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## Landlessness and Insecurity: Obstacles to Reintegration in Afghanistan

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The challenges faced by more than five and a half million Afghan refugees who have returned since 2002 receive scant regard in most international media or official proceedings concerning Afghanistan. Attention is primarily focused on Afghanistan's intensified armed conflict, NATO's withdrawal planning, and faltering peace efforts. Moreover, despite the millions of refugees who have returned in the past ten years, Afghans still comprise the world's largest refugee population.

In November 2008, the Afghanistan Ministry of Foreign Affairs and the UN High Commissioner for Refugees (UNHCR) held a high-level International Conference on Return and Reintegration in Kabul. During the conference, the non-governmental organization (NGO) delegation stressed the urgent need for a comprehensive reintegration strategy to cover basic goods and service provision, coordination, and funding for Afghan returnees. Two of the major reintegration challenges highlighted by the NGO delegation and further elaborated in this paper are: 1) the landless status of many returnees (which includes some of the formerly nomadic Kuchi population) and 2) how deteriorating security and the armed conflict are impeding assistance and reintegration program.<sup>2</sup> The paper argues that significant improvements to reintegration efforts could be achieved through the agreement of a holistic reintegration/durable solutions<sup>3</sup> strategy covering all returnees, with particular focus on: landlessness; increasing urbanization due insecurity and the lack of livelihoods in rural areas; and, the preservation of impartial, neutral, and independent humanitarian action, including reintegration programming.

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<sup>2</sup> Presented by NRC, Final Conference Address: International Conference on Return and Reintegration, Kabul (November 19, 2008).

<sup>3</sup> Walter Kalin, "The Framework on Durable Solutions for Internally Displaced Persons," Report of the Representative of the Secretary General on the Human Rights of Internally Displaced Persons, UNGA A/HRC/13/21/Add. 4 (February 9, 2010).

### Background

As a result of 30 years of unrelenting conflict, Afghanistan's refugee absorptive capacity is severely strained. Poor security, intensifying armed conflict, a prolific drug trade, ongoing natural disasters, and weak governance and rule of law have exacerbated the country's vulnerability and crippling poverty. About 42% of the population live on less than \$1 a day, the average life expectancy is 43 years, girls' secondary school attendance is a mere 6%, infant mortality is the highest in the world, and maternal mortality rates are a horrific 1,600 per 100,000 live births.<sup>4</sup> Despite billions of dollars in aid over the last decade and numerous high-level international pledging and strategic conferences, as of 2007 Afghanistan was still rated as the 155<sup>th</sup> nation out of 169<sup>5</sup> nations on the Human Development Index,<sup>6</sup> and one of the three most corrupt nations in the world.<sup>7</sup>

Following the invasion of Afghanistan by the Soviet Union in 1979, millions of Afghans fled the country or were displaced internally. The majority ended up in Iran and Pakistan, spending decades in exile. With the fall of the Taliban in 2002, more than five and a half million Afghans returned in the world's largest ever mass voluntary<sup>8</sup> repatriation operation. These returnees comprise more than one-fifth of the country's population. Almost a million internally displaced persons (IDPs) also returned to their areas of origin and/or migrated to urban centers due to the lack of livelihood opportunities in the rural areas from where they originated.<sup>9</sup>

In 2008, UNHCR stated that, "... the era of mass voluntary return of Afghan refugees is over." Yet there remain almost three million registered Afghan refugees in Pakistan and Iran living in protracted displacement,<sup>10</sup> and estimates of hundreds of thousands more who are unregistered. The majority were either born, or have lived in exile for over 25 years; they are reluctant to return due to concerns over insecurity, lack of land and livelihoods; and many have been severely affected by the floods in Pakistan.

For the large numbers of Afghans that have returned, many have faced secondary displacement to urban centers around Kabul (central) and Jalalabad (East), and to a lesser extent, Herat (West) and Kunduz (North). They have ended up living in cramped conditions with relatives or in sprawling spontaneous settlements in makeshift shelters or disused buildings.<sup>11</sup> It is estimated that Kabul's population has tripled since 2001,<sup>12</sup> and is growing at an estimated 150,000 people per year. The informal settlements generally lack safe water, sanitation, transportation, schools, health clinics, electricity, and other facilities and services.

