

Internal Displacement in Afghanistan: Complex Challenges to Government Response

Andrew Solomon and Chareen Stark

Overview of Internal Displacement in the Islamic Republic of Afghanistan

The displacement and suffering experienced by those forced to flee their homes, communities and land is not a new phenomenon for Afghans. After three decades of armed conflict, serious human rights violations and ethnic violence—in addition to frequent natural disasters—millions of Afghans have been displaced as refugees and as IDPs.¹ According to a survey conducted by the International Committee of the Red Cross in 2009, 76 percent of Afghans affected by conflict have experienced some form of forced displacement during

The analysis presented in this case study is based on desk research consisting of data collection on the twelve benchmarks of the Framework for National Responsibility in addition to approximately twenty-five interviews and discussions with representatives of the government of Afghanistan, Afghan civil society organizations, international organizations and international military forces. These key interviews were conducted by Andrew Solomon in Afghanistan in April 2010 to identify national responses to displacement, elements of the domestic normative framework relevant to IDP protection, gaps in this normative framework and challenges to its implementation. This field research informed a report published by the Brookings-Bern Project on Internal Displacement and the Norwegian Refugee Council in November 2010, entitled *Realizing National Responsibility for the Protection of Internally Displaced Persons in Afghanistan: A Review of Relevant Laws, Policies, and Practices* ([/www.brookings.edu/reports/2011/11_afghan_national_responsibility.aspx](http://www.brookings.edu/reports/2011/11_afghan_national_responsibility.aspx)).

¹ For a historical overview of displacement in Afghanistan during this time, including discussion of the six key phases of this displacement, see *Beyond the Blanket: Towards More Effective Protection for Internally Displaced Persons in Southern Afghanistan*, Brookings-Bern Project on Internal Displacement and the Liaison Office, May 2010, pp. 22–26 (www.brookings.edu/reports/2010/05_idp_protection_afghanistan.aspx).

their lives.² According to an Oxfam-led study with similar findings, of the 76 percent who had been forcibly displaced over the past three decades, 41 percent were internally displaced at least once, 42 percent were displaced as refugees and 17 percent were both internally and internationally displaced.³

Since 1978, Afghanistan has witnessed six major phases of forced displacement, peaking at 1.2 million IDPs in 2002.⁴

—**Phase 1 (1978–1988; mainly refugee out-flows):** Displacement began after the Saur Revolution (April Revolution) in 1978, which was supported by the former Soviet Union, brought to power the People’s Democratic Party of Afghanistan (PDPA).

—**Phase 2 (1989–1995; internal and international displacement; refugee return):** Displacement began with the withdrawal of Soviet forces from Afghanistan in 1989 but gained momentum in 1992 following the defeat of the Afghan communist government.

—**Phase 3 (1996–2001; refugee return and renewed internal and international displacement; drought displacement in 2000):** Displacement occurred under the Taliban regime, with fighting concentrated in the non-Pashtun territories of the North; displacement was also due to drought.

² International Committee of the Red Cross, *Our World: Views from Afghanistan, Opinion Survey 2009*, June 2009, pp. 16–17 (www.icrc.org).

³ Oxfam International, *The Cost of War: Afghan Experiences of Conflict, 1978–2009*, p. 4 (www.oxfam.org).

⁴ For further analysis, see *Beyond the Blanket*.

—**Phase 4 (2001–2002, renewed internal and international displacement):** Afghans fled in anticipation of a U.S. military intervention following the attacks of 11 September 2001, in anti-Pashtun violence after the fall of the Taliban, and to avoid aerial bombardments by the U.S.-led Coalition Forces.

—**Phase 5 (2002–2004, massive return of refugees and IDPs):** Following the end of Taliban rule, the UN High Commissioner for Refugees (UNHCR) undertook the world's largest assisted repatriation operation in almost thirty years, repatriating nearly 5 million Afghan refugees from Pakistan, Iran and other countries of asylum. At the same time, the majority of Afghanistan's 1.2 million internally displaced persons returned home spontaneously.⁵

—**Phase 6 (2004 to the present, new internal displacement and secondary displacement of returnees).** The growing strength of the Taliban insurgency—particularly in the south, east and southeast, which are predominantly Pashtun areas—and its increasingly fierce engagement with the Afghan National Security Forces (ANSF) and international military forces has prompted tens of thousands of rural households to relocate to the relative safety of urban areas, where shelter and livelihoods are more accessible. In 2010, over 100,000 Afghans were newly displaced within the country due to conflict, largely armed conflict between NATO-led forces and Taliban-led insurgent groups in the south, southeast and west; most IDPs

fled attacks or combat initiated by NATO-led forces.⁶

Because of the volatile security and political situation in Pakistan, more and more Afghans are forcibly displaced within their own country—particularly to urban areas, since the traditional asylum options of Iran and Pakistan have become less desirable due to continued deportations from Iran, forced closures of refugee camps in Pakistan and harassment of refugees.⁷ According to the UN High Commissioner for Refugees (UNHCR), as of January 2011, the number of persons internally displaced due to conflict, human rights abuses and generalized violence in Afghanistan is estimated to be around 350,000—the highest figure since 2005.⁸ This figure includes Afghans displaced before 2003 who were unable to return home or integrate locally but excluded IDPs in remote, urban and semi-urban locations whose status could not be verified. Indeed, due to the complexity of the causes and dynamics of internal displacement as well as the limitations on humanitarian access in conflict-affected areas, many estimate the actual population of IDPs throughout the country to be significantly larger than indicated by most publicly available sources.

Most internally displaced Afghans exist on the margins of society and lack basic protection and assistance, including adequate access to fundamentals such as food, water, shelter and health care. Many have also been dispossessed of property, are unable to secure their livelihoods and are denied basic education. Displacement of such a magnitude and consequence also affects and is inextricably linked to the well-being and development of society as a whole, including the communities that

⁵ Nearly half a million IDPs (493,556 individuals) received UNHCR assistance to return between 2002 and end 2009; see UNHCR, *Operational Information Monthly Summary Report—January 09, Statistical Overview of Returned Afghan Refugees from Pakistan, Iran and Nine Neighboring Countries, IDPs Caseload and Movements and Reintegration Activities, 02 Mar 2002– 31 January 2009*, p. iii (www.aims.org.af/services/sectoral/emergency_assistance/refugee/unhcr_summaries/jan_09/summary1.pdf).

⁶ Internal Displacement Monitoring Centre (IDMC), *Internal Displacement: Global Overview of Trends and Developments in 2010*, March 2011, p. 87 (www.internal-displacement.org).

⁷ *Beyond the Blanket*, p. xvi.

⁸ UNHCR, *2011 UNHCR Country Operations Profile: Afghanistan* (www.unhcr.org); data are based on information collected from provincial authorities (the Departments of Refugees and Repatriation) and UNHCR field offices.

host the displaced. Efforts to prevent internal displacement, protect those who have been displaced, and bring an end to displacement should figure prominently among the national priorities of Afghan authorities.

1. Prevent Displacement and Minimize Its Adverse Effects

Do national authorities take measures to prevent arbitrary displacement and to minimize adverse effects of any unavoidable displacement?

In 2007, the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons (human rights of internRSG) called on the government to do more to prevent displacement and assist the displaced.⁹ However, the ability of the government of Afghanistan to prevent arbitrary displacement and to minimize the adverse effects of any unavoidable displacement is hindered by its inability to exercise effective sovereignty over its territory due to the presence of nonstate armed groups and, since 2001, an ongoing armed conflict and insurgency.¹⁰ According to several estimates, the central government in Kabul exercises effective control over less than 50 percent of the country.¹¹ The inability of the government (or foreign military forces) to provide protection against arbitrary displacement is evidenced by the fact that it is not uncommon

for IDPs to seek the patronage and protection of local strongmen or other nonstate armed actors.¹²

The ability of national authorities to prevent and mitigate displacement is also challenged by the ongoing operations of international military forces. Since at least 2007, President Hamid Karzai has repeatedly condemned the alleged indiscriminate killing of Afghan civilians during U.S. and North Atlantic Treaty Organization (NATO)–International Security Assistance Force (ISAF) operations. Notably, both commands have reformed their operational guidelines to mitigate the impact of counterinsurgency and other combat and security operations on the civilian population. The issue of civilian casualties nevertheless remains a major point of friction between these forces and Karzai, who has launched investigations into a number of the incidents. In February 2010, Karzai acknowledged that NATO had made progress in reducing civilian casualties, but at the same time he urged NATO to do more to protect civilians during combat operations.¹³

While the Afghan legal system neither explicitly guarantees the right to be free from arbitrary displacement nor explicitly provides for the criminalization of arbitrary displacement, the Afghan Constitution, civil code and penal code guarantee several fundamental rights and freedoms that are relevant to the prevention and mitigation of displacement.¹⁴ For instance, in addition to af-

⁹ OHCHR, “UN Expert Concerned about Growing Problem of Internal Displacement in Afghanistan,” 20 August 2007, (www.brookings.edu/projects/idp/RSG-Press-Releases/20070820_afghanistan.aspx).

