



**Upper Tribunal  
(Immigration and Asylum Chamber)**

TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 00595 (IAC)

**THE IMMIGRATION ACTS**

**Heard at Field House  
on 31<sup>st</sup> March 2014 and 17<sup>th</sup> August 2015**

**Determination Promulgated**

**Before**

**UPPER TRIBUNAL JUDGE HANSON  
UPPER TRIBUNAL JUDGE PLIMMER**

**Between**

**TG (1)  
GD (2)  
GJ (3)  
PM (4)**

**(ANONYMITY ORDER MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Bazini (Counsel) on behalf of the first, second and third Appellants on 31<sup>st</sup> March 2014. No attendance on 17<sup>th</sup> August 2015.

Miss Bayati (Counsel) on behalf of the fourth Appellant on 31<sup>st</sup> March 2014 and Mr Warnapala, Solicitor, on 17<sup>th</sup> August 2015.

For the Respondent: Mr Tarlow (Senior Home Office Presenting Officer).

## **Risk to followers of the Sikh and Hindu faiths in Afghanistan:**

- (i) *Some members of the Sikh and Hindu communities in Afghanistan continue to suffer harassment at the hands of Muslim zealots.*
- (ii) *Members of the Sikh and Hindu communities in Afghanistan do not face a real risk of persecution or ill-treatment such as to entitle them to a grant of international protection on the basis of their ethnic or religious identity, per se. Neither can it be said that the cumulative impact of discrimination suffered by the Sikh and Hindu communities in general reaches the threshold of persecution.*
- (iii) *A consideration of whether an individual member of the Sikh and Hindu communities is at risk real of persecution upon return to Afghanistan is fact-sensitive. All the relevant circumstances must be considered but careful attention should be paid to the following:*
  - a. *women are particularly vulnerable in the absence of appropriate protection from a male member of the family;*
  - b. *likely financial circumstances and ability to access basic accommodation bearing in mind*
    - *Muslims are generally unlikely to employ a member of the Sikh and Hindu communities*
    - *such individuals may face difficulties (including threats, extortion, seizure of land and acts of violence) in retaining property and / or pursuing their remaining traditional pursuit, that of a shopkeeper / trader*
    - *the traditional source of support for such individuals, the Gurdwara is much less able to provide adequate support;*
  - c. *the level of religious devotion and the practical accessibility to a suitable place of religious worship in light of declining numbers and the evidence that some have been subjected to harm and threats to harm whilst accessing the Gurdwara;*
  - d. *access to appropriate education for children in light of discrimination against Sikh and Hindu children and the shortage of adequate education facilities for them.*
- (iv) *Although it appears there is a willingness at governmental level to provide protection, it is not established on the evidence that at a local level the police are willing, even if able, to provide the necessary level of protection required in Refugee Convention/Qualification Directive terms, to those members of the Sikh and Hindu communities who experience serious harm or harassment amounting to persecution.*
- (v) *Whether it is reasonable to expect a member of the Sikh or Hindu communities to relocate is a fact sensitive assessment. The relevant factors to be considered include those set out at (iii) above. Given their particular circumstances and declining number, the practicability of settling elsewhere for members of the Sikh and Hindu communities must be carefully considered. Those without access to an independent income are unlikely to be able to reasonably relocate because of depleted support mechanisms.*
- (vi) *This replaces the county guidance provided in the cases of K (Risk – Sikh - Women) Afghanistan CG [2003] UKIAT 00057 and SL and Others (Returning Sikhs and Hindus) Afghanistan CG [2005] UKAIT 00137.*

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## **DECISION AND REASONS**

1. The Appellants are all citizens of Afghanistan. These appeals have been identified for potential country guidance on the risk on return for followers of the Sikh and Hindu religions in Afghanistan.

### **Appellants' immigration history**

2. The first appellant entered the United Kingdom on the 26<sup>th</sup> January 2003. He was granted exceptional leave to remain until 31 December 2005 when he attained 18 years of age. On 30<sup>th</sup> November 2005 he applied for further leave to remain, which was refused on 10<sup>th</sup> May 2007. His appeal against that decision was dismissed by Immigration Judge Milligan-Baldwin in a determination dated 8<sup>th</sup> October 2007. On 20<sup>th</sup> May 2008 he applied for voluntary departure and on approval left the United Kingdom on 11<sup>th</sup> June 2008. The first appellant claims to have left Afghanistan again in July 2011 and to have re-entered the United Kingdom with his wife and daughter (the second and third appellants respectively) on 4<sup>th</sup> December 2011, without leave. He claimed asylum on arrival, which was refused on 4<sup>th</sup> April 2012. His appeal against the refusal was dismissed on 13<sup>th</sup> June 2012, although on 7<sup>th</sup> January 2013 the Upper Tribunal set aside the decision of the First-tier Tribunal and directed that the matter should be heard afresh.
3. The fourth appellant entered the United Kingdom in the back of a lorry in December 2006 and claimed asylum at Croydon on the 18<sup>th</sup> December 2006. This was refused on 16<sup>th</sup> January 2007 by the Secretary of State. His appeal was heard by Immigration Judge Foudy who, in a determination dated 13<sup>th</sup> March 2007, found him to be a credible witness who had a well-founded fear of persecution in Jalalabad by non-state actors on account of his Sikh religion. The appeal was, however, dismissed as the Judge concluded that relocation to Kabul was possible as there is a Sikh community in that city into which he could integrate.
4. Further representations were received from the fourth appellant and rejected by the Secretary of State on 26<sup>th</sup> March 2010 who concluded that he can relocate to Kabul and that the health problems that he and his wife suffer were not so severe so as to engage Articles 2 or 3 ECHR. The claim under Article 8 ECHR was also rejected in relation to the fourth appellant, his wife, and their daughter on the basis of her academic studies.

### **Issues for country guidance**

5. These appeals were listed as a potential country guidance case in order to determine a number of agreed issues which we construe to be (a) whether the current situation in Kabul is such that there would be at risk of persecution for followers of the Sikh and Hindu religion if removed per se and, if not, (2) whether relocation for those appellants who have been found to have suffered persecution in their home areas will be unduly harsh and, if not, (c) whether their Article 8 ECHR rights would be violated if removed. As the Article 8 issue was conceded before us there has been no need to consider this element of the appeals further.

To enable us to address these issues it has been necessary to consider the situation generally for Afghan Sikhs and Hindus in Kabul.

6. This determination, to which we have both contributed, takes account of all the oral and documentary material before us, including the written and oral arguments of both parties.

### **Country evidence**

7. We had the benefit of a significant amount of both oral and written country evidence. The appellants' respective representatives helpfully worked together to provide a single comprehensive bundle of country evidence for the hearing on 14<sup>th</sup> March 2014. Legal Justice Solicitors, instructed by TG in March 2015, filed a further bundle on 28<sup>th</sup> May 2015, which has been copied to all parties who were then invited to provide any further information they wished the Tribunal to consider in relation to the country situation. Warnapala & Company filed an additional bundle on the 26<sup>th</sup> June 2015. There was no attendance on behalf of TG at the hearing on 17<sup>th</sup> August 2015 as Legal Justice Solicitors confirmed they had no additional submissions to make that required their attendance, which was in accordance with a direction of the Tribunal. Mr Warnapala did attend but added little to the written evidence although confirmed he had no issue or point of dispute with the content of the bundle filed by Legal Justice Solicitors. Mr Tarlow maintained the Secretary of State's position and provided no additional evidence for the Tribunal to consider.
8. The evidence before us is considered within the body of the determination and details of the sources are set out more fully in Appendices A, B and C. This provides a full list of all material before the Upper Tribunal, together with links to relevant websites on which that evidence may be found, where relevant.

### **Introduction to expert and their reports**

9. Country expert reports have been received from Dr Roger Ballard and Dr Antonio Giustozzi. Dr Giustozzi also gave oral evidence.
10. Dr Ballard was awarded a PhD in Sociology by the University of Delhi in 1970. He held teaching posts at a number of UK universities before taking early retirement in 2002 in order to service an increasing number of instructions to act as a Consultant Anthropologist. In 2002 he was appointed Director of the Centre for Applied South Asian Studies, University of Manchester. His specialist interest is emigration from the Punjab, and hence in Sikh and Hindu settlers from the Jullundur Doab in India, and in Mirpuri Muslims from the Potohar/Azad Kashmir region of northern Pakistan including the changing dynamics of family and kinship, in popular religious practice, and in differential patterns of upward social, educational and economic mobility within all of these groups, both in the UK, and in their home base in the subcontinent.
11. Dr Ballard has provided two reports. "The History and Current Position of Afghanistan's Hindu and Sikh Population" dated 18<sup>th</sup> May 2011 and "Afghan Sikhs, Risk on return to Kabul" dated 20<sup>th</sup> May 2011.