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<sup>4</sup> Afghanistan HAP (2010).

<sup>5</sup> UN Development Program, <http://hdr.undp.org/en/statistics/>.

<sup>6</sup> UNDO, HDI Index (2007), <http://hdrstats.undp.org/en/countries/profiles/AFG.html>.

<sup>7</sup> Transparency International, Corruption Perception Index 2010 (October 26, 2010).

<sup>8</sup> See Agata Bialczyk, "Involuntary Repatriation and the Case of Afghanistan: A Critical Examination," RSC Working Paper No. 46 (January 2008), which questions the voluntariness of the mass return and repatriation operation. See also D. Turton and P. Marsden, "Taking Refugees for a Ride? The Politics of Refugee Return to Afghanistan," Issues Paper Series (Kabul: AREU, 2002).

<sup>9</sup> UNHCR, UNHCR Global Appeal 2008–2009, Geneva (2007), Afghanistan HAP (2010).

<sup>10</sup> UNHCR, UNHCR Global Appeal 2008–2009, Geneva (2007).

<sup>11</sup> Afghanistan HAP (2009).

<sup>12</sup> International Crisis Group Report No. 175, *Afghanistan: What Now for Refugees?* (August 31, 2009).

This paper explores two of major obstacles facing past, current and future returnees — the lack of access to land; and the problems for humanitarian actors assisting returnees in an ever-complex and insecure environment.

### **Key Problems Facing Returnees**

#### *1. Landlessness and Urban Migration of Returnees*

The Norwegian Refugee Council (NRC) has constructed hundreds of shelters in Eastern, Central, Northern, and Western Afghanistan since 2006 in order to assist returnees. Families are provided with a shelter kit, construction skills, and hygiene promotion training and quality monitoring support. Repair and shelter construction is a critical need in a country where it is estimated that over 500,000 homes have been damaged or destroyed and the population has doubled since the 1980s.<sup>13</sup> However, one of the largest impediments to the provision of housing and shelter involves land disputes and the landless status of many reintegrating Afghans. Without secure land tenure, it is near impossible for aid agencies to provide sustainable shelter, water and sanitation facilities, and most other services.

Land is an extremely valuable commodity in Afghanistan. The country remains a primarily rural and agrarian society where land ownership is closely linked to economic and political power. It is central to income generation, livelihoods and political status. Not surprisingly, land ownership and use is one of the key sources of conflict in the country.<sup>14</sup> Illegal occupation, land seizure, annual nomadic migrations, and the use of land for illegal poppy harvests by warlords and anti-government elements are common cause for conflict both within and between families, tribes, ethnic groups, warlords, armed opposition groups, and the government. With high population growth and massive return, the pressure on available land has risen steeply since 2001, increasing its value and fueling conflict surrounding its ownership and use.

#### **Problems with reclaiming land after return**

Protracted displacement situations often result in refugees being absent from their land and property for many years, or in the case of Afghanistan — decades. Refugees may flee without their land and property documents, or these may have been destroyed, lost, or confiscated while in transit or exile. Through its Information Counselling and Legal Assistance (ICLA) programme, NRC has found that when refugees return, they regularly find their property destroyed and/or land occupied, sometimes with multiple layers of on-selling or occupation.<sup>15</sup> Ownership disputes within families are also common, especially between those who fled and those who remained during the conflict. These multiple claims and disputes can take years to resolve, especially for families returning from many years in exile. Some families do not even bother to reclaim their land and property when they return, particularly where it has been occupied by powerful warlords or elites.

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<sup>13</sup> Afghanistan HAP (2009), p. 29.

<sup>14</sup> Liz Alden-Wiley, "Land Rights in Crisis – Restoring Tenure Security in Afghanistan," Issues Paper Series (Kabul: AREU, March 2003).

<sup>15</sup> See [www.nrc.no](http://www.nrc.no) ICLA pages for further discussion.