¹⁰ The role in internal displacement played by the Taliban regime (1996–2001) and antigovernment elements after 2001 is beyond the scope of this study.

¹¹ According to the Brookings state weakness index, Afghanistan ranks at the bottom of 141 countries in terms of the state’s ability to provide security and basic social services. See *Index of State Weakness in the Developing World*, Brookings Institution, 2008 (www.brookings.edu). See also *Report on Progress toward Security and Stability in Afghanistan*, U.S. Department of Defense, April 2010, section 3 (www.defense.gov).

¹² For an in-depth discussion of coping strategies pursued by IDPs in the absence of national protection, including seeking protection of local strongmen and the insurgency, see *Beyond the Blanket*, pp. 61–72.

¹³ Alfred de Montesquiou, “Karzai: NATO Still Causes Too Many Civilian Deaths,” Associated Press, 20 February 2010 ([/www.huffingtonpost.com/2010/02/20/karzai-nato-still-causes-_n_470048.html](http://www.huffingtonpost.com/2010/02/20/karzai-nato-still-causes-_n_470048.html)); “Karzai Protests Civilian Deaths,” *New York Times*, 25 January 2009 (www.nytimes.com/2009/01/25/world/asia/25iht-25karzai.19659063.html); “Karzai Anger over Civilian Deaths,” BBC News, 2 May 2007 (<http://news.bbc.co.uk/2/hi/6615781.stm>).

¹⁴ See further, Brookings-Bern Project on Internal Displacement and the Norwegian Refugee Council, *Realizing National Responsibility for the Protection of Internally Displaced Persons in Afghanistan*, pp. 24–25.

firming the principles of nondiscrimination and equality of all citizens before the law, the 2004 Constitution affirms the rights to freedom of movement, health, employment, education, family life and other fundamental rights and freedoms for all Afghans, including those who are internally displaced.¹⁵

The new Draft Law on Disaster Response, Management, and Preparedness, which was still being reviewed by the executive and legislative branches at the time of writing, outlines disaster prevention and mitigation activities and mechanisms for managing them in a range of disasters, from drought to earthquakes, avalanches, forest fires, epidemics, storms, floods and landslides. The draft law does not mention internal displacement specifically, but it includes among its goals the “rescue of disaster victims” and their “return to normal lives” in addition to overall disaster prevention.¹⁶

The *2009–2010 Strategy Report* of the Afghanistan National IDP Task Force, co-chaired by the Ministry of Refugees and Repatriation (MoRR) and UNHCR, includes the goal to “advocate with all relevant stakeholders to address causes of displacement and support initiatives to prevent further internal displacement.”¹⁷ However, it is unclear what substantive activities, if any, have been undertaken to prevent displacement.

On criminalization and prosecution, see Benchmark 10 in this case study.

¹⁵ See Articles 22, 39, 48, 52, 54. On education: Articles 17, 43–47, Constitution of the Islamic Republic of Afghanistan, 2004.

¹⁶ See Articles 5.3 and 5.4, Draft Law on Disaster Response, Management, and Preparedness in the Islamic State of Afghanistan. If approved, it would supersede the law on disaster response from 1990, a copy of which was not acquired for this report. The current draft law was received from representative of the UN Development Programme.

¹⁷ Afghanistan National IDP Task Force, *Strategy 2009 to 2010*, 30 August 2009 (<http://ochaonline.un.org/OCHALinkclick.aspx?link=ocha&dodid=1164335>).

2. Raise National Awareness of the Problem

Does the government (at the highest Executive level, e.g. President/Prime Minister) acknowledge the existence of internal displacement and its responsibility to address it as a national priority?

Although its ability to prevent and mitigate displacement remains limited, the government acknowledges the existence of internal displacement and its responsibility to address it as a national priority. An international adviser to the Ministry of Rural Development and Rehabilitation (MoRRD) has noted that President Karzai has “repeatedly emphasized that reducing [the] IDP caseload is a national priority.”¹⁸ In 2003, a report by the MoRRD and the Ministry of Refugees and Repatriation included the statement that “the State of Afghanistan is responsible for protection and durable solutions for the IDP population in the country with support from specialised agencies such as UNHCR, IOM and with financial assistance by the international community.”¹⁹ In the “Refugees, Returnees and IDP Sector Strategy” of the Afghanistan National Development Strategy for 2008–2013—the country’s blueprint for security, governance, economic growth and poverty reduction efforts developed in concert with national and international actors and approved by Karzai in 2008—the government acknowledges its responsibility for IDPs but also calls on international actors to complement government efforts.²⁰ The Ministry of Justice reportedly was work-

¹⁸ Peter Spink, “A Closing Window? Are Afghanistan’s IDPs Being Forgotten?” *Forced Migration Review*, no. 21, September 2004, p. 36 (www.fmreview.org).

¹⁹ Ministry of Rural Development and Rehabilitation and Ministry of Refugees and Repatriation, *Towards Definite Solutions for IDPs in the South: A Regional Operation Plan*, October 2003 ([www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/B057C8B9AB7B8DC5802570B8005A6F8D?OpenDocument#1.11.5](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/B057C8B9AB7B8DC5802570B8005A6F8D?OpenDocument#1.11.5)).

²⁰ Islamic Republic of Afghanistan, *Afghanistan National Development Strategy Secretariat, Afghanistan National*

ing in early 2010 to develop a national policy, though not IDP-specific, to guide the promotion of public awareness of citizens' legal rights.²¹ In addition, the UN Guiding Principles on Internal Displacement have been translated into Dari and Pashto and were distributed at the national and local levels in 2003.²² It is unclear if the government has ongoing institutionalized awareness campaigns on the rights of IDPs.

3. Collect Data on Number and Conditions of IDPs

Do the national authorities collect data on the number and conditions of IDPs?

The Ministry of Refugees and Repatriation, including through its various provincial departments (Department of Refugees and Repatriation, or DoRRs) collects data on and profiles IDPs through its role as co-chair with UNHCR of the National IDP Task Force. The ministry relies on its provincial DoRR branches, relevant ministries, local authorities, UN agencies, the Afghanistan Independent Human Rights Commission (AIHRC) and NGOs. However, data collection methods have not been very systematic and are fraught with difficulties that affect their accuracy. While the task force has sought to redress some of these problems, others are beyond its control.

Development Strategy 1387–1391 (2008–2013): A Strategy for Security, Governance, Economic Growth and Poverty Reduction (www.undp.org.af/publications/KeyDocuments/ANDS_Full_Eng.pdf).

²¹ *The Situation in Afghanistan and Its Implications for International Peace and Security*, Report of the Secretary-General, 10 March 2010, UN Doc. No. A/64705-S/2010/127, 17. See further, Brookings-Bern Project on Internal Displacement and the Norwegian Refugee Council, *Realizing National Responsibility for the Protection of Internally Displaced Persons in Afghanistan*, p. 22.

²² Norwegian Refugee Council and UNHCR, *Workshop on the UN Guiding Principles on Internal Displacement*, 7–8 December 2003, Kabul (www.internal-displacement.org).

Established in 2008 as a subgroup of the UN-led Afghanistan Protection Cluster, the National IDP Task Force includes national actors and international partners and undertakes monitoring and profiling of three IDP caseloads in Afghanistan: conflict-induced, natural-disaster induced, and protracted IDPs.²³ While task force data are used as a primary reference for planning purposes, it is commonly accepted that the data do not accurately and fully represent the magnitude and complexity of the displacement situation in Afghanistan. Factors hindering the counting and profiling of IDPs include the temporary nature of displacement, particularly in terms of natural disaster-induced displacement; insecurity and lack of access to IDPs, particularly in the southern provinces of Helmand, Kandahar and Uruzgan; and different interpretations of who qualifies as an internally displaced person rather than an economic migrant and when displacement begins and ends.