12. Dr Giustozzi is a visiting research fellow at the London School of Economics and Political Science (LSE), International Relations and International History (IDEAS) and visiting professor at the War Studies Department (KCL). He holds a PhD in International Relations from the LSE which he received in 1997.
13. Dr Giustozzi provided one report dated 1<sup>st</sup> February 2014 and gave oral evidence.

### **Background to Sikhs and Hindus in Afghanistan**

14. The presence of followers of the Sikh and Hindu religions in Afghanistan is not a modern phenomenon. The history of the Sikh and Hindu presence from an anthropological perspective is discussed in some detail in the report of Roger Ballard. It is suggested in the report that some anthropologists believe them not to have originated from India, as some had assumed, but to be part of a distinct component of the autochthonous population of Afghanistan although others suggest followers of these religious groups were brought in by the British in the 19<sup>th</sup> century.

#### *Population size*

15. The Sikh and Hindu population is believed to have numbered as much as a quarter of a million spread throughout Afghanistan, according to a detailed account of the conditions of the Sikhs in Afghanistan written by a Sikh visitor to Kabul in the early 1940s. They, together with members of the Hindu faith, controlled a great deal of the long-distance trade within Afghanistan as well as across its borders. They also held posts in the administration.
16. The UNHCR document dated July 2011 entitled "Afghan Hindus and Sikhs: Their Situation and Recommendations for the Assessment of Claims" contains the following information regarding the historical background derived from the Integrated Regional Information Network: IRIN, Afghanistan: focus on Hindus and Sikhs in Kandahar, report:

'The first presence of Hindus and Sikhs in the Central Asian country is said to be roughly 200 years ago.

Of the estimated 50,000 Hindus and Sikhs living in Afghanistan 10 years ago, most have left. Only about 1000 Sikhs remain in the country today, half of them concentrated in Jalalabad, the provincial and commercial capital of the eastern Nangarhar Province.

Sikhs left Afghanistan en masse, along with thousands of Hindus, after Hindu extremists destroyed the Babri Mosque in Ayodhya, in India, in December 1992, in fear of threats from radical Muslims following large scale looting of Hindu and Sikh temples all over Afghanistan.

Their properties were looted, they were tortured and treated inhumanely, particularly in Kabul, with women reportedly raped. Under the Taliban, 'Indians' were marginalised and were not allowed to have any major stake in local economies as they had previously done.

The Hindus and Sikhs, with their typical business acumen, had established factories in Kabul and operated a healthy exporting business, trading in Afghan goods such as

dried fruit, textiles and precious stones. With the coming to power of the Taliban, however, they had to resort to operating small shops selling fruit and textiles.

Their social status prior to the 1990s had also enabled them to be part of the military and civil services, and some even took up high positions in banking. With the fall of the Taliban, the 'Indian' community in the battered country is hoping to prosper once again and to rehabilitate the local economies.

For generations, Hindus, Sikhs and Jews lived in harmony with Muslim Afghans. Their rights were respected, and they regarded themselves to be Afghans as much as Hazaras, Pashtuns, Tajiks or Uzbeks born and raised in the country did.'

17. The actual number of Sikhs and Hindus in Afghanistan is not at all clear. A number of differing opinions appear in the evidence and even Dr Giustozzi, a leading country expert, was unable to be clear on the precise figure. In his report he states:

'4. No precise estimate for the number of Sikhs and Hindus in Afghanistan exists, due to the failure of the government to carry out a census of the population. UNHCR sources estimated that in Kabul in 2005 185 Sikh families were left, with 160 in Jalalabad and 100 in Kunduz, these being the main communities. Sikh community sources estimated the number of families living in Kabul in 2010 to be down to 130, mostly living in the Karte Parwan area. Even some of those left say that they remained only because they were too poor to flee. According to the Department of State, the Sikh community in Afghanistan estimated its size in 2009 at 531 families or 3000 individuals, compared to from up to 200,000 before the war. Another estimate, provided by the Deputy of the Hindu and Sikh Council of Afghanistan, was 5000 Sikhs and 2000 Hindus. More recently the head of the community, Awtar Singh, estimated the size at 372-395 families nationwide, which would indicate a further decline. In any case it is obvious that the Sikh/Hindu population has been declining very much, by over 90%, a fact that should itself be an indication that the conditions of living in Afghanistan for the members of this community are now far worse than those of the rest of the population, which instead has been returning to Afghanistan: 5 million Afghan refugees have returned from mainly Pakistan and Iran between 2002-9. Considering the small size of the community, the sample of episodes of violence, abuse and harassment compiled in this report, which is certainly not exhaustive, indicates a high level of pressure on the Sikh/Hindu community. The episodes which occurred after 2005 amount to a substantial level of violence and harassment when projected into a population of 3000.'

18. The Appellants invited the Tribunal to accept that the number of members of these minority religious groups in Afghanistan was approximately 3,000 although it was accepted that the figure may well be less than 3,000. Dr Giustozzi refers to the Deputy of the Hindu and Sikh Council of Afghanistan estimating that there are only fifty properties left in Kabul owned by Sikhs and Hindus as at January 2014 as well as some estimates of there only being 1,000 individuals remaining.
19. We are unable to make a clear finding with regard to the exact figure of Sikhs and Hindus currently remaining in Afghanistan as we have insufficient evidence to enable us to do so. In any event, a figure of around 3,000 and the fact there has been a steady and significant reduction in numbers is not disputed by the Respondent in her Operational Guidance Notes for Afghanistan issued in June 2013 at paragraph



3.15.3-4. The same paragraph refers to a report published by the Centre for Applied South Asian Studies "The History and Current Position of Afghanistan's Hindu and Sikh population: 2011" which contains the following comment:

'The only reliable observation that can be made about the current [2011] characteristics of Afghanistan's Sikh and Hindu minority is that it is now only a small fraction of its former size, and that as numbers shrink, its remaining members are finding themselves ever more vulnerable to aggressive exploitation, against which they have no meaningful defence. Hence the exodus can only be expected to continue'.

20. The same report acknowledges there have been some returnees from India but these have not made a significant difference to numbers as many have not stayed according to Dr Giustozzi. For the purposes of the appeals a working hypothesis of 3,000 was accepted by all parties.

#### *The historical position of Sikhs and Hindus in Afghanistan*

21. It would be misleading to give the impression that the situation for Afghan Sikhs and Hindus has always been as it is today as otherwise it would not have been possible for members of these religious groups to achieve the status within the country they had in the past. Dr Ballard in his report dated 18<sup>th</sup> May 2011 charts the rise and fall of Afghan Sikhs and Hindus during the period of the Soviet-backed regime when a significant proportion of Afghan Sikhs and Hindus became qualified pharmacists and held other professional posts within the regime, which was strongly secular in character, and in no way encouraging hostility towards non Muslim minorities. Dr Ballard attributes the start of the current difficulties for Afghan Sikhs and Hindus as being the collapse of the Soviet presence and the arrival of the Taliban:

'But the Russian forces wilted in the face of ferocious assaults by the *mujahedeen*. When they eventually withdrew with their tails between their legs in 1989, chaos reigned, and the Hindus and Sikhs of Afghanistan found themselves in severe difficulty. In the first instance they found themselves facing economic chaos as the various *Mujahadeen* splinters engaged in an internecine civil war, and yet greater difficulties still when the militantly Islamic Taliban swept to power in 1994. The tolerance of diversity which had hitherto been such a characteristic of Afghan Islam rapidly began to evaporate in the face of the hard line *jihadi* and fundamentalist attitudes promoted by the Taliban.

Hence even though the arrival of the Taliban was welcomed by large sections of the Afghan population because they replaced a smash and grab period of warlordism with a strictly imposed order - albeit of an exceptionally rough and ready kind - their arrival was in no way welcome by members of Afghanistan's Sikh and Hindu minority. Given their training in *madrassah* wholly committed to Wahhabi and Deobandi interpretations of the Islamic tradition, the Taliban not only enthusiastically imposed bloody punishments on all those whom they considered to have overstepped their narrow and literalistic interpretations of Quranic injunctions, but also took the view that infidels and idolaters have no place in the Islamic paradise which they had constructed. As a result members of the Hindu and Sikh minority were required to wear yellow stars on their clothing, Muslims at large were strongly encouraged to avoid using their shops, and ever more vigorous efforts were made to 'persuade' them to see the error of their ways and to become Muslims. Such persuasion soon involved much more than verbal threats. Sikhs and Hindus soon found themselves being required to make financial

contributions to the *jihad*, and if they failed to pay up, to find themselves faced with even larger ransom demands if they wanted to see their kidnapped sons and daughters returned home alive rather than as corpses.

However it would be quite wrong to assume that all Afghan Muslims were in sympathy with those tactics, which ran wholly contrary to their long-standing commitment to plurality-tolerant Sufi interpretations of Islam. In many respects the Taliban ideology was one which had been imported by a neo-fundamentalist group which had its roots in Pakistan. In the face of these assaults Sikh and Hindu families frequently found themselves provided with a modicum of support and shelter by their Muslim neighbours, and most especially those with whom they had sustained relationships or reciprocity over many generations.'