Afghanistan has layers of sometimes-incompatible laws and regulations<sup>16</sup> and various Presidential Decrees<sup>17</sup> passed by the different regimes over many decades. Various regimes have redistributed land to political and military elites, or illegally seized land without regard to prior title. Some of these seizures have been partially reversed, whilst others have not. These conflicting laws, regulations, seizures and practices provide a confusing myriad of competing obligations and rights concerning land ownership, use, and access. Afghanistan also lacks a national land tenure policy, standards, and rules. As a result, the current land system generally fails to meet the needs of the people, allows disputes to remain unresolved, and weakens public respect for the law. There is also limited capacity in local government structures for the administration, management, and allocation of land. The Afghanistan Research and Evaluation Unit (AREU) estimates that at least 50% of Afghanistan's land tenure is not formalized.<sup>18</sup>

Further complicating the picture is the weakness of the formal justice system, which is not trusted by many Afghans and lacks adequate structures and trained legal professionals, especially in rural areas. The United Nations Development Programme (UNDP) estimated in 2007 that about 80% of legal cases end up in the traditional dispute resolution system (*jirgas* and *shuras*), which suffer from many problems, not least, discrimination against women. The shortcomings of Afghanistan's land law and justice system often has a disproportionate impact on returnees and displaced populations. They are generally vulnerable, impoverished and have limited access to justice, whether formal or customary, making it easy for those who are more powerful to infringe upon their rights.

Since 2003, NRC has responded to the land and property concerns of returnees and displaced populations through its Information Counseling and Legal Assistance (ICLA ) programme, assisting millions of Afghans to resolve their land or property disputes or fulfill other related needs. NRC is one of the few organizations currently providing free legal assistance to Afghans for civil housing, land, and property disputes. Given the high use of the customary system, NRC's lawyers support civil claims within the formal system as well as within the *jirgas* and *shuras* with a focus on endeavoring to ensure a fair outcome that is consistent with Afghan law. Given that strengthening the formal system might take decades, more focus on the customary system is required, particularly in respect of ensuring that the rights of female owners and claimants are respected and upheld. NRC has also trained thousands of judges, lawyers, and community elders in property law in order to promote the appropriate application of Afghanistan's codified laws and Shari'a, rather than the customs and traditions that are often applied, especially in the traditional system.

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<sup>16</sup> See NRC and UNHCR, *Guide to Property Law in Afghanistan* (2005) and the various laws in Afghanistan, including The Law on Land under Decree No. 57, Taliban Emirate of Afghanistan, Ministry of Justice, Issue No. 795 (2000); The Civil Law of Republic of Afghanistan, Kabul, Afghanistan (1977); and the Law on Managing Land Affairs, Official Gazette (July 31, 2008).

<sup>17</sup> Decree No. 83 "Relative to Property (Imlak) (November 2003); Decree No. 297 "On Dignified Return of Refugees" (December 2001); Decree No. 104 "On Land Distribution for Settlement of Eligible Returnees and IDPs" (December 2005).

<sup>18</sup> Alan Roe, "Water Management, Livestock and the Opium Economy – Natural Resources Management Farming Systems and Rural Livelihoods," Chapter 4 Synthesis Paper Series (Kabul: AREU, 2008).

### Landlessness and problems with the current Land Allocation Scheme (LAS)

While land disputes are a serious reintegration constraint, *landlessness* is a major impediment to the reintegration of returnees and the return of refugees still residing in Pakistan and Afghanistan, with 90% of recent returnees and those left in Pakistan professing to have no claim to land or property.<sup>19</sup> Under the Afghanistan National Development Strategy (2008 - 2013), the Government of Afghanistan established the Refugee, Returnee, and Internally Displaced Persons (IDPs) plan whereby it committed, with the support of the international community, to provide access to land for returning refugees. A central aspect of the strategy is the Land Allocation Scheme (LAS), established by the Government of Afghanistan in 2005 under Presidential Decree No. 104 whereby intact and uncultivated government land is supposed to be redistributed to landless returnees and IDPs.<sup>20</sup> Under the auspices of the Ministry of Refugees and Repatriation (MoRR), and administered by the provincial Department of Refugees and Repatriation (DoRR) offices, as of March 2009:

Approximately 270,000 families have been registered for consideration under the LAS, 65,413 have been selected, 41,127 have paid for their plots, 31,000 plots have been distributed, but only 10,684 families have moved into house on sites. These figures indicate that only 24 percent of applicants received plots, and only 25 percent of those who paid for plots live on them. The rate of departure of residents has been as high as 80 percent on some LAS, due to lack of livelihoods and inadequate basic services.<sup>21</sup>

The LAS has been marred by a numerous of problems, not least inconsistent interpretation of key provisions within Presidential Decree 104 and ineffective implementation. However, in the case of the Sheikh Mesri site, good coordination, community solidarity and community decision-making had generated a much more successful and viable LAS than in other locations.<sup>22</sup> Some of the main challenges for the LAS include:

- The isolated location of sites (often located far from commercial centers and labor markets) and the lack of integrated planning to ensure the provision of basic services such as portable water, electricity, sanitation facilities, schools, and health clinics has compromised the viability of some settlements.<sup>23</sup> For example, the Andkhoy LAS site in Faryab province lacked a holistic plan, with drinking water and other facilities inadequate to meet the needs of the population. The site is also located far outside the urban center with limited livelihood opportunities and education facilities. NRC constructed a number of shelters; however, without other facilities and services, the viability of the site remains uncertain.

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<sup>19</sup> UNHCR, 2008–2009 Appeal.

<sup>20</sup> Presidential Decree No. 104, “On Land Distribution for Settlement of Eligible Returnees and IDPs” (December 2005).

<sup>21</sup> Sheila Reed and Connor Foley, *Land and Property: Challenges and Opportunities for Returnees and IDPs in Afghanistan*, unpublished report prepared for NRC (June 2009), p. 20, quoting MoRR Land Allocation Process (March 18, 2009). Locations and Stage I and Stage II data.

<sup>22</sup> Reed and Foley, *Land and Property*, pp. 21–22.

<sup>23</sup> Afghanistan Independent Human Rights Commission, “Economic and Social Rights in Afghanistan III” (December 2008).

- Unclear and inconsistent application processes for plots, slow processing of applications, and inappropriate or corrupt beneficiary selection processes have undermined some LAS. In the case of the Chamtala LAS, 50% of interviewees in an unpublished NRC study estimated that plots of land had been inappropriately occupied by those who did not meet the selection criteria.
- There is some ambiguity concerning the rights and requirements on landless returnees and IDPs that have hindered their access to LAS plots. For example, confusion exists as to whether returnees receive a right of occupancy rather than ownership when they are allocated a land plot. Under Presidential Decree No. 104 returnees or IDPs initially receive a certificate granting temporary rights over their allocated land plot, with land ownership deeds awarded after five years of proven occupation. However, many returnees still believe that the temporary certificate is a land ownership deed.
- Returnees who are most vulnerable and in need of land may be excluded from accessing LAS plots. The requirement under Articles 10 and 11 of Decree No. 104 for returnees to pay an unspecified fee for the land plots and possibly finance construction costs may prove prohibitive for those who are most impoverished and vulnerable. Similarly, to be eligible for a land plot, Article 2 of Decree No. 104 requires returnees to possess identity documents that many returnees do not have, including a displacement certificate, which is not currently being issued. Landless returnees and displaced populations are only eligible for land assistance in their areas of origin under Decree No. 104, which is proven through their Voluntary Repatriation Form. This is not viable for those who are unable to return to their areas of origin due to insecurity, lack of livelihoods or other reasons.

Last, but not least, the MoRR is one of the most poorly resourced and challenged of all government Ministries in Afghanistan. It has little capacity to operate a country-wide land distribution effort without significant support from other Ministries, and increased investment in provincial level DoRR. To strengthen the system, UNHCR has provided support through the MoRR Project Implementation Unit (PIU) in order to improve site selection and planning. Improvements to the monitoring process are also contemplated. While some improvements have resulted from the PIU, including enhanced coordination across the various government authorities and aid actors, substantial obstacles remain. In reality, even if all LAS were developed, they would not cover the immense numbers of landless returnees and IDPs. More analysis is needed in order to devise alternative, sustainable solutions, such as the provision of long-term low-rent leasehold apartments.