Politics also affects accurate reporting of numbers—the basis for providing protection and assistance—illustrating the complexity of the IDP issue in Afghanistan. According to UNHCR in 2006, “there is much at stake for IDP leaders when determining the numbers of people in their settlements” as aid distribution amounts depend on those figures. In addition, it has been frequently alleged that poor individuals have presented themselves as IDPs, especially in the “less official camps” in Panjwayi and Maywand, “and received equal benefits as the ‘genuine’ Kuchi IDPs.”²⁴

In 2007, the Representative of the UN Secretary-General on the Human Rights of Internally Displaced

²³ See further, Afghanistan Protection Cluster, *Afghanistan Protection Cluster—Terms of Reference, Final July 2010*; Afghanistan Protection Cluster, *Afghanistan Protection Cluster Work Plan 2011 Final -1* (<http://ochaonline.un.org/afghanistan/Clusters/Protection/tabid/5586/language/en-US/Default.aspx>).

²⁴ Asia Consultants International, *Durable Solutions for Kuchi IDPs in the South of Afghanistan: Options and Opportunities*, commissioned for UNHCR Kandahar, November 2006 (www.unhcr.org/46c993942.pdf).

Persons human rights of internrecommended that the government undertake comprehensive national assessment and profiling of IDPs.²⁵ On the basis of the RSG's recommendation, UNHCR, under the auspices of the National IDP Task Force and in close cooperation with the Ministry of Refugees and Repatriation, profiled IDPs based on surveys that had been undertaken, in particular those by UNHCR offices in the field, by provincial Departments of Refugees and Repatriation of the Ministry of Refugees and Repatriation, and by the UN Assistance Mission in Afghanistan (UNAMA). The resulting report, published in November 2008, the *National IDP Profile*, documented 235,833 IDPs, including the cause and location of their displacement, and assessed their protection and assistance needs.²⁶

The report distinguishes the following four categories of displacement: protracted displacement, including the majority of identified IDPs; new conflict-induced displacement, including individuals displaced since 2002; secondary displacement, including returnees and deportees; and displacement due to food insecurity or natural disaster. The report does not include IDPs displaced by recent droughts and included scant information on the estimated thousands displaced since 2006 due to conflict between national/international forces and antigovernment elements.²⁷ In May 2009 the National IDP Task Force updated the total figure of IDPs upward, to 270,000, to account for new information on urban areas in Helmand Province and conflict-induced displacement, although the numbers were contested due to access restrictions.²⁸

²⁵ OHCHR, "UN Expert Concerned about Growing Problem of Internal Displacement in Afghanistan."

²⁶ UNHCR and Ministry of Refugees and Repatriation, "Joint Press Release: First National IDP Report Reveals Complex Challenges for IDPs," 15 December 2008 (www.unhcr.org/49b8e91c2.html); UNHCR, *National Profile on Internally Displaced Persons (IDPs) in Afghanistan*, December 2008 (www.unhcr.org/49ba33a02.html).

²⁷ UNHCR, *National Profile on Internally Displaced Persons (IDPs) in Afghanistan*.

²⁸ Figures provided at IDP Task Force meeting, 12 May 2009; cited in *Beyond the Blanket*, p. 16.

As the *National IDP Profile* acknowledges, access restrictions and insecurity limit the collection of information in many parts of the country. Given these and other methodological issues, the figures for this profile are neither comprehensive nor fully accurate.²⁹ However, the report served to re-engage actors on the issue of internal displacement, and IDP data compiled and reported by the National IDP Task force is considered a starting point.

Data collection efforts since the release of the *National IDP Profile* continue to reveal complexities and limitations. In contrast to the December 2009 UNHCR estimate of 297,000 IDPs, the January 2010 MoRR estimate included 414,000 IDPs.³⁰ Accessibility was one of the reasons for the discrepancy. The MoRR data were collected from all thirty-four provinces, whereas the UNHCR figure likely "exclude[d] displaced persons residing in a number of host communities throughout the country."³¹ UNHCR has acknowledged that it had little access to certain groups of displaced people and thus limited information on those groups.³² However, UNHCR has also noted that temporary displacements and secondary displacements also account for the variance in figures.³³ Similar discrepancies between MoRR and UNCHR IDP figures were reported in October 2010.³⁴ But, as discussed, the misrepresentation of IDP figures also accounts for the variance in the figures.³⁵

²⁹ For further analysis of the methodology used in the *National IDP Profile*, see *Beyond the Blanket*, pp. 16–18.

³⁰ Integrated Regional Information Networks (IRIN), "Afghanistan: More IDPs than Previously Thought-Government," 4 January 2010 (www.irinnews.org/Report.aspx?ReportId=87626).

³¹ USAID, *Afghanistan – Complex Emergency Situation Report # 1, FY 2010*, September 30 2009, available at: www.usaid.gov

³² Refugees International, *Afghanistan: Eyes Wide Open to Humanitarian Needs*, 20 July 2009 (www.refugeesinternational.org).

³³ USAID, *Afghanistan: Complex Emergency Situation Report No. 1, FY 2010*, 30 September 2009.

³⁴ IRIN, "Afghanistan: Little Relief for Growing Number of Conflict IDPs," 14 October 2010 (www.irinnews.org/report.aspx?reportid=90768).

³⁵ According to interview with key informant, July 2011.

To address the problems and discrepancies in data collection and reporting on IDPs and thereby provide IDPs with greater protection and assistance, the task force established an ad hoc group, the Working Group on IDP Data Reconciliation and Harmonization.³⁶ This working group, which comprises technical staff from UNHCR and the emergency section of the MoRR, reviewed the IDP data collection and reporting methodologies of both entities. It issued a formal note in March 2010 discussing its findings and offering a series of recommendations to streamline data collection, recording and reporting across the DoRRs, other ministries, local authorities, UN agencies, the AIHRC and NGOs—all of which employ different methodologies. Among the DoRRs, there are no uniform practices, forms, databases or the like for developing and analyzing data on IDPs.

The working group issued eleven recommendations for improving data collection, including that UNHCR and the MoRR develop guidelines for collecting and harmonizing data, as part of the more comprehensive “Guidance Package on Protection of IDPs.” This “package” also entails clarifying the concept of “internally displaced person” and the roles of the relevant humanitarian and other actors providing IDPs with protection and assistance. The working group also called for establishment of additional regional IDP task forces as well as regular monthly meetings between DoRRs and UNHCR field offices to ensure consistency in IDP data reporting. With respect to natural disaster-induced displacement, the working group recommended that the International Organization for Migration (IOM) compile related displacement figures and share the information on a monthly basis with the national and regional task forces.

To follow up on these recommendations, the MoRR and UNHCR formed the IDP Data Management Working Group in September 2010. This working group conducted a comparative review of IDP statistical

information to identify discrepancies by region in numbers of IDPs (in terms of families, not individuals, due to data limitations) and cause of displacement, from September 2010 through February 2011. The working group was able to reduce the discrepancies by 95 percent (over 30,000 families) by the time that it released its report with revised figures, analysis and recommendations in April 2011. The review process revealed many of the same issues in data collection previously identified by the National IDP Task Force.

Indeed, the working group acknowledged those issues: “Practical steps have not been taken to implement recommendations/ suggestions made by the IDP Data Harmonization working group held in March 2010 by MoRR.” Chief among the problems identified was the DoRRs’ lack of a consistent methodology for collecting IDP information and reporting it to the Ministry of Refugees and Repatriation. Reporting to provincial offices on the presence and number of IDPs included “haphazard methods including phone calls, post, letters and contact with the regional DoRRs via Codan HF Radio. The working group also called attention to the fact that IDP statistics do not capture return, secondary displacement, or relocation; do not distinguish between protracted and new caseloads and in many cases between conflict- and natural disaster-induced displacement; and are not disaggregated by age or gender. Further to the above discussion on manipulation of IDP figures, the working group observed: “IDP data and information is mainly reported by DoRRs for the purpose of humanitarian assistance distribution and in most cases the IDP data is higher than UNHCR data.” While this working group issued a series of recommendations to improve data collection efforts, it remains to be seen what impact they will have.³⁷

³⁶ See IRIN, “Afghanistan: Little Relief for Growing Number of Conflict IDPs.”

³⁷ UNHCR and MoRR, *Afghanistan Note IDP Data Management Working Group: 2011*, 25 April 2011, p. 5-6 (<http://ochaonline.un.org>; for Recommendations).

4. Support Training on the Rights of IDPs

Has there been any training of the authorities on the rights of IDPs?