22. It is important to understand the correct context of the requirements to wear yellow patches/stars; this does not appear to have been for purposes similar to those behind the requirements of Jews in Nazi Germany to wear yellow stars but rather ostensibly so they would not be arrested by the Religious Police for breaking Taliban laws on the length of beards and other issues, according to a Times of India article dated 22<sup>nd</sup> November 2006 which is based upon a Reuters report as referred to in the report of Dr Ballard [Appendix A. Item 22].

#### *Country guidance decisions*

23. The situation of members of these religious groups in Afghanistan has been the subject of a number of decisions. The country guidance case of SL and Others (Returning Sikhs and Hindus) Afghanistan CG [2005] UKAIT 00137 found that there was no evidence to support the claim that Afghan Sikh and Hindu minorities were persecuted or ill-treated in breach of their protected human rights under Article 3 by the state or that the degree of societal discrimination against them was such as to give rise to any such persecution treatment as a class. Although some discrimination occurred against the Sikh and Hindu community on grounds of their ethnic and religious affiliations, such discrimination did not give rise to a general need for protection. A claimant's status as an Afghan Sikh or Hindu was nonetheless a factor to be taken into account in assessing individual claims on a case by case basis.
24. In K (Risk – Sikh - Women) Afghanistan CG [2003] UKIAT 00057 the Tribunal held that there was no real risk that, if the Claimant - a single Sikh woman from Kabul with children - was returned to Kabul with her dependants, she would face treatment which was sufficiently severe as to amount to persecution or a breach of her rights under Article 3 on account of being a Sikh female who would be returning to Kabul without male support.
25. In a more recent decision, however, of DSG & Others (Afghan Sikhs: departure from CG) Afghanistan [2013] UKUT 148 (IAC) the Tribunal found that the evidence before the First-tier Tribunal Judge in that case justified his departure from the country guidance in SL & Others. The Upper Tribunal panel had noted that in SL the Tribunal had relied on figures from an UNHCR estimate of the number of Sikhs and Hindu families in Afghanistan which in that report were stated to be 3,500. This led the Tribunal to conclude that the Sikh and Hindu communities were in total in the region of some 20,000 persons of whom a substantial proportion were in Kabul. The

figures before the Panel were substantially less and this led them to conclude that this would make a considerable difference in considering the incidents of the attacks on Sikhs and Hindus in terms of the small number of the population encountering quite large numbers of attacks and that therefore the attacks would not be considered to be merely random but targeted at this much smaller community.

26. In DSG the Upper Tribunal did not feel it had sufficiently comprehensive material before it to decide whether SL was to be replaced although its findings clearly affected how judges should approach that guidance in light of new evidence. These cases have been identified as ones in which there would be adequate material to consider, inter alia, the continued validity of SL.

### **The current situation – developments since 2005**

#### *Dr Ballard's reports*

27. The current period of Afghanistan's long and somewhat tortuous history began with the overthrow of the Taliban regime in spring 2002 which many hoped would lead to a restoration of the status quo that was somewhat representative of the situation that existed in the country prior to the Soviet occupation in 1979. As a result a significant number of those who had sought refuge overseas, including Muslims, Sikhs and Hindus, returned to Afghanistan. It was during this period that President Karzai came to power [Appendix A. Item 22].
28. Dr Ballard further notes in the same report, that whilst the weight of systematic oppression that was suffered by Sikhs and Hindus during the Taliban era was lifted, such that they were even guaranteed representation in the newly constituted National Assembly, there remain many underlining difficulties. The 2006 US State Department Religious Freedoms Report, section 19.26, notes that non-Muslim minorities such as Sikhs, Hindus and Christians continued to face social discrimination and harassment and, in some cases, violence. The authors of the report acknowledged that the treatment was not systemic although it is stated that the government did little to improve conditions during that year. The same report records information received from the Sikh community that in the autumn of 2005 there was a report of the disappearance of a Sikh travelling from Kabul to Jalalabad, that some Sikh and Hindu children were unable to attend government schools due to harassment from teachers and students with the government failing to take sufficient steps to protect the children and reintegrate them into the classroom environment, and a failure by the government to provide funding or assistance for Sikh schools. The Sikh community chooses to send its children to its own schools due to reports of abuse and harassment in government run schools.
29. In section 6.5 of the report [Appendix A. Item 22] Dr Ballard refers to further difficulties experienced by Sikhs including locals claiming they are not from Afghanistan and telling them to return to India, throwing stones at the adults and children and in 2007 a protest by Afghan Sikhs following difficulties experienced in the cremation of their dead to which we shall refer in more detail below.

30. Dr Ballard also sets out a summary of an interview undertaken by the BBC World Service with Dr Anarkali Kaur, a leading member of the Sikh community in Kabul in which Dr Kaur stated that in relation to the current position of the Sikh and Hindu community in Kabul:
- Although the community was living in Afghanistan before the arrival of Islam, they are now widely viewed as outsiders, and as immigrants from India.
  - Before the arrival of the Taliban, the community enjoyed a good life in Afghanistan.
  - War has destroyed many aspects of everybody's lives in Afghanistan, but the Sikhs and Hindus have been particularly vulnerable as a result of their being viewed as an alien minority.
  - Despite an influx of Sikh and Hindu refugees from the countryside, the size of the community in Kabul has continued to shrink as its members have sought refuge elsewhere.
  - Current problems include: lack of personal security, especially in the form of threats from unknown gunmen; lack of access to educational facilities; a widespread belief that all Sikhs and Hindus are rich (even if most of their businesses have now closed down), rendering members of the community vulnerable to kidnap in search of ransom payments.
31. Dr Ballard notes as significant that at no point in the interview does Dr Kaur suggest that the authorities in Kabul provide members of the community with any significant degree of protection against the forms of harassment which she identified.
32. Dr Ballard's second report [Appendix A. Item 21] was prepared at the specific request of Waranpala Solicitors for the purposes of the fourth appellant's appeal. In section 5.2 he expresses his opinion in relation to the situation in Kabul in the following terms:

'5.2 Kabul and Jalalabad: different worlds

While Kabul is by far the largest city in Afghanistan, Jalalabad is by no means out in the sticks: rather it lies halfway along Afghanistan's most significant trade route, the road between Kabul and Peshawar. Moreover precisely because of its location, the province in the midst of which it lies has been a key battleground for the various wars in which *mujahedeen* guerrillas have been active ever since the Soviet invasion more than thirty years ago, and who still tied down a large contingent of ISAF forces to this day.

However it would be idle in the extreme to assume that Kabul has been untouched by these developments. Quite the contrary: throughout this period taking control of Kabul has been the ultimate objective of all these insurgents, and if they have only intermittently achieved that objective it is largely the result of violent bickering among themselves on the one hand, and the presence of military forces of external origin - originally Russian, and now largely American - on the other hand, in support of their

own favoured regime in Kabul. Hence whilst patches of Kabul – those within which members of what most Afghans regard as the occupying power have taken up residence - are relatively stable, the same cannot be said for the remainder of the country, or indeed the city. Given the weakness of the Afghan state - a historical no less than a contemporary phenomenon - members of every Afghan community routinely look towards their fellow members of their *qaum* (crudely their tribe) for succour and support, not least as a source of protection in the face of predatory initiatives by members of other rival *qaum*.

In the midst of all this, members of Afghanistan's Sikh and Hindu population have behaved in just the same way; and to the extent that they virtually monopolised a narrow but essential niche in the socio-economically order which did not bring them into serious [competition] with any other *qaum*, they largely looked after themselves. However not only have four decades of insurgency swept away at all past compromises to one side, but the fact that *mujahedeen* (of all manner of stripes) have played a leading role in the whole process has left members of the Sikh and Hindu *quam* ever more exposed. In Afghanistan at least, they were never warriors; and now, in the eyes of the *mujahedeen*, as well as those affected by their ideology, members of this community are now regarded as *kaffirs*, unbelievers who have no legitimate place in the Afghan social code.

From this perspective the processes which have rendered the position of Sikh communities in the more peripheral towns and cities in Afghanistan's periphery are no different from those at work in Kabul: Afghanistan is one country. Nevertheless that does not mean that there is absolutely nothing distinctive about the situation in Kabul. Precisely because Kabul has long been Afghanistan's commercial as well as its political capital, it has long played host to the largest Hindu and Sikh community in the country. And for just the same reason as the position of Sikhs in outlying towns and cities, as well as outlying parts of Kabul itself, became increasingly untenable, the community began to close ranks around, and seek shelter in, the Gurdwara in Kate Parwan [a district of Kabul located to the northwest of the city centre], which has long been the ultimate hub of the Sikh community in Afghanistan as a whole.