### **Secondary Displacement: Afghanistan's rapid urban expansion**

As noted earlier, large numbers of Afghan returnees have not returned to their areas of origin, and have instead ended up in unplanned informal settlements in urban and peri-urban areas, such as Kabul and Nangarhar Provinces. There are several reasons for this phenomenon, including: insecurity in their home provinces; lack of linkage to their families and communities following decades in exile; family growth, making return impossible due to already high pressure on land occupancy and use; the absence of adequate education and health facilities in rural locations; and the lack of livelihood opportunities for many returnees who have been employed in urban roles or cash for work jobs whilst in exile. It is estimated

that approximately 80% of Kabul's population reside in unplanned informal settlements covering 69% of the city's residential land.<sup>24</sup>

The informal settlements are often located on government or disputed land, with returnees and economic migrants squatting without rights, making them highly susceptible to corruption and other abuse. Informal taxation and payment systems have developed, with lucrative benefits for power brokers that may be difficult to dismantle. The settlements generally lack basic services such as water, electricity, sanitation, transportation, schools, and health facilities. There is rarely any kind of integrated planning.

Humanitarians have also struggled to adjust their profiling tools and response modalities for urban settings. For example, it has been difficult to identify and implement a needs-based response to returnees and displaced populations within Kabul where most people has been 'affected' by displacement at some point in their life and there are high numbers of economic migrants and urban poor living side by side with returnees and IDPs. The main coordination and response actors are also not the normal humanitarian interlocutors or deliverers — urban planning, municipal councils, and the private sector being dominant. Moreover, without clarity regarding land tenure, multiple layers of power brokers with ownership claims over urban land can make it difficult for aid agencies to provide services that may be perceived as bestowing any form of permanence or usage right on returnees. In response, NRC, the Internally Displaced Monitoring Centre (IDMC), and the Overseas Development Institute (ODI) are in the process of conducting a study on urban displacement in Kabul to analyze the characteristics of the urban population, especially in relation to displacement and the coping strategies of displaced populations.

### ***2. Shrinking Operational Access and the Politicization of Humanitarian Actors***

The intensification of Afghanistan's armed conflict and attempts to politicize or militarize humanitarian activities is a major challenge for the successful reintegration of Afghan returnees. Poor security is impeding the ability of reintegrating refugees to access basic goods and services. At the same time, it is also impeding the ability of humanitarians to access Afghan returnees with assistance, protection and reintegration programs. As the United Nations Secretary General states in his Protection of Civilians in Armed Conflict 2010 report: "*Access is the fundamental prerequisite of humanitarian action, [yet] access is increasingly unsafe in many places, frequently delayed and often impeded, leaving millions of vulnerable people deprived of live-saving assistance.*" When humanitarians do not have access, reintegration programs and reintegrating refugees suffer.

Since 2005 security has deteriorated across Afghanistan. Civilian casualties have risen and humanitarian access has decreased.<sup>25</sup> Many parts of the country are inaccessible for Government officials and international agencies.<sup>26</sup> Humanitarians are regularly killed and kidnapped, although the Afghanistan NGO Safety Office reported in its 2010 third quarter review that while abductions had increased, the risk of harm had decreased.<sup>27</sup> There are not

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<sup>24</sup> Reed and Foley, *Land and Property*.

<sup>25</sup> 31 NGO workers were killed and over 100 kidnapped in 2008. As of September 30, 2009, 18 NGO workers had been killed. (ANSO Q3, September 30, 2009). UNAMA reported a 40% increase in civilian casualties in 2008 compared to 2007, and a 24% increase in the first six months of 2009 compared to the same period in 2008.

<sup>26</sup> UNDSS estimated early 2009 that only 37% of Afghanistan is low risk/permissible, 20.6% medium risk/unstable with 20.4 percent high risk/volatile and 22.2% high risk/hostile – Afghanistan HAP (2010).

