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Comments on Events in the Islamic Transitional Government of Afghanistan

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1. I have been asked to offer an expert opinion on a document entitled Events in the Islamic Transitional Government of Afghanistan prepared for circulation to Afghan Temporary Protection Visa holders. I teach in the School of Politics at University College, University of New South Wales, Australian Defence Force Academy, and am an Associate at the Centre for Arab and Islamic Studies at the Australian National University. I have published extensively on Afghan politics for over two decades, and am author of *The Afghanistan Wars* (London and New York: Palgrave Macmillan, 2002). I have also written a study of *The Foreign Policy of the Taliban* (New York: Council on Foreign Relations, 2000), and recently co-authored a report to the UK Department for International Development entitled *Afghanistan's political and constitutional development* (London: Overseas Development Institute, 2003). I also co-authored *Regime Change in Afghanistan: Foreign Intervention and the Politics of Legitimacy* (Boulder: Westview Press, 1991) and *Political Order in Post-Communist Afghanistan* (Boulder: Lynne Rienner, 1992), and edited *Fundamentalism Reborn? Afghanistan and the Taliban* (New York: New York University Press, 1998, 2001). I have testified on a number of occasions before the Administrative Appeals Tribunal as an expert witness for the Minister for Immigration and Multicultural and Indigenous Affairs.

2. In my view, the document gives an almost wholly misleading impression of the present situation in Afghanistan. Somewhat like the notorious account of Stalinism presented by Sidney and Beatrice Webb in their book *Soviet Communism: A New Civilisation* (London: Longmans, Green & Co., 1944), it focuses on formal initiatives taken by governmental agencies without investigating the actual impact of those initiatives on the lives of ordinary people. In a country emerging from a condition of almost total state collapse, this is a naïve and dangerous way of depicting the conditions of everyday life. For example, the document states that 'The Transitional Authority has appointed a network of regional Governors responsible for maintaining law

and order throughout Afghanistan'. This begs the question of how effective such a network has been. The answer is almost totally ineffective (see April Witt, 'Karzai Powerless as Warlords Battle', The Washington Post, 18 May 2003; Peter Osborne, 'On the Roads of Ruin', The Observer, 25 May 2003).

3. The arid formalism of Events in the Islamic Transitional Government of Afghanistan can usefully be contrasted with the specific comments made by the UN Secretary-General in his most recent report on Afghanistan to the Security Council (The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General (New York: United Nations, A/57/762 - S/2003/333, 18 March 2003)). Mr Kofi Annan warned that 'Afghans in many parts of the country remain unprotected by legitimate State security structures' (para. 20). He went on to state that 'Sporadic acts of terror continue to occur all too frequently' (para. 23), and added that 'Reports from several sources in the first months of 2003 point to increased activity by elements hostile to the Government and to the international community in Afghanistan' (para. 24). On human rights he had the following to say: 'The general human rights situation in Afghanistan remains a source of great concern. The lack of adequate national security and law enforcement capacity and the weakness of the justice system exacerbate human rights violations. Abuses are committed in all parts of the country, most often by forces under the control of regional factions or local commanders' (para. 39). In his concluding observations, the Secretary-General reported that 'Afghanistan's peace process remains fragile. Insecurity and the lack of law and order continues to impact negatively on the lives of Afghans every day, whittling away at the support for the transitional process ... After 23 years of war, the progress made in 2002 has only begun to shore up the fragile foundations of peace, but stability and national reconciliation are by no means firmly consolidated' (para. 70).

4. In a presentation to the 4750th meeting of the Security Council on 6 May 2003, the Head of the United Nations Assistance Mission in Afghanistan, Ambassador Lakhdar Brahimi, spoke with equal force. He stated that the issue of security in Afghanistan cast 'a long shadow over the whole peace process there and, indeed, over the whole future of the country'. The 'deterioration', he argued, 'stemmed from daily harassment and intimidation, inter-ethnic and inter-factional strife, increases in the activity of elements linked to the Taliban and Gulbuddin Hekmatyar, and the drug economy'. He stated that the benefits of peace were still largely centred on Kabul and 'a peace dividend' still eluded the vast majority of Afghans.

5. One might be forgiven for concluding that these conclusions—of which there is no echo at all in Events in the Islamic Transitional Government of Afghanistan—are more pertinent to the safety of Afghan Temporary Protection Visa holders than the signing of the 'Kabul Declaration of Good Neighbourly Relations', and visits by President Karzai to neighbouring countries, which receive two paragraphs of their own!

6. Events in the Islamic Transitional Government of Afghanistan has almost nothing of value to say about the situation in rural and regional Afghanistan. This omission is quite alarming. For example, Ghazni, an area from which a large number of Temporary Protection Visa holders originate, was described by Todd Pitman in an Associated Press despatch from Kabul dated 20 May 2003 as 'a hotbed of suspected Taliban activity southwest of Kabul'. Such information is surely more important for Temporary Protection Visa holders than the news in Events in the Islamic Transitional Government of Afghanistan that the Afghan Independent Human Rights Commission 'has conducted a number of seminars and workshops on women's rights, human rights education and transitional justice'!

7. On refugee repatriation, it is perhaps not surprising that the Temporary Protection Visa holders are not informed in Events in the Islamic Transitional Government of Afghanistan of UNHCR's oft-stated position that 'repatriation should be voluntary and gradual, in view of insecurity in parts of Afghanistan and the limited absorption capacity of the war-torn country' (UNHCR News Report, Kabul, 22 May 2003). It is also disingenuous to quote UNHCR as if it were wholly independent: in a recent study, two highly-regarded specialists have concluded that 'it was precisely UNHCR's "weak position" in relation to "the policies of its funders and hosts" that led it to launch a "facilitated" repatriation programme early in 2002 which was, arguably, in the best interests neither of its intended beneficiaries nor of the long term reconstruction of Afghanistan' (David Turton and Peter Marsden, *Taking Refugees for a Ride? The politics of refugee return to Afghanistan* (Islamabad: Afghanistan Research and Evaluation Unit, 2002) p.56).

8. It is also worth noting that the return of millions of Afghans from Pakistan to Afghanistan in 1992-93—the largest and fastest spontaneous repatriation that UNHCR had ever witnessed—sadly did not mean that Afghanistan was secure: on the contrary, the period which followed saw countless Afghans exposed to the predations of the Taliban. When countries have experienced massive disruption, it may take years before one can be sure that it is safe for refugees to return—something implicit in all serious commentary on the Cessation Clause in Article I(C)(5) of the 1951 Convention Relating to the Status of Refugees (see James Hathaway, *The Law of Refugee Status* (Toronto: Butterworths, 1991) pp.199-205; Guy Goodwin-Gill, *The Refugee in International Law* (Oxford: Oxford University Press, 1998) pp.84-87), and accepted in UNHCR Executive Committee Conclusion no.69 of 1992 on Cessation of Status which refers to the 'fundamental, stable and durable character of the changes' as an 'essential element' in states' assessments.

9. I regret to say that my overall view is therefore that, given the reliance that a Temporary Protection Visa holder might place on Events in the Islamic Transitional Government of Afghanistan, the document should be regarded not simply as misleading, but as highly irresponsible.