However just because such a defensive concentration of numbers facilitated the articulation of the greater degree of mutual support, there was still a sure sense that the community was as vulnerable as ever, not least because its members still had to find a means of living and working in the midst of a wider social order whose members were becoming increasingly hostile to their very presence in their midst. Moreover even though they were gathering together in this way in the heart of the old city, the Karzai regime has had, and still has, many much more challenging issues that confront the difficulties encountered by members of this peripheral and still shrinking *qaum*.

From this perspective on the situation in which members of this community find themselves in Kabul emerges as little different from that of those who once lived in Jalalabad. To be sure it is one which has lasted longer than those which were once to be found in almost all of Afghanistan's more peripheral cities and towns, but in the longer run it seems destined to be faced with the same fate: Afghanistan may be their land of ancestral origin, but recent developments have rendered further residence in their country of birth untenable.'

*Dr Giustozzi's reports and evidence*

33. Also on behalf of the fourth appellant Warnapala Solicitors commissioned a report from Dr Giustozzi dated 1<sup>st</sup> February 2014 [Appendix A. Item 1] Dr Giustozzi also gave oral evidence before us and was cross-examined by Mr Tarlow.
34. Dr Giustozzi notes in his report that during 2012 overall levels of violence had declined in Afghanistan due to the withdrawal of foreign troops although Afghan-on-Afghan violence has actually increased. Such violence has been distributed geographically with civilian casualties inflicted by the insurgents being on the rise, except in 2012 when there was a decline. It is said that the level of violence implies an environment very conducive to abuses of every type, particularly at the expense of a small minority like the Sikhs and Hindus who are not armed and cannot defend themselves.
35. In light of the estimated size of the Hindu and Sikh community in Afghanistan it is Dr Giustozzi's opinion that reported attacks and harassment amount to a very serious threat which explains why the large majority of Afghan Hindus and Sikhs have opted to abandon their property in Afghanistan and flee the country. It is further stated in his report:

'Virtually all Sikh families in Afghanistan had businesses in the country and would have had little motivation to leave in the absence of a serious threat. Because the insurgency largely operates in rural areas, while Sikhs all live in towns and cities, they have not been threatened by the Taliban specifically after 2001; however as detailed in the report there are other very significant sources of threat. Relocation options for Sikhs are limited to the few remaining Sikh communities. Nobody apart from a Sikh trade or craftsmen would employ any of them and even that would be difficult as Sikhs would prioritise their own relatives for hiring.'

36. Dr Giustozzi refers to non-state sources of violence and threats. He describes Hindus and Sikhs being targeted for kidnapping, ransom, looting and protection rackets as a result of a perception of being relatively wealthy. It is noted that neither the Hindus nor Sikhs enjoy protection from any of Afghanistan's various factions because they are too small numerically to matter politically and could therefore be targeted with impunity. Seizure of property by militia commanders, whilst a widespread practice, had a disproportionate effect upon the Sikh and Hindu communities and women could be raped with little fear of retaliation from their fellow community members which would not have been the case with other communities; the majority of which were all well armed. In relation to the current situation Dr Giustozzi writes:

'9. The defencelessness of Sikhs and Hindus remains true even today as they do not enjoy protection from any of Afghanistan's various factions. They are also too small numerically to matter politically. Therefore, they can be targeted with impunity. Cases of kidnapping of Sikhs have still been occasionally reported after 2001. After 2001 the militias have mostly been incorporated in the police, while criminal gangs are also known to have setup an extortion ring which targets businesses. According to Sikh community leader Atwar Singh, in Kabul alone 250 houses belonging to Sikhs have been illegally occupied when the militia moved into the city at the end of 2001 and it has not been possible to reclaim them, due to the lack of co-operation of the police and

the judiciary. At present there are only an estimated 50 Sikh/Hindu properties left in Kabul. Expropriation has almost stopped after 2001 because all the most valuable properties had already been taken away from Sikhs. The main controversy from 2001 onwards has been surrounding the seized properties and efforts by Sikhs and Hindus to recover them. The leader of the Kabul Sikh community wrote to President Karzai several times to ask for the return of seized properties. Although Karzai instructed the Ministry of the Interior to deal with the issue, as of 2007 little has moved on this front. Almost all these militia all were linked to groups like Jamiat-i-Islami, which is strong in the Ministry of Interior. Many shops have also been seized.'

10. There are plenty of criminal gangs in Afghanistan and the most active and famous among them operate in and around Kabul and have often been targeting Sikhs. The network of former militia commanders in control of Parwan is known as the 'Parwan Mafia' which rotates around characters such as the former Minister of Interior, Zarak Moqbel Ahmad, Abdul Basir Salangi (Chief of Police of Kabul in 2003), Ayub Salangi (former Chief of Police of Kabul and currently Deputy Minister of Interior), Amanullah Guzar (former Chief of Police of Kabul), Haji Almas (Member of Parliament) and Maulana Sayyidkhel (former Chief of Police of Parwan and Kunduz, now dead). Through a cousin of Zarak, Khuja Nabi, the network maintains contact with two of the most important criminal gangs in Kabul, those led by Rais Khodaidad and Habib Estalifi, a fact which allows the network to carry out targeted assassination and other operations against rivals and enemies. In Nangarhar province one of the main sources of criminal violence have been the militias of Hazarat Ali. Attacks took place wherever Sikh or Hindu communities existed in Afghanistan, including Kabul, where a commander of Jamiat-i-Islami, Rahim, was even sentenced to death for his crimes against Sikhs and others, but managed to evade execution due to his connections. Rahim is the only known case of somebody having been prosecuted for an attack on Sikhs.

11. All the Sikh/Hindu temples (they are usually shared by the two religions) in Kabul were ransacked and destroyed, although some of them were rehabilitated later (see para. 30). Afghans often mixed Sikh and Hindus together as they are all seen as 'Indians' (Hindu). According to the deputy of the Hindu and Sikh Council, there have been after 2000 tens of cases of returning Sikhs who tried to reclaim their property, but failed to get any collaboration from the authorities and received instead death threats. Eventually most of them were forced to flee the country again, also because of the lack of resources of livelihood. Up to October 2004, only about a hundred Sikh families had returned to Afghanistan, according to sources gathered by the Indian press. There has been after 2004 a continuing but unquantifiable flow of returning Sikhs, mostly members of families who left Afghanistan in the late 1990s and are returning because they failed to settle successfully in their countries of immigration (India, Europe and Russia). These returnees are coming back to try and recover the properties which were expropriated in the 1990s, but without success and are often forced to leave again because they do not have a source of livelihood.

12. Episodes of attacks and harassment of Sikhs are sometimes reported in the press, as detailed below. With regards to the case of SL and Others (Returning Sikhs and Hindus) Afghanistan CG [2005] UKIAT 00137, in my view at that time the seriousness of the condition of Sikhs in Afghanistan was greatly underestimated, so that even if there is no evidence that it has worsened since 2005, it remains pretty grim. There are very few valuable properties left in the hands of Sikh families, so property seizures are today inevitably rare. Even if we take the episodes of violence and harassment

mentioned in this report and assuming that this represents the whole picture (which is highly unlikely given that Afghanistan is in the middle of a violent conflict of thousands of deaths occurring yearly, distracting the media from Sikh issues), the picture which emerges is one of intensive harassment and de facto discrimination. Estimates of its size today correspond to no more than the size of a single village. If the known episodes of harassment and violence (which presumably represents only a proportion of the actual incidents having occurred as explained above) are compared to the size of the population, we should consider that there is a rampant hostility and discrimination against Sikhs in Afghanistan.'

37. In relation to the availability of protection Dr Giustozzi notes that, due to the perceived weak position of Sikhs and Hindus and the condition of the Afghan law enforcement system, they become easy targets for abuse. They cannot defend themselves physically as most Muslims in Afghanistan would for, if they did, the mechanism of Muslim solidarity would kick in which would be entirely to the Sikh's disadvantage. Dr Giustozzi notes that many liberal Muslims agree that Sikhs and Hindus have been discriminated against.
38. The Sikh and Hindu community are represented in the Senate by Anarkhali, a Hindu woman appointed by President Karzai as a Senator although a proposal to have a Parliamentary seat reserved for Sikhs and Hindus was rejected by the Afghan parliament in December 2013 on the basis it was contrary to the Afghan constitution. It is clear that President Karzai is willing to support the Sikh and Hindu cause such as supporting the idea of having a reserved seat in Parliament and it is noted that Sikhs and Hindus have some influence among liberal Afghans as well as over the President.
39. In relation to the availability of protection, the report notes the police are known for being abusive and ineffective as well as corrupt and, specifically in relation to the difficulties experienced by Sikhs and Hindus, Dr Giustozzi writes:

'19. As mentioned above, as far as it has been possible to establish no crime committed against Sikhs by Muslim Afghans has been punished; Sikhs can report attacks to the police, but it is very rare for the police to follow them up. For example, the Sikh community complains about police indifference to a wave of crime attacks on Sikhs in Karte Parwan. The case of Rahim mentioned above is the only known exception, but the sentence against him was never implemented. As indicated above, however, no Sikh who tried to recover his property from the authorities has been successful. Despite the end of official persecution, therefore, within the state apparatus hostility to Sikhs and Hindus remains widespread. However, there are direct orders from the President of Afghanistan to protect Sikh funerals and the police have been implementing these orders. As a result of this the Sikh community praises the police for having escorted Sikh funerals in the face of protesting crowds.