<sup>27</sup> ANSO, 3<sup>rd</sup> Quarter Report (2010).

precise numbers as to how many Afghans are being denied assistance and protection as a result of the insecurity. Although it is clear that humanitarian needs are high, as evidenced by the fact that Afghanistan represents the second largest consolidated humanitarian appeal globally for 2010 and the fourth largest in 2011.<sup>28</sup> With the conflict intensifying, it is expected that internal displacement will increase. It is estimated that there are now well over 300,000 IDPs in Afghanistan, but given access constraints and the fluidity of the situation, these numbers could be higher.

A key concern in Afghanistan is encroachment by military and political actors on the acceptance of humanitarian/reintegration actors by local populations, parties to the conflict, and other stakeholders. Humanitarians have been portrayed and pressured to act as “force multipliers” for the international military forces, provide “post-battlefield clean up,” and participate in counter-insurgency stabilization operations (i.e., the 3D, or Defense, Development, and Diplomacy strategy).<sup>29</sup> This strategy seeks to merge civilian and military efforts in order to generate popular support for the government and international military forces and the rejection of the armed opposition groups. However, a growing body of research questions the effectiveness of the strategy, especially when weighed against the risks of undermining the acceptance and access of aid providers and civilians.<sup>30</sup> Some key concerns that could impact negatively on humanitarian and early recovery reintegration activities in Afghanistan include the following:

- **The instrumentalization of aid, aid providers, and aid recipients through counter-insurgency strategies compromises the ability of humanitarians to be perceived and accepted as principled humanitarian actors by local populations and the armed opposition groups.** In order to safely access vulnerable populations in volatile and unpredictable conflict situations, humanitarians seek to adhere to a number of key principles when providing assistance, protection, and reintegration programs,<sup>31</sup> including:

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<sup>28</sup> Afghanistan HAP 2010, and Humanitarian Appeal 2011, Afghanistan CAP (November 30, 2011).

<sup>29</sup> NGOs have consistently raised concerns regarding the statements made by ISAF and donor nation officials and the instrumentalization of aid and aid providers in Afghanistan as part of counter-insurgency strategies, see the Agency for the Coordination of Humanitarian Relief website at [www.acbar.org](http://www.acbar.org) for a summary.

<sup>30</sup> See for example, Marck Bradbury, “State-building, Counterterrorism and Licensing Humanitarianism in Somalia,” Feinstein International Center, Tufts University (September 2010); Mark Bradbury and Michael Kleinman, “Winning Hearts and Minds? Examining the Relationship between Aid and Security in Kenya,” Feinstein International Center, Tufts University (April 2010); and Andrew Wilder, “Winning Hearts and Minds? Examining the Relationship Between Aid and Security in Afghanistan, Pakistan and the Horn of Africa.”

<sup>31</sup> International Court of Justice (ICJ), *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgement, ICJ Rep. 1986, para. 243: Kate Mackintosh, “Beyond the Red Cross: The Protection of Independent Humanitarian Organisations and Their Staff in International Humanitarian Law,” *The International Review of the Red Cross*, Vol. 89, No. 865 (March 2007). Humanitarian assistance includes early recovery and reintegration programs, with the defining element being whether it is given “without discrimination of any kind.” A 2003 definition from Institute of International Law, Resolution of the Sixteenth Commission (Humanitarian Assistance) September 2, 2003, states: “‘Humanitarian assistance’ means all acts, activities and the human and material resources for the provision of goods and services of an exclusively humanitarian character, indispensable for the survival and the fulfillment of the essential needs of the victims of disasters. a) ‘Goods’ includes foodstuffs, drinking water, medical supplies and equipment, means of shelter, clothing, bedding, vehicles and all other goods indispensable for the survival and the fulfillment of the essential needs of the victims of disasters; this term never includes weapons, ammunition or any other military material. b) ‘Services’ means the means of transport, tracing services, medical services, religious, spiritual and psychological assistance, reconstruction, de-mining, decontamination, voluntary return of refugees and internally displaced persons, and all other services indispensable for the survival and the fulfillment of the essential needs of the victims of disasters.”