Human rights training for government officials, including those in the formal justice and security sectors, takes place on a periodic basis and with the support and participation of international partners.³⁸ Much of the training tends to focus on general human rights standards and pertinent issues like rights of the accused, women's rights, child abuse, and access to justice. The AIHRC, for example, has trained police and army recruits on human rights through the National Army Training Center and the National Policy Academy.³⁹ The Ministry of Refugees and Repatriation and other line ministries have participated in training on internal displacement organized by international organizations, for example, the Norwegian Refugee Council.

Some members of traditional dispute mechanisms (*jirgas* and *shuras*) have also been trained in basic aspects of Afghan national law that are relevant to resolving property disputes involving IDPs.⁴⁰ Afghan refugee and returnee issues were part of the agenda for the 2010 Consultative Peace Jirga on national reintegration and reconciliation but the situation of IDPs was not addressed in a meaningful way.⁴¹

In addition, Afghan authorities have established the new Human Rights Support Unit (HRSU) within the

Ministry of Justice (MoJ) as a mechanism to facilitate domestic compliance with international human rights obligations in all line ministries.⁴² The government's commitment to establishing the HRSU was set forth in the Afghanistan National Development Strategy, in Pillar 2, "Governance, Rule of Law and Human Rights"; in the Afghanistan Compact (AC); and at the International Kabul Conference on Afghanistan in July 2010. A task force comprises MoJ officials and representatives from the AIHRC and civil society organizations provides oversight and functions as a decisionmaking body for the HRSU. The task force meets on a quarterly basis and is chaired by the minister of justice or his designated deputy. The HRSU and the task force receive technical support from an advisory board.

The HRSU is composed of four subunits: Human Rights Education Subunit; Legal Technical and Strategic Studies Subunit; Monitoring, Evaluation and Follow-up Subunit; and the Internal Issues Related Subunit.⁴³ The Human Rights Education Subunit is tasked with conducting capacity-building activities, particularly training sessions and workshops on human rights, for government officials. To date, at least one training session has been conducted, with support from the UN Development Programme (UNDP) and in cooperation with the UNAMA Human Rights Unit, on the implementation of the recommendations to Afghanistan issued by the UN Human Rights Council in its Universal Periodic Review.⁴⁴ Participants included the Ministry of Foreign Affairs, HRSU staff, members of the Department of Human Rights and International Women's Affairs, AIHRC representatives and UNAMA staff. The HRSU, if properly resourced and staffed, could

³⁸ UN Assistance Mission in Afghanistan, "UNAMA Trains Police Officers, Prosecutors on Human Rights," 19 February 2010 (<http://unama.unmissions.org>).

³⁹ Afghanistan Independent Human Rights Commission, *Annual Report, January–December 31, 2009, 2010*, pp. 31–32 (www.aihrc.org.af/English).

⁴⁰ Mary Lindgren, *Property Law Training for Jirga and Shura Members: The Process for Creating Legal Training*, Norwegian Refugee Council, 2007.

⁴¹ "Resolution Adopted at the Conclusion of the National Consultative Peace Jirga, 2–4 June 2010," 6 June 2010 (www.afghanistan-un.org).

⁴² The Ministry of Interior established the Human Rights Department (with branches at the provincial level) in April 2002 to investigate human rights abuses by police.

⁴³ Government of the Islamic Republic of Afghanistan, Ministry of Justice, "Human Rights Support Unit" (<http://moj.gov.af/en/page/3165>).

⁴⁴ Government of the Islamic Republic of Afghanistan, Ministry of Justice, "Human Rights Support Unit Success Story: Human Rights Support Unit conducts UPR follow up training workshop," <http://moj.gov.af/en/page/1822>

contribute to improving the Afghan legal framework for human rights protection in general and for the protection of IDPs in particular.

Government authorities have participated in training sponsored by the Afghanistan Independent Human Rights Commission, the Norwegian Refugee Council and the Internal Displacement Monitoring Centre and have worked to incorporate human rights trainings into police academy curriculum.

IDMC and UNHCR have trained state and provincial authorities on the UN Guiding Principles on Internal Displacement, aiming to enhance their ability to protect IDPs more systematically. For example, in 2003 representatives from MoRR, the Ministry of Internal Affairs, the Ministry of Rural Rehabilitation and Development, and the Afghanistan Independent Human Rights Commission were trained on the Guiding Principles, which were provided in English, Dari, and Pashto.⁴⁵ Similar training was held in 2009 and 2010. An outcome of the 2003 workshop was the issuing of recommendations by participants, including government officials, on what steps could be taken to prevent displacement. These included continuing to strengthen the democratic process at national and local levels, raising awareness among government officials and local authorities, and offering training on international humanitarian law and human rights relating to the prevention of arbitrary displacement. Participants stressed the need to settle land and property disputes as a strategy to minimizing risks of renewed displacement.⁴⁶ In 2005 representatives from the AIHRC attended a workshop on national human rights institutions and internal displacement conducted by the Asia Pacific Forum–Brookings-Bern Project on Internal Displacement.⁴⁷

⁴⁵ IDMC, *Workshop on the UN Guiding Principles on Internal Displacement*, 7-8 December 2003, available at: www.internal-displacement.org

⁴⁶ Ibid.

⁴⁷ See APF-Brookings-Bern Project on Internal Displacement, “Regional Workshop on National Human Rights Institutions and Internally Displaced Persons,” October 2005, Colombo, Sri Lanka (www.brookings.edu/

5. Ensure a Legal Framework for Upholding IDPs’ Rights

Does national legislation address the specific needs arising in situations of internal displacement and support IDPs to realize their rights?

Afghan national authorities have not developed a comprehensive IDP-specific legal instrument that affirms the human rights of those who are internally displaced or establishes minimum standards for preventing and responding to internal displacement. Nor have they formally adopted a normative instrument that sets forth a flexible or dynamic concept or definition of an internally displaced person for the purpose of ensuring full respect for IDPs’ human rights. Nevertheless, several basic elements of a framework for addressing the basic needs and vulnerabilities of IDPs can be found among a variety of constitutional provisions and legal instruments, including presidential decrees that are currently in force.⁴⁸

The Afghan legal system does not explicitly guarantee an individual’s right to be free from arbitrary displacement as set forth in the Guiding Principles on Internal Displacement. However, the Constitution does affirm several fundamental rights and freedoms that can prevent Afghans from being forced from their homes and communities. For example, according to Articles 38 and 40 of the Constitution, the homes and property of all persons are considered inviolable and immune from invasion. Similar prohibitions on extrajudicial confiscation or acquisition of property are affirmed by the Civil Code of Afghanistan, which provides that no person may be dispossessed of property except by law.⁴⁹ In addition, dispossession of a person’s residence is also a

idp).

⁴⁸ See further, Brookings-Bern Project on Internal Displacement and the Norwegian Refugee Council, *Realizing National Responsibility for the Protection of Internally Displaced Persons in Afghanistan*.

⁴⁹ Article 1903, Civil Code of Afghanistan.

criminal offense under the Penal Code of Afghanistan.⁵⁰ Although these provisions are clearly intended to protect against trespassing and confiscation of property, not arbitrary displacement, they can contribute in a limited manner to the development of a more comprehensive protection framework that deters acts associated with displacement and provides a remedy to those who have been forcibly evicted and separated from their property without a basis in law. These provisions, however, are not strengthened by the prohibition of acts of arbitrary displacement or similar crimes.

Afghan IDPs who have lost or who are denied documentation, such as national identity cards (*tazkera*) or birth certificates, may be excluded from health care, education, pensions and other social benefits. The Constitution does not explicitly guarantee the right of legal personality, although it does recognize the inherent right of all Afghans to citizenship.⁵¹ Legal personality is recognized by the Civil Code, which also provides for the registration of Afghan male citizens and the issuance of a national identity card that contains personal and family information along with place of residency, occupation, and military service status; registration is mandatory for all men but reportedly is optional for women.⁵² This document, which typically is issued by the local population registration department of the Ministry of Interior, serves as an Afghan citizen's primary form of identification and means of accessing legal entitlements.⁵³ According to the Law on Registration of Population Records, which regulates issuance of the *tazkera* as well as birth and death certificates, when a

person seeking to obtain a *tazkera* and other documents is no longer in his place of normal residence, an application may be submitted to the local registration department.⁵⁴ This type of facilitated procedure is essential to ensuring that IDPs enjoy a legal relationship to the state and can realize their rights and freedoms under the law.