20. Carrying long hair and turban in the Sikh fashion of course greatly facilitates identifying Sikhs and therefore exposes them to the hostility of elements of the population, such as Muslim zealots as discussed above. Because it is difficult to recognise Sikhs when they do not carry these distinctive features, it is not possible to estimate how many Sikhs do not dress according to their religious code.'



40. Dr Giustozzi refers to incidents of violence since SL was decided in 2005 and provides examples at paragraphs 23 to 25 of his report which can be summarised as follows:

- i. Pressure being brought to bear against members of the Sikh community to sell their property at a favourable price in Kabul since 2005. This included in 2006 a former Minister of Defence, Fahim, targeting a Sikh neighbour and even approaching the head of the Sikh community for assistance in his expropriation effort but this was nine years ago.
- ii. Threats against those active in seeking the return of seized properties which is not particularised in terms of date or detail.
- iii. In 2006, eight years ago, a young Sikh from Jalalabad who returned to the city to recover his family's property but disappeared before being able to contact his relatives there.
- iv. A Hindu rights activist, Anarkali Honaryar, who is also a delegate to the Constitutional Loya Jirga in 2003 and who is now a Senator, complaining that the properties of Hindus have not been returned and that Hindus still received death threats from gunmen. Eleven years ago.
- v. In March 2004 the Hindu and Sikh community of Khost complained to the local governor that "powerful Muslims" were forcing them to give up property, which is ten years ago.
- vi. April 2005, a Sikh temple in Khost was attacked and robbed by twenty one armed men, a city where there has always been a heavy security presence due to insurgency in neighbouring areas without any intervention from the police or other law enforcement agencies which is said to be highly significant of the neglect of Sikhs by the authorities, which was nine years ago. Of 243 Hindu families who once lived in Khost only one remains today.
- vii. During recent elections, Hindu and Sikh candidates have been harassed in Kabul and their election posters torn down and replaced with aggressive anti-infidel slogans. It is noted in the report that many Sikhs have indicated they miss the Taliban regime which was more effective in protecting them and preventing harassment and theft.
- viii. Attempts to start business activities being thwarted by threats. There have been at least two bomb attacks against Hindu and Sikh shops selling Indian films and music which is judged unacceptable to Islam by Muslim extremists and in Lashkargah (Helmand) Sikh shops have been demolished on order of the governor and no land has been allocated to build new ones. Although the evidence is not of recent events.
- ix. Ongoing harassment of adult Sikh and Hindus, particularly at the bazaar, who have fruit thrown at them and other gestures of hostility.

- x. Believers attending ceremonies at the Temple are targeted for abuse. Netting is said to cover second story windows of the Dharamsal Temple in Kabul after they were repeatedly smashed with bricks and rocks and passers-by often shout “infidel” and other insults. Worshippers rarely leave the service after its conclusion in the evening as knife wielding robbers are said to lurk near the temple waiting for adherence to these night time services, meaning congregation members prefer to sleep within the temple compound and leave the following day, which is said to be ongoing.
- xi. Sikh religious tradition and cremation is a strong point of contention between Sikhs and Muslims. Plans to build a crematorium were blocked by Muslim zealots according to the deputy mayor of Kabul. The conflict arises between the Sikh and Hindu tradition of cremation of the dead from the fact that in Islam not only is cremation not accepted but Afghan tradition demands that corpses are buried without being tampered with. In September 2007 Muslim zealots attacked a Sikh cremation ceremony in Kabul, beating up several of the participants and forcing the ritual to stop. The Sikhs later demonstrated in front of UNAMA’s office requesting help who arranged a police escort to protect the funeral convoy back to the place of the ceremony and hold Muslim attackers at bay. It is reported that Sikhs who have themselves tried to carry out cremations have been beaten up, stoned, or otherwise blocked from doing so, and described as statue worshipping infidels whose ceremonies “smell”. Islam considers cremation a sacrilege. Such opposition continues to date and although President Karzai and the Mayor of Kabul have tried to find viable locations for the Sikhs, in each and every case the local Muslim population has opposed the ceremonies and attacked them leading the police to have to intervene to protect the Sikhs or the funerals taking place under a hail of stones.’ We note this occurred seven years ago and is not evidence of the current position.

41. Elsewhere Dr Giustozzi comments upon the livelihood issues by reference to the tradition of Sikhs and Hindus as traders although he notes that in the absence of capital to start a business, returnees to Kabul will struggle to earn a livelihood. Many who have lost their businesses are unemployed and are disadvantaged in the labour market as many Muslims will give preferential employment to other Muslims. The majority of Sikhs and Hindus still residing in Afghanistan are there with their families because they could not afford to get the family out of the country to a safer location. In paragraph 32 Dr Giustozzi writes:

‘32. There is no assistance returning refugees back to Kabul and most of them are reported to be living in miserable conditions in the temple, at the expense of the community (temples operate as charities, with limited funds provided by the faithful). The community is too small and poor to provide more than occasional support to homeless Sikhs; those receiving support are expected to become able to cater for themselves after a few months and each functioning temple can only provide shelter to a handful of needy members of the community at any given time. Even those who qualify for UNHCR help will only be given temporary hospitality in a tent at the

outskirts of Kabul and then left to fend for themselves. Community leaders are advising refugees in India not to return to Afghanistan. According to an Amnesty International Report, three Sikhs who had been returned to Afghanistan had to seek refuge in the temple after being racially abused in the street. There are 12 functioning temples around Afghanistan (out of 64 before the war), of which four are in Kabul and several towns have none; the Kabul community is the largest and better able to provide some help through the temple than other communities. In Nawabad for example some 120 families were reported in 2006 to be living within the ruins of the old temple, in very precarious conditions.

We again note the date of these events which are eleven years old.

42. In relation to employment opportunities Dr Giustozzi writes:

'35. There are no Sikh employed by the Afghan government at present. Because they are usually only educated to primary school level if at all, they are rarely in a position to apply for jobs in the bureaucracy anyway. There is no official discrimination against them, but hiring in the state apparatus in Afghanistan is driven by patronage and clientelism and lacking connections to power for politicians is probably the main obstacle for Sikhs. Typically Sikhs and Hindus in Afghanistan are self-employed, running their own family businesses. [The fourth appellant] would have to seek employment from another Hindu or Sikh business, but there are relatively few of them left and the owners will always prioritise their own relatives when hiring. It is unlikely that a Muslim business will hire a Sikh in any case. When that happens, they are usually employed servants and paid very low rates. A current estimate is that 20% of the economically active Hindu and Sikh population owns and operates its own shop (mostly grocery shops) and the remaining 80% holds menial jobs. Sikh women do not normally work in public places but rather at home, except in emergencies such as no other family member being able to attend the family shop. Very few Sikh women work outside their homes and usually these are the few who got educated. There is no discrimination against Sikhs in the health service, but should a Sikh need medical assistance, the services provided by the government are limited and not actually free; he would for example have to pay these medicines in most cases. For this reason many Sikhs are today unemployed. The government does not provide any unemployment benefit or assistance of other kind to the unemployed and under employed. For this reason relocation to a different town is very difficult; the Sikhs would need to acquire property there in order to start trading. Renting property is a risky option, as they would have most likely to rent from Muslims, who in turn could come under pressure by religious zealots, who could object to having Sikhs living among them.'

#### *UNHCR*

43. We note at pages 45-46 of the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan Report – 6 August 2013, the following:

"The Sikh and Hindu communities, although allowed to practice their religion publicly, reportedly continue to face discrimination, including when seeking government jobs. They are also reported to suffer intimidation and harassment during major religious celebrations. Both communities report not being able to cremate their dead in accordance with their customs, due to interference by those who live near the cremation sites. Sikhs and Hindus have reportedly been victims of illegal occupation

and seizure of their land, and have also reportedly been unable to regain access to property lost during the mujahideen era. The right to education for Hindu and Sikh children is reported to be severely compromised because of abuse, harassment and bullying by other students. Although reliable data about the size of the Sikh and Hindu communities in Afghanistan are not available, large numbers of Sikhs and Hindus are believed to have left Afghanistan as a result of the severe difficulties they faced. The small numbers of Sikhs and Hindus who remain in Afghanistan have reportedly been left even more vulnerable to abuse."