1) *humanity* — to alleviate human suffering wherever it is found; 2) *impartiality* — assistance and protection must meet the needs of the population, without discrimination; 3) *neutrality* — humanitarians should not have allegiances to the conflicting parties or ulterior religious, political or ideological agendas; and 4) *independence* — humanitarians should not actively promote government agendas. By adhering to these principles, humanitarians seek to separate themselves from the conflict and thereby, safely access vulnerable populations without being perceived as a threat by the parties to the conflict. However, in Afghanistan with large private sector contractors implementing aid-style activities for counter-insurgency stabilization purposes in the same locations as humanitarians with a similar appearance (such as using white land-cruisers which have traditionally been used by humanitarians to symbolize neutrality), this separation can be difficult to demonstrate and communicate.

- **When activities such as the provision of schools, health facilities, shelter, and land to returnees is politicized or militarized as part of counter-insurgency, intelligence gathering, or force protection, teachers, health workers, students, and patients could be perceived as taking sides, and thereby face reprisals.** Whereas the military and private contractors return to compounds with high walls and armed guards at night, the civilian population has no such protection. Counter-insurgency activities that instrumentalize civilian aid activities shift the burden of risk for military strategies from military actors to those who are most vulnerable — service providers and the civilian population.
- **The inclusion of the Afghanistan National Development Strategy (ANDS) as a central component within counter-insurgency strategies may politicize civilian government staff engaged in coordination and delivery of reintegration efforts.** The safety of civilian government employees and activities may therefore be compromised, resulting in the staff being *perceived* as an active tool or participant in the conflict by the armed opposition groups. As a result, interaction between government and humanitarians may become more risky which could further undermine return and reintegration activities.
- **The pressure for comprehensive integration of the humanitarian, political, and military components of the UN may compromise the partnering and coordination of UN humanitarian agencies and humanitarian NGOs in return and reintegration programming.** NGOs are increasingly concerned that the perception and acceptance of UN agencies as impartial and independent humanitarian actors in Afghanistan is compromised by UNAMA's overt support for the stabilization strategies of the international military forces and the government. As stated by Donini, "An additional concern relates to the way the UN mission has positioned itself and the implications of taking sides, and being seen as taking sides, for the humanitarian system's ability to address humanitarian need in Afghanistan."<sup>32</sup> Donini points out that various UN Security Resolutions concerning UNAMA support the international military forces and the Karzai government with "... the UN Secretary-General and his Special Representative for Afghanistan (SRSG) have publicly and repeatedly welcomed the military surge and the persecution of the war."<sup>33</sup>

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<sup>32</sup> Antonio Donini, "Afghanistan: Humanitarianism Unraveled," Feinstein International Center, Tufts University (May 2010), p.2.

<sup>33</sup> *Ibid.*, p. 4.

- **The diversion of aid funds in support of counter-insurgency stabilization strategies has promoted partial outcomes favoring insecure locations over those where there is most need.** Despite donor commitments to the EU Consensus on Humanitarian Aid and Good Humanitarian Donorship Initiative, which requires humanitarian aid to be delivered according to the principle of impartiality, in Afghanistan aid is often diverted to locations where troops from donor countries are deployed or where there is the greatest insecurity, rather than to locations where there is the greatest need.<sup>34</sup> Field commanders may also have large discretionary budgets for “provincial reconstruction” (such as the construction of community buildings and infrastructure) but may lack the necessary humanitarian and development experience and oversight capacity to prevent serious corruption and financial malpractice. Private contractors are major deliverers on behalf of stabilization agendas, but recent studies and a report by the US Senate Armed Services Committee in July 2010 have raised concerns over the effectiveness of aid being used in this manner, with detailed examples of corruption and the use of aid to support an Afghan warlord.