Property and land rights of IDPs are either specifically addressed or generally implicated by substantive and procedural provisions found in a series of executive acts issued since 2001.⁵⁵ Presidential Decree No. 104 on Land Distribution for Settlement to Eligible Returnees sets forth a basic framework for distributing government land to IDPs and returnees as a means of addressing their needs for shelter; however, it does not recognize other rights or needs of IDPs.⁵⁶ It requires IDPs seeking access to land to provide a national identity card and documentation proving internal displacement status—a requirement that excludes most IDPs because they do not have the necessary documentation. In practice, the decree has not proven effective in guaranteeing the land and property rights of IDPs in a meaningful way.⁵⁷

⁵⁰ Article 431, *Penal Code of Afghanistan*.

⁵¹ Article 28, Constitution of the Islamic Republic of Afghanistan.

⁵² See Article 36 and 47, Civil Code. Articles 51–54 regulate residency and appear to define criteria for establishing and confirming residency but complete English language translations of these provisions are not readily available.

⁵³ Mobile registration units have reportedly been established in other government buildings and courts. For more information on the *tazkera*, see “Frequently Asked Questions: National Identification Cards,” United Nations High Commission for Refugees (UNHCR), May 2005, available at: www.unhcr.org/4497b1c12.pdf.

⁵⁴ Article 5, *Law on Registration of Population Records*, 1955. (Efforts to confirm existence of a more recent version of this law or other instruments regulating issuance of population records were unsuccessful.)

⁵⁵ For a comprehensive and in-depth discussion of Afghan property and land rights, see Conor Foley, *Guide to Property Law in Afghanistan*, Norwegian Refugee Council, 2005. See also Sheila Reed and Conor Foley, *Land and Property: Challenges and Opportunities for Returnees and Internally Displaced People in Afghanistan*, Norwegian Refugee Council, June 2009; Liz Alden Wily, *Policy Brief: Land and the Constitution*, Afghan Research and Evaluation Union, August 2003.

⁵⁶ *Decree of the President of the Islamic Republic of Afghanistan on Land Distribution for Settlement to Eligible Returnees and Internally Displaced Persons*, No. 104 (6 December 2005).

⁵⁷ See Reed and Foley, *Land and Property: Challenges and Opportunities for Returnees and Internally Displaced People in Afghanistan*, p. 6.

6. Develop a National Policy on Internal Displacement

Has the national government adopted a policy or plan of action to address internal displacement?

To date, the Afghan government has not adopted a policy or plan of action focused specifically on internal displacement or protection of the human rights of IDPs.⁵⁸ While national authorities had developed policies, including the Draft Regional Operational Plan for the south of the country in 2003 and the National IDP Plan and Policy in 2005, these instruments are defunct.⁵⁹ However, one of the key strategies of the Afghanistan National Development Strategy for 2008–2013 lays the foundation for a basic framework to address the situation of IDPs, refugees and returnees.

In 2003, the Ministry of Rural Rehabilitation and Development (MoRRD), Ministry of Refugees and Repatriation and the Ministry of Frontiers and Tribal Affairs (MoFTA) drafted the Regional Operational Plan for achieving durable solutions for IDPs in the south of the country, focusing on return. The plan foresaw the provision of direct support by the governors of Kandahar and Helmand and oversight by the Consultative Group on Returnees and IDPs. The plan aims to identify activities that could lead to durable solutions for IDPs within a three-year period, yet the plan itself “does not stretch beyond 2004,” in recognition of the need to reassess and engage in additional dialogue before developing a final plan, especially given the security situation and other external factors that could constrain its implementation.⁶⁰ One of the plan’s principles was that “the UN Guiding

Principles on Internal Displacement are to be adhered to by the Afghan State to promote and seek permanent solutions for IDPs.”⁶¹ The plan foresaw the development of other regional plans to address internal displacement and the inclusion of the plan in the national budget; it also included a Terms of Reference for an international adviser to assist in the plan’s implementation.

In 2005, the Consultative Group on Returnees, Refugees, and IDPs endorsed the National IDP Plan and Policy, which emphasized durable solutions and affirmed the government’s responsibility to address internal displacement.⁶² This group was reportedly the mechanism that facilitated coordination between the government and the United Nations as of April 2003. The National IDP Plan and Policy was an initiative of the MoRRD, the MoRR, and the MoFTA and was supported by UNHCR, the UN Development Programme, the World Food Programme and the UN Assistance Mission in Afghanistan.⁶³ The consultative group also agreed to respect the Guiding Principles.⁶⁴

Under the economic and social development pillar of the Afghanistan National Development Strategy for 2008–2013, the Afghan government adopted the Refugee Return and IDP (RRI) sector strategy. The RRI strategy was also affirmed in Kabul at the International Conference on Return and Reintegration in November 2008.⁶⁵ The RRI strategy, which emphasizes the return

⁵⁸ The Transitional Islamic State of Afghanistan adopted the National Return, Displacement, and Reintegration Strategy in March 2003, but the instrument has expired.

⁵⁹ Key informant interview, July 2011.

⁶⁰ Ministry of Refugees and Repatriation and Ministry of Rural Development and Rehabilitation, *Towards Definite Solutions for IDPs in the South: A Regional Operation Plan*, October 2003, p. 2 (www.internal-displacement.org).

⁶¹ *Ibid.*, p.3.

⁶² UNHCR, *National Profile of Internal Displaced Persons (IDPs) in Afghanistan*, p. 6.

⁶³ Pete Spink, “A Closing Window? Are Afghanistan’s IDPs Being forgotten?” *Forced Migration Review*, no. 21, September 2004.

⁶⁴ Transitional Islamic State of Afghanistan, *National Return, Displacement and Reintegration Strategy for the Year 1382 [2003]*. March 2003 (<http://reliefweb.int/node/409885>).

⁶⁵ Islamic Republic of Afghanistan, Afghanistan National Development Strategy Secretariat, *Afghanistan National Development Strategy 1387–1391 (2008–2013): A Strategy for Security, Governance, Economic Growth and Poverty Reduction*, June 2008, pp. 129–33 (www.embassyofafghanistan.org/documents/resume_ANDS.pdf); UNHCR, *Afghanistan Situation Operational Update*,

and reintegration of returnees to the exclusion of other durable solutions such as local integration or settlement elsewhere, states that it is geared toward the sustainable reintegration of “all Afghan refugees, returnees and IDPs choosing to return” and that return is the “guiding principle” of the strategy. The strategy further states that its vision includes paying greater attention to the protection of women and children, among other vulnerable groups of refugees and IDPs, but it stops short of providing specific policy guidance as to how to protect their rights in practice. To encourage voluntary return, the RRI strategy sets forth measures to encourage voluntary return in two main areas: the provision of housing, facilities, and access to land and social services such as employment opportunities, health care and education for IDPs; and improving government capacity.⁶⁶ While the RRI strategy does demonstrate the government’s commitment to meeting the Afghanistan Compact’s benchmark on protecting and assisting all IDPs,⁶⁷ the strategy and the Afghanistan National Development Strategy as a whole do not fully integrate a human rights perspective in their efforts to address the protection needs of IDPs.

7. Designate an Institutional Focal Point on IDPs

Has the government designated a national focal point on IDPs?

The Ministry of Refugees and Repatriation is the lead

September 2009 (www.unhcr.org/4ac49fa39.html).

⁶⁶ Government of the Islamic Republic of Afghanistan, *Afghanistan National Development Strategy 1387–1391 (2008–2013)*.

⁶⁷ This benchmark, which was adopted in February 2006, provides “[b]y end-2010, all refugees opting to return and internally displaced persons will be provided assistance for rehabilitation and integration in their local communities.” See Annex I, “Benchmarks and Timelines of the Afghanistan Compact,” London Conference on Afghanistan, 31 January–1 February 2006, p. 11. The Afghanistan Compact is a political document that sets forth the framework for international cooperation with Afghanistan for five years.

government ministry for conflict-induced IDPs.⁶⁸ The Afghanistan Natural Disaster Management Authority (ANDMA), a subministerial body responsible for coordinating emergency response and post-disaster recovery, coordinates short-term assistance for those affected and displaced by natural disasters.⁶⁹ Both bodies coordinate protection and assistance at the national level with other government bodies and international actors concerned with protection issues. They also work at the provincial level through their respective regional directorates. However, the MoRR and ANDMA lack the necessary resources, capacity and political clout to effectively realize their protection mandates.