#### *Other reports*

44. A number of additional news and other reports that have been provided in the appellants' bundles relating to the general country conditions in Afghanistan which we have taken into account when considering these issues although this is not a case which is intended to provide any guidance in relation to the general security situation in Afghanistan per se in relation to which specific country guidance exists. For this reason documents in the bundle provided by Legal Justice Solicitors relating to the general security situation following the withdrawal of the international forces and ongoing violence have not been specifically commented upon unless they are deemed to have direct relevance to the risk on return for the particular social groups under consideration.
45. The material includes a news report dated 30<sup>th</sup> January 2012 of a Sikh man returned to Afghanistan on a chartered flight from the United Kingdom being detained by the authorities who claimed that he is not an Afghan. His date of return was 6<sup>th</sup> July 2010 yet the date of the article is 30<sup>th</sup> January 2012. The article [Appendix A. Item 17] refers to the general situation of religious intolerance, difficulties for religious minorities, difficulties and hardships experienced by Sikhs and Hindus as referred to in the country expert reports to which we have referred above. The event occurred, however, four years ago and there is no evidence to show the returnee remains detained.
46. We also note an article relating to Sikhs and Hindus dated 17 May 2008 [Appendix A. Item 36] that claimed persecution in Afghanistan, a reference to the fact that members of both faiths were told by the Taliban that they had to undertake their religious ceremonies in private. They were not prevented from continuing to practice their faith and that Hinduism is said to have been widely practised in Afghanistan before the introduction of Islam in the seventh century when a mass conversion led to the slaughter of thousands of Hindus.
47. A news article from the Rawa News dated 11<sup>th</sup> July 2013 contains a number of quotes from those interviewed by a journalist including Anarkall Kaur Honaryar, a Sikh member of the Upper House of Parliament, which acknowledges that Sikhs and Hindus face some problems which she attributes to ignorance in the wider community. In relation to the land allocated issue, Honaryar is recorded as having stated that she was behind an initiative to build a purpose-built settlement in eastern Kabul complete with schools, a crematorium and other facilities for the Sikhs and Hindus in the city although the response had not been enthusiastic. "Now that we've

launched the town, no one is prepared to go there” she said. “The municipality calls me every day and says construction work needs to get started there”.

48. We have commented above on the age of the evidence relied upon in relation to the assertions of ongoing persecution of Sikhs and Hindus in Afghanistan. In this regard we note the continuing lack of evidence in the recent bundle provided for the August 2015 hearing of specific incidents of targeted persecution suffered by such individuals as a result of their religious identity.
49. Presidential elections have also taken place in Afghanistan and President Karzai has been replaced by President Ashfar Ghani as part of a power sharing arrangement between President Ghani and his opponent Abdullah Abdullah who is the Afghan Governments Chief Executive. A cabinet has been appointed which is said not to include the names of the major warlords. The current President is described as having a technocratic outlook in contrast to his predecessor who was only interested in power relations [Appendix C. Item 6]. Insufficient evidence has been provided to illustrate a change of government policy towards the subject group or deterioration in or loss of the benefits and support they were able to acquire under the previous president.

*Evidence relied upon by the Secretary of State*

OGN

50. The Secretary of State sought to rely upon the sources of country material from the OGN June 2013, and specifically section 3.15 relating to Hindus and Sikhs which states:

**‘3.15 Hindus and Sikhs**

**3.15.1** Hindus and Sikhs may seek asylum on the grounds that they face societal discrimination and harassment and that they cannot rely on the protection of the Afghan authorities.

**3.15.2 Religious Overview: see 3.13.2**

**3.15.3 Demography:** The US State Department in its International Religious Freedom 2012 Report for Afghanistan published 20 May 2013 states that —Reliable data on religious demography is difficult to obtain because an official nationwide census has not been conducted in decades. Leaders of minority religious communities estimate there are 350 Sikh families and 30 Hindu families. The USSD Religious Freedom report for 2011, published July 2012, stated — According to self-estimates by these communities, there are approximately 2,000 Sikhs and 100 Hindu believers. The Institute for War and Peace Reporting (IWPR) reported in July 2011 that — Given its proximity to India, Afghanistan historically had substantial Hindu and Sikh minorities, estimated at 20,000 before the factional civil war in 1992-96, followed by Taleban rule under which they were subject to discrimination rules. With most community members long gone, the total number of Hindus and Sikhs in Afghanistan is now estimated at around 3,000. In the US International Religious Freedom Report for July to December 2010, published 13/09/2011 and in the 2010 report, published 17 November 2010 the

number of Sikhs is quoted at 3,000 and Hindus at 100. The US 2009 International Religious Freedom report quotes figures of 4,900 Sikhs and 1,100 Hindus.

**3.15.4** The Centre for Applied South Asian Studies (Casas) 2011 report —History and Current Position of Afghanistan’s Hindu and Sikh population quotes a UNHCR paper of June 2005 as estimating 600 Sikh and Hindu families (about 3,700 persons) living in Afghanistan with small but steady numbers returning, particularly from India. The majority lived in Kabul (185 families), Jalalabad (160 families) and Kunduz (100 families) with others in Ghazni, Kandahar and Khost. Previously there had been as many as 200,000 Sikhs and Hindus living in Afghanistan. In considering the data the author of the report states — the only reliable observation that can be made about the current [2011] characteristics of Afghanistan’s Sikh and Hindi minority is that it is now only a small fraction of its former size, and that as numbers shrink, it’s remaining members are finding themselves ever more vulnerable to aggressive exploitation, against which they have no meaningful defence. Hence their exodus can only be expected to continue.

**3.15.5 Treatment:** Freedom of religion and the corollary right to manifest one’s religion in private or public are guaranteed by the Afghan Constitution. The Constitution contains, however, a repugnancy provision stating that no law can be contrary to Islam and defers to Shari’a law for matters not explicitly stipulated therein. According to some reports, members of the Hindu and Sikh communities continue to face societal discrimination, harassment and, in some cases, violence at the hands of members of other religious groups. Freedom House in its 2013 Afghanistan report noted — Religious freedom has improved since the fall of the Taliban government in late 2001, but is still hampered by violence and harassment aimed at religious minorities and reformist Muslims, Hindus, Sikhs, and Shiite Muslims – particularly those from the Hazara ethnic group – have also faced official obstacles and discrimination by the Sunni Muslim majority — Sikhs and Hindus continued to face discrimination, reporting unequal access to government jobs and harassment in their schools, as well as verbal and physical abuse in public places. In August a Sikh community leader publicly requested assistance to relocate Sikhs outside the country.

**3.15.6** Sikh and Hindu communities also experience problems with land confiscation by local authorities and commanders, as well as obtaining land for cremation. Although Hindus and Sikhs had recourse to dispute resolution mechanisms such as the Special Land and Property Court, in practice the communities felt unprotected.

**3.15.7** At least two Sikhs served in government positions, including one as a senior economic advisor to President Karzai and one as a presidentially appointed member of the upper house of parliament. Sikh leaders complained that they lacked political representation, noting that most Afghans fail to distinguish between Hindus and Sikhs despite significant religious differences. They also continued to complain about a lack of guaranteed seats in parliament. There are schools for Sikh children in Ghazni, Helmand, and Kabul. There are no Sikh schools in Jalalabad, despite estimates that nearly one-quarter of the Sikh population lives there. The government provides limited funding for Sikh schools, including for teachers for the basic curriculum. A few Sikh children attend private international schools. Hindus do not have separate schools, but sometimes send their children to Sikh schools.

**3.15.8** The US Commission on International Religious Freedom Annual Report 2012 notes - In January, media reported on the case of Baljit Singh, a 23 year-old Sikh.

Detained in 2010 on charges of falsely claiming Afghan citizenship after the United Kingdom deported him, Singh was in detention for over 19 months until being released on February 1. Singh alleged that during his detention, fellow prisoners and prison guards beat him on multiple occasions, insulted him, and forced him to remove his turban. Singh also alleged that he was deceived into converting to Islam while in prison; officials recorded and later broadcast his conversion on Tolo television. Officials from the attorney general's office disputed the claims of mistreatment and told media that non-Muslim prisoners routinely converted to Islam in the belief they would receive more lenient treatment. Singh was granted asylum and returned to the United Kingdom in July. The Guardian newspaper of 3 July 2012 reported — Singh said he was being harassed for his religion and pressured to convert. He was verbally and physically abused in prison. One inmate threw boiling water over him, Singh said, pulling out a picture of his bandaged face shortly after the assault. He was also ordered to sleep in a corner of an outdoor courtyard, next to the toilet, he said. Men had to step over him on their way to relieve themselves, and as they did so, some kicked the turban that marked him out as a Sikh. Singh said the conversion angered the country's already beleaguered Sikh community, which has dwindled from thousands of families to just a few hundred over 30 years of war and persecution.