### Conclusion and Recommendations

Afghanistan faces enormous challenges in the years to come, not least active conflict, weak governance, and chronic poverty. Tangible progress could be achieved with renewed donor support to meet the reintegration needs of the millions of Afghan refugees who have returned since 2002. The complex myriad of Afghanistan’s conflicting land laws and regulations, the multiple layers of disputes, the weak judicial system, the powerful elites that act with impunity, and the predominantly landless nature of returning refugees, are some of the most serious obstacles to successful reintegration of Afghan returnees. Without access to land, it is extremely difficult to provide other basic services to returnees. As a result, they will likely continue to migrate to the urban informal settlements *en masse*. Thus, donors should:

1. **Support the development of a comprehensive reintegration/durable solutions strategy for Afghanistan to address the needs of all returnees irrespective of when and where they have returned.** Crucial issues that should be included within the strategy include:
  - a. Resolving issues of landlessness and urbanization should be prioritised, as should the application of the Durable Solutions Framework.
  - b. Specifically, the Land Allocation Schemes (LAS) requires more transparency in beneficiary selection, location, planning, and consideration of comprehensive service provision if they are to be successful. Other areas of improvement include:
    - i. strengthening inter-ministerial coordination;
    - ii. increasing resources for, and accountability of the MoRR and DoRRs; and
    - iii. the resolution of ambiguities in Presidential Decree No. 104, including reform of provisions and practices that discriminate against the most vulnerable and impoverished landless returnees.

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<sup>34</sup> Justine Stone, “NGOs Work to Keep Aid Independent of Military in Afghanistan,” *The Human Rights Brief*, Centre for Human Rights and Humanitarian Law (February 9, 2010), <http://hrbrief.org/2010/02/ngos-work-to-keep-aid-independent-of-military-in-afghanistan/>; and IRIN, “Afghanistan: How Much Development Aid Will Leave With the Troops” (November 29, 2010), <http://www.irinnews.org/Report.aspx?ReportID=91225>.

- c. Given that it is unlikely that the LAS will be able to cater for the needs of all of landless returnees, especially in the short to medium term, alternatives such as multiple-level low-rent, long-term leasehold apartments should be investigated.
  - d. Viable government land will also need to be freed up in order to support comprehensive reintegration programs for the landless with livelihoods strategies to ensure sustainability.
2. **A comprehensive land policy and mechanisms for enforcement are required to address the competing land laws and regulations and customary interpretations of land ownership, access, and usage.** Such a policy would provide a building block for a comprehensive reintegration strategy. However, some key areas of focus include:
  - a. Donors should be cautious about promoting large-scale land titling systems with the high levels of conflict, disputes, and corruption in a context such as Afghanistan where there is high risk of “elite capture” and the alienation of the rightful refugee and returnee owners from their land and property.
  - b. Ensuring more focus on the traditional resolution system in relation to land disputes will be important until the formal system is significantly strengthened and trusted by Afghans, as well as ensuring more attention on preventing discrimination against female owners /claimants within the traditional system.
3. **More attention is required to address the problems associated with the large informal settlements within Kabul and Nangarhar Provinces.** NRC, IDMC, and ODI will conduct a study on urban displacement in Kabul to analyze the characteristics of the urban population, especially in relation to displacement and their coping strategies. The findings of this study should be used to inform the development of a comprehensive reintegration strategy for Afghanistan with strengthened support for urban programming, especially responding to housing, land, basic service, and livelihood needs.
4. **Donors should focus more resources and support for relevant humanitarian organizations to undertake focused, coordinated and adequately resourced reintegration programs that transcend initial transit support and remain firmly outside counter-insurgency stabilization strategies.** Given the intensification and politicization of the armed conflict in Afghanistan, it is essential that donors and Member States support humanitarian actors to maintain their operational independence, neutrality and impartiality. Furthermore, with the international military forces planning for withdrawal, avoiding the politicization of actors and individuals, including local government officials and the local population that are vulnerable to potential reprisals, is essential. Clear structural separation of UN humanitarian agencies and OCHA from political and military strategies is also an important prerequisite for successful reintegration. However, the separation of reintegration from stabilization strategies should not lessen the responsibility of donors to support these activities through appropriate and independent funding mechanisms.
5. **At the same time humanitarian actors engaged in reintegration activities should strengthen their acceptance efforts and outreach campaigns and ensure stronger operational adherence to the humanitarian principles, given the blurred civilian and military context.** Humanitarians can do more within their own operations to strengthen acceptance, access, and delivery. Shifting the focus from security and

deterrence to acceptance and engagement with all actors for the purpose of strengthened humanitarian action is fundamental.