The designation of a lead ministerial focal point is a fairly recent phenomenon. According to the Deputy Representative for the UN High Commissioner for Refugees in Afghanistan in 2008, there was “no single agency that has responsibility for IDPs; however, the institutional response is better organized than previously.” The MoRR, ANDMA and the Ministry of Rural Rehabilitation and Development all “claim[ed] some jurisdiction” over IDPs, although the provincial governor’s office was often the government body that dealt with internal displacement issues in lieu of the national government. The deputy representative also noted that at the time, UNHCR had been working to establish an IDP task force.⁷⁰ That year, the National IDP Task Force was created, co-chaired by the MoRR and UNHCR. In April 2011, the IDP Data Management Working Group recommended that the MoRR designate an institutional focal point on internal displacement at the national level and the provincial level to facilitate and improve data collection efforts (see Benchmark 3).

⁶⁸ Islamic Republic of Afghanistan, *Afghanistan National Development Strategy 1387–1391 (2008–2013)*.

⁶⁹ Brookings-Bern Project on Internal Displacement, *Displacement and Security in Afghanistan*, summary report of seminar, 23 June 2008 (www.brookings.edu/events/2008/0623_afghanistan.aspx).

⁷⁰ “Remarks by Ewen McLeod, Deputy Representative for the United Nations High Commissioner for Refugees in Afghanistan,” in Brookings-Bern Project on Internal Displacement, *Displacement and Security In Afghanistan*.

The National IDP Task Force works in coordination with regional IDP task forces based in Kandahar, Herat, and elsewhere in the country in addition to assisting other ad hoc, informal protection coordination mechanisms at the provincial level. Notably, the National IDP Task Force's work plan, which is currently being implemented and monitored through the regional task forces, formally adopts the IDP definition set forth in paragraph 2 of the Guiding Principles on Internal Displacement. Following a May 2010 request by the National IDP Task Force to the Afghanistan Protection Cluster for guidance on assessing the protection needs of IDPs, the Afghanistan Protection Cluster issued the *Protection Checklist: Internally Displaced Persons* and the *Guidance Note on Protection for the Internally Displaced: Causes and Impact by Sector* in July 2010.⁷¹ These tools serve to assist all actors, including the MoRR, national and regional IDP task forces, civil society organizations and international humanitarian organizations, in their protection and assistance activities for IDPs displaced by conflict and natural disasters.

8. Support NHRIs to Integrate Internal Displacement into Their Work

Is there a national human rights institution (NHRI) that gives attention to the issue of internal displacement?

Afghanistan's national human rights institution is the Afghanistan Independent Human Rights Commission.⁷² The AIHRC, which was established by a presidential decree of the interim administration in June 2002, became constitutionalized in 2004 and regulated by the Law on the Structure, Duties, and Mandate of the

Afghanistan Independent Human Rights Commission in 2005. While the mandate of the AIHRC is to protect, monitor and promote the human rights of all Afghans, it includes a focus on women, children, and those with disabilities⁷³ and also monitors and reports on other vulnerable groups, including IDPs, refugees and returnees.⁷⁴ The AIHRC investigates complaints, monitors and reports on human rights abuses, advises the government and conducts workshops for government staff and civil society. The Kabul-based commission had thirteen other offices throughout the country at the time of writing.⁷⁵

Previously, the AIHRC was a member of the working group of the Return Commission of the North. Established in 2002 with UN, central government and northern faction representatives, the commission sought to facilitate the return of refugees and IDPs in the northwest.⁷⁶ Further information on the commission's work beyond its study on returnees in 2003 was not available.⁷⁷

Through field monitoring, the AIHRC assesses the human rights and protection situation and needs of the vulnerable, including IDPs' status, area of origin and

⁷¹ Afghanistan Protection Cluster, *Protection Checklist: Internally Displaced Persons*, 22 July 2010; and Afghanistan Protection Cluster, *Guidance Note on Protection for the Internally Displaced: Causes and Impact by Sector*, 22 July 2010 (on file with authors). Both documents received by UNHCR in Kabul.

⁷² National Human Rights Institution Forum, Afghanistan (www.nhri.net/NationalData.asp?ID=127).

⁷³ Article 58, Constitution of the Islamic Republic of Afghanistan, 2004.

⁷⁴ UN General Assembly, *Report of the UN High Commissioner for Human Rights on the Situation of Human Rights in Afghanistan and on the Achievement of the Technical Assistance in the Field of Human Rights*, 9 September 2005 (www.unhcr.org/refworld/docid/43f30fbd0.html).

⁷⁵ AIHRC (www.aihrc.org.af/english/).

⁷⁶ Other members were representatives from the UN Assistance Mission in Afghanistan, the UN High Commissioner for Refugees and the Jumbesh, Jamiat, Hizb-e-Wahdat factions,

⁷⁷ According to UNAMA, the commission was formed in October 2002. UNHCR also reportedly "inaugurated" it in March 2003. See further UNAMA, "Press Briefing by Manoel de Almeida e Silva, UNAMA Spokesman, 09 Feb 2003," 9 February 2003 (<http://reliefweb.int/node/118793>); IRIN, "Afghanistan: UN High Commissioner for Refugees Inaugurates Return Commission," 5 March 2003 (www.irinnews.org); IRIN, "Afghanistan: Focus on Returns and Reintegration in the North" (www.irinnews.org).

cause of displacement. IDPs constituted a significant segment of the monitored research population for the commission's 2008–09 annual report on economic and social rights, which indicated that the majority of IDPs living in urban slums and informal settlements lacked adequate food, water, health care, and education.⁷⁸ The report also revealed that the majority of IDPs are unable to return to their homes and communities due to insecurity, lack of housing, and disputes over land and property.

Internal displacement also is covered by the AIHRC and the UN Assistance Mission in Afghanistan in their annual reports on the protection of civilians. The latest report, on 2010, stated that civilians were severely affected by the ongoing conflict, including through displacement and other humanitarian consequences. Notably, the report includes observations and analysis on problems with respect to protection of civilians affected by operations of the Afghan National Security Forces and International Security Assistance Force in Marja and Kandahar in 2010, based on monitoring conducted throughout 2010 by the AIHRC and UNAMA.⁷⁹ Both organizations tracked and investigated civilian casualty incidents and met with government officials, elders, individuals internally displaced by the military operations and ISAF.⁸⁰ Since July 2010, the AIHRC has

worked with the National IDP Task Force on IDPs. However, their collaboration has been largely ad hoc and limited to specific cases.

The AIHRC is fully funded by donor countries. The commission has stated that one of its main institutional challenges has been the “lack of State funding towards AIHRC’s overall budget [and] this lack of sustainable funding and our ongoing dependency on donor contributions continues to undermine the future stability of the AIHRC.”⁸¹

9. Facilitate IDPs’ Participation in Decisionmaking

(a) Do the national authorities encourage and facilitate the ongoing participation of IDPs in the planning and implementation of policies and programs for addressing internal displacement?

The government has made some efforts to encourage IDP participation; however, it is unclear whether opportunities to participate are offered on an ongoing or ad hoc basis. UNHCR, in coordination with the Ministry of Refugees and Repatriation, has organized “go and see” visits to enable IDPs to make informed decisions regarding return.⁸² Information on the usefulness of the visits and the frequency with which IDPs have participated in them was not available. However, according to research conducted in Kandahar province by the Brookings-Bern Project on Internal Displacement and the Liaison Office, many IDPs relied on information on conditions in areas of origin from their kin and tribal networks, “much of which contradicted the ‘official’ views of IDP representatives taking part in the UNHCR-facilitated visits.”⁸³

⁷⁸ Afghanistan Independent Human Rights Commission, *Report on the Situation of Economic and Society Rights in Afghanistan: IV, Qaws 1388 (November/December 2009)*, p. 21 (www.aihrc.org.af/2010_eng).

⁷⁹ ANSF includes the Afghan Border Police, the Afghan National Army (ANA), the Afghan National Police (ANP) and the National Directorate of Security. See further UNAMA and AIHRC, *Afghanistan Annual Report 2010: Protection of Civilians in Armed Conflict*, March 2011, pp. 46–56 (www.aihrc.org.af/2010_eng).

⁸⁰ AIHRC and UNAMA specify that “[i]nterviews with internally displaced persons included persons who left Marja at all phases of the military operation and its aftermath, from the start of operations in February 2010 through to early August. As the situation stabilized, UNAMA Human Rights and the AIHRC also interviewed elders and IDPs who fled Marja during active operations and who had begun making regular trips back to Marja through to the end of 2010.” UNAMA and AIHRC, *Afghanistan Annual Report 2010: Protection of Civilians in*

Armed Conflict, p. 47.