**See also: Actors of protection (section 2.2 above)**  
**Internal relocation (section 2.3 above)**

**Caselaw (section 2.4 above)**

**3.15.9 Conclusion.** Data on religious demography is not reliable as the Afghan Government does not collect such information. Given the disparity of data in public sources, all that can be said with certainty is that the Sikh / Hindu community has significantly reduced from its peak in the pre Taliban era. In view of the importance in Afghanistan of the extended family and community structure, caseworkers need to consider whether adequate support for their needs is likely to be available to an individual returnee.

**3.15.10** Whilst there is no evidence that Sikhs or Hindus are at real risk of persecution at the hands of the Afghan authorities solely because of their ethnicity, nor are there indicators of a Government able to provide effective protection to the Sikh/Hindu community. Sikhs and Hindus can be subject to societal harassment and discrimination. Where an applicant claims that they have suffered harassment and discrimination in the past, then careful consideration should be given as to whether their situation meets the threshold for granting protection.

**3.15.11** If a Sikh or Hindu man or married woman does establish that they would on return face a localised risk amounting to persecution, it might be possible for them to avoid such treatment by internal relocation to an area where well-established and close knit Sikh and Hindu communities remain. Where internal relocation would avoid persecution and would be reasonable, a grant of asylum will not be appropriate. However see note 3.15.9 above.

**3.15.12** Single Sikh and Hindu women and female heads of household without a male support network cannot reasonably relocate within Afghanistan. Therefore, if they would face ill-treatment which amounts to persecution they should be granted asylum unless there are clear case-specific reasons not to do so.'

*British Embassy letter*

51. The second document relied upon by the Secretary of State is a letter from the British Embassy in Kabul dated 29<sup>th</sup> December 2013 which summarises information said to have been provided by an Afghan Senator in the Afghanistan National Parliament on 10<sup>th</sup> November 2013 based upon that unnamed individual's personal knowledge. This can be summarised as follows:

- Sikhs and Hindus living in Afghanistan are originally from this country and are not migrants from India as generally perceived. The number of Sikhs and Hindus in Afghanistan reached a number of 100K before the Russian intervention and civil war. During the lengthy 35 year war, a large number of Sikhs and Hindus migrated to different countries, particularly India. Before the war, Sikhs and Hindus made a prominent contribution to society and held key positions, such as Dr Barmokhandas who was the pioneer of forensic medicine in Afghanistan. Before the war era, they were engaged in businesses such as gold selling, herbal medicine homoeopathy and cloth selling.
- Currently the number of Sikh and Hindus in Afghanistan could reach approximately 7000 out of whom 5000 are permanently living in Afghanistan and 2000 are Sikhs living in Afghanistan to do business with their families living elsewhere. Sikhs and Hindus are not as wealthy as they used to be before the war and they live based on a daily wage or engage in small-scale businesses such as herbal medicine, homoeopathy and cloth selling. The tradition of gold selling is no longer seen among Sikhs and Hindus which is due to their lower economic social status.
- There are very few educated Sikhs or Hindus and they cannot send their children to schools as bullying is high against Sikh/Hindu children. However two schools have been built by the Government of Afghanistan specifically for Sikh and Hindu children in Kabul and Nangarhar provinces, where they can get elementary education. They have worshipping places (Gurdwaras/Dharamshalas). There are no restrictions on worshipping or their religious ceremonies. They have a good relationship with Muslims and they attend interfaith ceremonies.
- Throughout Afghanistan, Sikhs and Hindus live in small communities in Kabul, Kandahar, Helmand, Khost, Nangarhar, Ghazni, Kunduz, Parwan, Heart and Mazar-e-Sharif provinces. Currently there are 64 worshipping places across the country with nine in Kabul and the remainder in the provinces mentioned above, with each community having their own worshipping place. There are no Sikh/Hindu media publications in Afghanistan.
- Sikhs and Hindus have problems regarding their cremation venue (Shamshan) in Kabul and Ghazni provinces. Although the Ghazni issue has been resolved, problems persist in Kabul. A cremation venue has been allotted to Hindus and Sikhs (at Qalacha area) who have been using it for the



past 120 years. However, due to the expansion of residential units and urbanisation, residential buildings have been built around the Shamshan, no longer letting Hindus and Sikhs use that particular venue as the smell of the burnt bodies contaminates the environment. As a result, residents around the Shamshan stone their dead bodies and don't let them observe their funerals. They have had to ask the police to protect them during many funerals, the police have obliged and held security for their processions. Kabul Municipality has allocated a large area for Hindus and Sikhs at Police District 21 area of Kabul city where they can build residential units and their Shamshan. District 21 is freshly annexed to the Kabul Municipality though is not developed yet.

- The new area will take a long time to be developed into a proper residential area as it lacks basic infrastructure such as electricity, water, sanitation, roads etc. Some Sikhs face land grabbing problems. Sikhs and Hindus left their property and fled the country as a result of war. The properties are usually grabbed either by some fellow Sikh community members or other people from the surrounding area. Most of them get the issues resolved through relevant legal systems and have regained their land, however, some do not claim their property fearing the party grabbing their land would harm them. Currently there is a lack of shelter for some Sikhs who have been living in Gurdwaras (worshipping places) across the country. There are families living in a Gurdwaras in Kabul, Jalalabad, Kandahar, Helmand, Ghanzi and Kunduz. These families have made rooms inside the premises of the Gurdwara and are living there due to lack of housing.
- The Ministry of Haji and religious affairs has resolved the problems with the residents around the Shamshan at Qalacha and residents will let Sikhs undertake ceremonies for the next 2-3 years until the Shamshan at PD 21 is developed. The Ministry of Haji and religious affairs has taken steps and introduced awareness programmes across mosques to promote religious tolerance with Sikhs and other minority groups which have been effective and welcomed by the Sikhs and Hindus.
- Sikhs do not have any complaints against the system and they are happy with what the government is doing. However, some of the issues they face are common amongst the Sikh community. Sikhs and Hindus are not the target of any particular persecution or discrimination in any part of the country. They have a good relationship with Muslims and attend interfaith ceremonies. They are not subject to discrimination by the public. They can set up their businesses as everybody else in the country can do. Hindus and Sikhs return back in small numbers. Lately three families returned back from India. Hindus and Sikhs can participate equally in political processes and the Afghan president has recently issued a decree (#59) through which Sikhs and Hindus are reserved seats at the Lower House. The decree is currently in the Upper House and is awaiting passage.

- Currently Sikhs and Hindus have to participate in Parliamentary elections through open competition. There are very few prominent Sikhs or Hindus. Although another Sikh ran for Parliamentary elections in 2010, he lost. There are opportunities to engage in local and national politics.

52. This evidence is specifically criticised by Dr Giustozzi at paragraph 36 of his report of 1<sup>st</sup> of February 2014 [Appendix A. Item 1] where he writes:

‘36. The figures provided in the letter concerning the size of the Sikh and Hindu community are similar to those discussed in para. 4 of this report. The number of Sikh and Hindu temples is stated as 64, but this figure also included a majority of interactive temples, which have been damaged during succession of wars in the 1980s and 1990s and never repaired. According to the letter, some Sikhs have been able to reclaim their properties after 2001, but the three senior members of the community interviewed for this report have all indicated that they were not aware of any successful case of properties having been recovered. The decree of President Karzai, which was meant to give Sikhs and Hindus a reserved seat in Parliament, has been rejected by the parliament and therefore the information contained in the letter is not up to date. In other regards the content of the letter coincides with the content of this report.’

53. In relation to the position of women Dr Giustozzi refers in his report to other reports that in 2005, nine years ago, two Sikh school girls were reported missing after visiting the only active temple in Kandahar. They were later found to have been forcefully converted to Islam. Attempts to seek redress proved unsuccessful as a judge who reviewed the case found that Islamic jurisprudence meant the young women were now Muslim and nothing further could be done. Two similar cases have been reported from Charikar and Baghlan. The conversion of an infidel to Islam is considered in some circles to be a great achievement in religious terms and actively encouraged by a number of Muslim clerics.
54. Women are particularly at risk as a result of the presumption they are more likely to convert under duress. As a result it is said to be rare for Sikh families to take their women out and particularly without the cover of a Burkah. Dr Giustozzi states that in ten years of travelling in Afghanistan he has never seen a recognisable Sikh woman in the streets, even though he has often seen Sikhs. The risk to Sikh women generally is said to be based upon a fear of being harassed as they do not meet Islamic strictures concerning the dress code. In his opinion it would be unthinkable today for a Sikh man to let a female member of his family travel outside the family home alone.
55. Children: In Dr Giustozzi’s opinion Sikh children are more vulnerable and harassment of young Hindus and Sikhs, particular girls, is reported as being common as are fights between Muslim and Sikh or Hindu children.
56. It is noted that harassment of young Hindu and Sikh children was continuing unabated in 2010 and 2011 with a total of 70 school age children at that time in Kabul being forced to drop out of school, switch school or go to private schools. Harassment included bullying, beatings, hair being cut by other children. There is a private school for Sikh and Hindu children in Kabul with about 30 students and a single state school where the teaching staff are judged by Sikh families to be

supportive enough to allow them to send their children there; although harassment is reported by Muslim children here too.