⁸¹ AIHRC, *Strategic Action Plan: 2010 – 2013*, March 2010 (www.aihrc.org.af/english).

⁸² UNHCR, *Returnee Update*, no. 43, 1–15 October 2003 (www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=SUBSITES&id=3f9928ca4).

⁸³ *Beyond the Blanket*, p. 67.

The need for further efforts to involve IDPs in decision-making processes was stressed at a training workshop held in Kabul in 2003 by the Norwegian Refugee Council and UNHCR.⁸⁴ The participants raised concerns that government efforts to promote IDP participation were insufficient and that improvements needed to be made.⁸⁵ Participants reported that while most camps have IDP representatives that assist in camp management and food distribution, the majority of “camp residents lack information on their rights.”⁸⁶

With the support of UNHCR, the MoRR formed the Displaced Persons Council (DPC) in 2003. Comprising groups of IDPs and refugees originally from five Northern provinces who were displaced elsewhere in Afghanistan as well as to the Balochistan region of Pakistan, this council was intended specifically to complement and inform the work of the Northern Return Commission and to increase the participation of displaced populations in the return process. The DPC shared its recommendations on how best to address obstacles to return with the Hamid Karzai (with whom the DPC met in October 2003 at the Presidential Palace), relevant government ministries, the Afghan Independent Human Rights Commission, governors in the places of origin, and the international community. However, the DPC had ceased to function by 2005, after most DPC members had returned to their places of origin.⁸⁷

(b) Are IDPs able to exercise their right to political participation, in particular the right to vote, without undue difficulties related to their displacement?

Evidence on the ability of IDPs to vote in elections since 2004 could not be verified. For the presidential elections in 2009, security posed significant constraints during

the campaigning, registration and actual election periods.⁸⁸ The Electoral Law (2010) does not include any provisions specifically upholding and protecting the rights of IDPs to vote, but it does affirm the right of all Afghan citizens to participate in elections and prohibits restriction of that right on the basis of “social status.”⁸⁹

In 2003, the UN Assistance Mission in Afghanistan, in cooperation with the government, conducted a voter registration campaign for the 2004 general elections.⁹⁰ The operational plan drafted by UNAMA included specific procedures to register returnees, IDPs, and nomads (Kuchis) and called for thirteen teams to register IDPs in camps and host communities.⁹¹ Information on the actual registration and turnout of IDPs for the 2004 election could not be found. However, 10.5 million people were registered, and about 8 million individuals, or roughly 80 percent of the electorate, voted.

In 2005, the Joint Electoral Management Body created the Election Operational Plan for the Constituent Assembly Elections. The plan specifically mentions preparing and promoting materials that would help to “encourage the participation of minorities, internally displaced persons (IDPs) and refugees, nomads and

⁸⁴ IDMC, *Workshop on the UN Guiding Principles on Internal Displacement*, 7–8 December 2003 (www.internal-displacement.org).

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ UNHCR, *Report of the Displaced Persons Council Meeting*, 19–21 October 2003 (15 November 2003).

⁸⁸ UNAMA, *Electoral Unit, Voter Registration in Afghanistan: Operational Plan*, 31 July 2003 (www.iec.org.af); AIHRC-UNAMA, *Joint Monitoring on Political Rights: Presidential and Provincial Council Elections, Second Report*, 16 June–1 August 2009 (www.aihrc.org.af/English).

AIHRC-UNAMA, *Joint Monitoring on Political Rights: Presidential and Provincial Council Elections, Third Report*, 1 August–21 October 2009 (www.aihrc.org.af/English).

⁸⁹ Article 5, *Decree of President of the Islamic Republic of Afghanistan on Promulgation of the Electoral Law (Electoral Law 2010)*, 18 February 2010. See further, Brookings-Bern Project on Internal Displacement and the Norwegian Refugee Council, *Realizing National Responsibility for the Protection of Internally Displaced Persons in Afghanistan: A Review of Relevant Laws, Policies, and Practices*, November 2010, p. 27.

⁹⁰ Only presidential elections were held in 2004; the parliamentary and provincial council elections, which were postponed, were held in September 2005.

⁹¹ UNAMA, *Electoral Unit, Voter Registration in Afghanistan: Operational Plan*, 31 July 2003.

disabled persons.”⁹² The Organization for Security and Cooperation in Europe (OSCE), which monitored the 2009 presidential and parliamentary elections, noted that the 850,000 Kuchis who are registered to vote did not participate in the provincial council election. “As a nomadic population, the Kuchi have one national ballot for parliamentary elections, and did not participate in the current provincial council election, as they are not attached to one location.” The OSCE recommended that the Independent Election Commission of Afghanistan (IEC) take specific measures to ensure that the Kuchi population is able to vote.⁹³

UNAMA and national and international observers reported significant irregularities in other areas bearing on the participation of IDPs in the 2009 elections, and there was “relatively low participation of women and voters in general, especially in conflict-affected areas.”⁹⁴ In addition, the language used in voter education and information materials for outreach to all Afghans was an issue. The OSCE reported that the Independent Election Commission of Afghanistan had planned to restrict the languages used in outreach materials to Dari and Pashto—in violation of the Constitution—in order “to avoid controversies as to which minority languages should also be used” and recommended that local languages be used for voter outreach. However, the OSCE also noted that

the IEC public outreach department was able to recruit civic and voter education trainers who spoke the local language in areas where there are higher densities of various minority groups for the “face-to-face” outreach program. In addition, production companies which prepared radio and TV broadcast materials also duplicated messages in Uzbek and Tajik on a voluntary basis.

Nevertheless, the OSCE reported that the lack of local languages in public announcements regarding the campaign process prompted complaints from civil society representatives.⁹⁵

10. Establish the Conditions and Provide the Means for IDPs to Secure Durable Solutions

Is the government working or has it worked to establish conditions enabling IDPs to secure a durable solution to displacement?

The government has not worked effectively to establish conditions allowing IDPs to secure durable solutions. Many IDPs are deterred from returning or unable to return to their places of origin due to a variety of factors, including ongoing insecurity and property disputes, a lack of basic services in return areas and inadequate economic opportunities. These factors have also resulted in further displacement upon return, for IDPs and refugees alike.

⁹² *Joint Electoral Monitoring Body, 2005 Afghanistan Constituent Assembly: Election Operational Plan Outline*, 8 March 2004 (www.iec.org.af).

⁹³ OSCE, *Islamic Republic of Afghanistan, Presidential and Provincial Council Elections, 20 August 2009, OSCE/ODIHR Election Support Team, Final Report*, p. 33 (www.osce.org); Article 16, Constitution of the Islamic Republic of Afghanistan, 2004.

⁹⁴ Citation from AIHRC/UNAMA, *AIHRC-UNAMA Joint Monitoring of Political Rights Presidential and Provincial Council Elections Third Report, 1 August - 21 October 2009*, p. 1 (<http://unama.unmissions.org>) See also, UN General Assembly/UN Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, A/64/705-S/2010/127, 10 March 2010, Annex, p. 16 (www.un.org/Docs/sc/sgrep10.htm).

⁹⁵ OSCE, *Islamic Republic of Afghanistan, Presidential and Provincial Council Elections, 20 August 2009, OSCE/ODIHR Election Support Team, Final Report*, 8 December 2009, p. 33 (www.osce.org); The Afghan Constitution states that minority languages are the third official languages, after Pashto and Dari, in areas where they represent a majority; see Article 16, Constitution of the Islamic Republic of Afghanistan, 2004.

The government promotes return and is not considered to be doing much to facilitate local integration. Authorities have focused primarily on finding durable solutions for IDPs in protracted displacement, acknowledging that local integration is a viable option in such cases. There is concern that the government has not adequately addressed durable solutions for IDPs displaced since 2006.⁹⁶

According to the Afghan Independent Human Rights Commission, “Growing insecurity, homelessness, disputes over property, and lack of livelihood options are the factors obstructing the return of refugees and the reintegration of returnees and IDPs”⁹⁷ In 2007, the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons stressed that land disputes and landlessness “remain a substantial cause of displacement and a substantial obstacle to return.”⁹⁸

In 2008, in a joint plan with the UN High Commissioner for Refugees, the government encouraged thousands of IDPs living in the three largest IDP camps to return to their home provinces. The plan was poorly received by IDPs, many of whom were not willing to return due to insecurity, ethnic tensions and lack of economic opportunities in their places of origin.⁹⁹ In 2009, only 7,000 IDPs of a total of 135,000 IDPs living in “camp-like settlements” had returned.¹⁰⁰ Those who do choose to return are often displaced again due to a lack of basic services and are thus classified as economic migrants, a classification that is “easily dismissed by provincial authorities and largely ignored by relief agencies.”¹⁰¹

⁹⁶ IDMC, *Armed Conflict Forces Increasing Numbers of Afghans to Flee Their Homes*, April 2010 (www.internal-displacement.org).

⁹⁷ AIHRC, *Report on the Situation of Economic and Social Rights in Afghanistan*, December 2009.

⁹⁸ OHCHR, “UN Expert Concerned about Growing Problem of Internal Displacement in Afghanistan,” 20 August 2007.

⁹⁹ IRIN, “Afghanistan: IDPs Reluctant to Return Home,” 28 April 2008 (www.irinnews.org).

¹⁰⁰ IDMC, “Internal Displacement Global Overview of Trends and Developments in 2009,” p. 76 (www.internal-displacement.org).

¹⁰¹ IRIN, “Afghanistan Insecurity, Lack of Aid Prompt IDPs

The government has also taken legal measures that are contrary to establishing the conditions for durable solutions. A group of twenty-four Afghan civil society groups, the Transitional Justice Coordination Group, stated that the controversial Law on National Stability and Reconciliation “undermines justice and the rule of law.”¹⁰² Passed by Parliament in 2007, the law, which purports to recognize the rights of war crime victims to seek justice, effectively bars Afghan authorities from prosecuting alleged perpetrators of displacement if the victim does not file a complaint.¹⁰³

11. Allocate Adequate Resources to the Problem

Do the authorities prioritize internal displacement in allocating budgetary resources and in mobilizing international support?

The government has made an effort to address internal displacement in its allocation of budgetary resources on paper, but it is unclear whether that has borne out in reality. Moreover, the government relies heavily on international financial support to address displacement.

The government minimally addresses the displaced in its 2009 National Budget, which includes a medium-term fiscal strategy for 2009–2011 and is aligned with the objectives of the Afghan National Development Strategy. According to this budget, by the end of 2010,

to Leave Camp,” 21 June 2009 (www.irinnews.org).

¹⁰² Human Rights Watch, *Afghanistan: Repeal Amnesty Law*, 10 March 2010 (www.hrw.org).

¹⁰³ See, for example, Human Rights Watch, *Afghanistan: Repeal Amnesty Law*; and “Top UN Human Rights Official in Afghanistan Calls for Repeal of Amnesty Law,” United Nations News Centre, 25 March 2010 (www.un.org). See also Amin Tarzi, “Afghanistan: Amnesty Bill Places Karzai in a Dilemma,” Radio Free Europe/Radio Liberty, 23 February 2007 (www.rferl.org/content/article/1074897.html).

all refugees opting to return and internally displaced persons will be provided assistance for rehabilitation and integration in their local communities; their integration will be supported by national development programmes, particularly in key areas of return.¹⁰⁴

The FY 2009–2010 budget allocated \$3 million to the Ministry of Refugees and Repatriation to fund efforts for refugees and IDPs under the “Social Protection Sector” to “ensure technical and basic social services for established towns for returnees.”¹⁰⁵ However, Noor Mohammad Haidari, a senior MoRR adviser, stated in January 2010, “Whilst we have no budget for assistance to IDPs, we stress long-term and sustainable solutions.” He added that MoRR is unable to provide IDPs with integration services and requires assistance from donors, aid agencies and other government entities.¹⁰⁶

In addition, international humanitarian organizations and the donor community provide significant resources to fill gaps and fund protection-oriented programs for the displaced along with other humanitarian activities. In 2009, 90 percent of Afghanistan’s public expenditures were funded by international sources.¹⁰⁷ Also as of 2009, Afghanistan had been the fourth-largest recipient of humanitarian aid in the world since 1995. Between 2000 and 2009, humanitarian expenditures for Afghanistan, Asia’s largest recipient of such aid, stood at \$5.1 billion of a total of \$90 billion spent globally on humanitarian response.¹⁰⁸

¹⁰⁴ Ministry of Finance, 1388 National Budget, 2009 (www.budgetmof.gov.af/Budget_Resources/1388/1388_National_Budget_ENG.pdf).

¹⁰⁵ Ibid.

¹⁰⁶ IRIN, “Afghanistan: More IDPs than Previously Thought—Government,” 4 January 2010 (www.irinnews.org).

¹⁰⁷ Latest data available at the time of writing. IDMC, *Armed Conflict Forces Increasing Numbers of Afghans to Flee Their Homes*.

¹⁰⁸ Figures from Development Initiatives, as reported by Global Humanitarian Assistance. Figures include contributions from governments—members of the Organization for Economic Cooperation and Development—Development Assistance Committee and others reporting to the UN

12. Cooperate with the International Community when National Capacity is Insufficient

Does the government facilitate efforts by international organizations to address internal displacement?

The government invites and accepts assistance from the international community to help address internal displacement and works to ensure that international actors enjoy safe and unimpeded access to the internally displaced. However, ongoing insecurity and violence limit humanitarian access.

In August 2007 during a working visit to Afghanistan, Walter Kälin, the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, participated in a UN workshop on the protection of civilians in Afghanistan and met with the vice president, several ministers, and heads of international agencies.¹⁰⁹

Humanitarian access is limited due to insecurity and violence throughout the country, including attacks against aid workers, largely by armed opposition groups. The attacks are indicative of the inability of the national authorities to provide adequate protection to those assisting crisis-affected populations. Since 2006, Afghanistan has been the second of the three most violent environments for aid workers, reflecting an increasing trend in the incidence of attacks on aid workers since 1997.¹¹⁰ In

Office for the Coordination of Humanitarian Affairs (OCHA) Financial Tracking Service (FTS)—and private contributions reported to the FTS. This includes the money spent by these donors through UN agencies, NGOs and financing mechanisms such as the Central Emergency Response Fund. Global Humanitarian Assistance, “Country Profile: Afghanistan,” and Global Humanitarian Assistance, *GHA Report 2011*, pp. 22–34; see further pp. 38, 50, 69–75 (www.globalhumanitarianassistance.org).

¹⁰⁹ OHCHR, “UN Expert Concerned about Growing Problem of Internal Displacement in Afghanistan,” 20 August 2007.

¹¹⁰ See further, Abby Stoddard, Adele Harmer and Victoria

2007, following his visit to Afghanistan to participate in a UN workshop on the protection of civilians, Walter Kälin stated that the inaccessibility “for security reasons” of conflict-affected areas to humanitarian organizations “hampers the delivery of urgently needed humanitarian assistance.”¹¹¹ In 2009, the UN Assistance Mission in Afghanistan reported that insecurity restricted its access to a number of displaced persons and made it difficult to provide assistance.¹¹² According to the UN, less than 40 percent of the country was categorized as a “low-risk/permissive environment” for international

humanitarian organizations in 2009.¹¹³ Insecurity has prompted the UN and international organizations to limit the number of international staff based in certain areas or, following attacks on personnel, to evacuate staff temporarily and to reduce nonessential programs in order to reduce exposure to attacks.¹¹⁴ The spread of conflict in 2010 to more stable provinces in the north-west and the west further reduced humanitarian access, hindering the ability of humanitarian agencies to protect and assist civilians, including internally displaced Afghans.¹¹⁵

DiDomenico, *Providing Aid in Insecure Environments: 2009 Update Trends in Violence against Aid Workers and the Operational Response*, Humanitarian Policy Group Policy Brief 34, Overseas Development Institute, April 2009 (www.odi.org.uk).

¹¹¹ OHCHR, “UN Expert Concerned about Growing Problem of Internal Displacement in Afghanistan,” 20 August 2007.

¹¹² U.S. State Department, *2009 Human Rights Report: Afghanistan* (www.state.gov).

¹¹³ OCHA, *Afghanistan Humanitarian Action Plan 2010*, 30 November 2009 (www.unocha.org).

¹¹⁴ See for example, Zoi Constantine, “Evacuated UN Workers Return to Afghanistan,” *The National*, 25 February 2010 (www.thenational.ae); OCHA, *Afghanistan Humanitarian Action Plan 2010*, 30 November 2009.

¹¹⁵ OCHA, *2011 Consolidated Appeal for Afghanistan*, November 2010, p. 36 (www.unocha.org).



Kabul, Afghanistan / A woman passes her registration details to a UNHCR worker at a distribution event at Tamir Mill Bus site.
Photo: UNHCR / J. Tanner / February 2011