57. Reports are received of attempted conversions to Islam from which the school authorities are unwilling or unable to assist.
58. It is said that many Sikh children have been withdrawn from school as a result of such harassment. Numbers are estimated to be between 500-550 in Nangarhar, Helmand, Kandahar, Ghazni, Baghlan, Laghman and Kumar provinces with 200 of these being in Jalalabad alone. The government has assigned one teacher to a Gurdwara in Kabul to teach Dari and mathematics to Sikh and Hindu children whilst Sikh schools are reported to still exist in Ghazni, Nangarhar, Helmand and Kabul.
59. There are no high schools for Sikhs and families rarely send their children to a high school as their intent would be for the children to help in the trading activities of the family. There is no official barrier to such children attending high school although the situation would be the same as described above for Sikh children attending primary schools. The school experience is said to be better for those who do not adopt the distinctive hairstyle and dress associated with Sikhs and Hindus and it is said a few female Sikhs are educated to university level although often do not dress in a recognisable way in public.
60. We have also noted the document entitled "Compilation of Request for Information. UK Request on Afghan Sikhs and Hindus" dated November 2013 in which replies provided by a number of named States to questions relating to their individual practices in dealing with asylum claims from Afghan Sikhs and Hindus are summarised. We note some participants state they automatically grant asylum to religious minorities from Afghanistan but that the majority do not, such as Germany and Canada for example.

### **Submissions**

61. At the conclusion of the oral evidence (which only included evidence from Dr Giustozzi) both parties made submissions, referring to their respective skeleton arguments and to the background material. For the appellants it was submitted that all Sikhs in Afghanistan are at risk of persecution per se. It was also submitted that it is important to consider the cumulative impact of harassment and discrimination toward Sikhs/Hindus and that in general they are at risk of serious harm/harassment/discrimination and this amounts to serious harm/treatment contrary to article 3 of the ECHR from which there is no sufficiency of protection and that internal relocation is not available.
62. It was also submitted on the appellants' behalf that there are also additional elements/issues in respect of women and children within the Sikh/Hindu community. Mr Tarlow asked us to find that the asylum claims of members of the Sikh/Hindu community from Afghanistan should be considered on their own individual facts and it cannot be properly said that all members of the Sikh/Hindu community in Afghanistan are at risk.

## Legal framework

63. Paragraph 334 of the Immigration Rules states that:

'An asylum applicant will be granted asylum in the United Kingdom if the Secretary of State is satisfied that:

- (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom;
- (ii) he is a refugee, as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
- (iii) there are no reasonable grounds for regarding him as a danger to the security of the United Kingdom;
- (iv) he does not, having been convicted by a final judgment of a particularly serious crime, he does not constitute danger to the community of the United Kingdom; and
- (v) refusing his application would result in him being required to go (whether immediately or after the time limited by any existing leave to enter or remain) in breach of the Geneva Convention, to a country in which his life or freedom would be threatened on account of his race, religion, nationality, political opinion or membership of a particular social group'.

64. The level of protection required is set out in the Refugee or Person in Need of International Protection (Qualification) Regulations 2006. Regulation 4 (2) states:

'Protection shall be regarded as generally provided when the actors mentioned in paragraph (1)(a) and (b) (see above) take reasonable steps to prevent the persecution or suffering of serious harm by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the person mentioned in paragraph (1) has access to such protection'.

65. We have reminded ourselves that the paramount aim of the Refugee Convention and Qualification Directive is to be found in the principle of surrogacy, ergo a lack of protection in one's own state called for surrogate protection from the international community. The standard of protection to be applied is not that which would eliminate all risk but rather a practical standard which takes account of the duty which the state owes its nationals.

66. In AW (sufficiency of protection) Pakistan [2011] UKUT 31(IAC) the Tribunal held that (i) at paragraph 55 of Auld LJ's summary in Bagdanavicius [2005] EWCA Civ 1605 it is made clear that the test set out in Horvath [2001] 1 AC 489 was intended to deal with the ability of a state to afford protection to the generality of its citizens; (ii) notwithstanding systemic sufficiency of state protection, a claimant may still have a well founded fear of persecution if authorities know or ought to know of circumstances particular to his/her case giving rise to the fear, but are unlikely to provide the additional protection the particular circumstances reasonably required (per Auld LJ at paragraph 55(vi)); (iii) in considering whether an appellant's particular circumstances give rise to a need for additional protection, particular account must be taken of past persecution (if any) so as to ensure the question posed is whether there are good reasons to consider that such persecution (and past lack of sufficient protection) will not be repeated.

67. Specifically in relation to religious issues; in Omoruyi v SSHD (2001) INLR 33 Simon Brown LJ said "it is therefore plain (and hardly surprising) that, whether the harm is perpetrated by the religious upon the non religious or vice versa (or indeed by one religious body upon another) and whether because of adherence (or a refusal to adhere) to a belief or because of behaviour, there will be persecution for reasons of religion provided always that the other ingredients of the definition are satisfied."
68. In MN and others (Ahmadis – country conditions – risk) Pakistan CG [2012] UKUT 00389 (IAC) the Upper Tribunal analysed the judgment of the Court of Justice of the European Union in Federal Republic of Germany v Y (C-71/11) & Z (C-99/11) and said this:

'91. The Grand Chamber of the Court of Justice of the European Union in *Federal Republic of Germany v Y (C-71/11) & Z (C-99/11)* had before it references for a preliminary ruling concerning the interpretation of Articles 2(C) and 9(1)(a) of the Directive relating to proceedings by Y and Z whose applications for asylum were on the basis that their membership of the Muslim Ahmadiyya community in Pakistan had forced them to leave their country of origin. The questions for the preliminary ruling were worded in almost identical terms in both cases as follows:

"1. Is Article 9(1)(a) of [the] Directive...to be interpreted as meaning that not every interference with religious freedom which infringes Article 9 of the ECHR constitutes an act of persecution within the meaning of [the former provision], and that a severe violation of religious freedom as a basic human right arises only if the core area of that religious freedom is adversely affected?

2. If question 1 is to be answered in the affirmative:

(a) Is the core area of religious freedom limited to the profession and practice of faith in the areas of the home and neighbourhood, or can there be an act of persecution, within the meaning of Article 9(1)(a) of [the] Directive..., also in cases where, in the country of origin the observance of faith in public gives rise to a risk to life, physical integrity or freedom and the applicant accordingly abstains from such practice?

(b) If the core area of religious freedom can also comprise the public observance of certain religious practices:

- does it suffice in that case, in order for there to be a severe violation of religious freedom, that the applicant feels that such observance of his faith is indispensable in order for him to preserve his religious identity,

- or is it further necessary that the religious community to which the applicant belongs should regard that religious observance as constituting a central part of its doctrine,

- or can further restrictions arise as a result of other circumstances, such as the general conditions in the country of origin?

3. If question 1 is to be answered in the affirmative:

Is there a well founded fear of persecution, within the meaning of Article 2(c) of [the] Directive..., if it is established that the applicant will carry out certain religious practices – other than those falling within the core area – after returning to the country of origin, even though they will give rise to a risk to his life, physical integrity or freedom, or can the applicant reasonably be expected to abstain from such practices.”

92. The following conclusions were reached by the court:

“[57] Freedom of religion is one of the foundations of a democratic society and is a basic human right. Interference with the right to religious freedom may be so serious as to be treated in the same way as the cases referred to in Article 15(2) of the ECHR, to which Article 9(1) of the Directive refers by way of guidance, for the purpose of determining which acts must in particular be regarded as constituting persecution.

[58] However, that cannot be taken to mean that any interference with the right to religious freedom guaranteed by Article 10(1) of the Charter constitutes an act of persecution requiring the competent authorities to grant refugee status within the meaning of Article 2(d) of the Directive to any person subject to the interference in question.

[59] On the contrary, it is apparent from the wording of Article 9(1) of the Directive that there must be a ‘severe violation’ of religious freedom having a significant effect on the person concerned in order for it to be possible for the acts in question to be regarded as acts of persecution.

[60] Acts amounting to limitations on the exercise of the basic right to freedom of religion within the meaning of Article 10(1) of the Charter which are provided for by law, without any violation of that right arising, are thus automatically excluded as they are covered by Article 52(1) of the Charter.

[61] Nor can acts which undoubtedly infringe the right conferred by Article 10(1) of the Charter, but its gravity is not equivalent to that of an infringement of the basic human rights from which no derogation can be made by Article 15(2) of the ECHR, be regarded as constituting persecution within the meaning of Article 9(1) of the Directive and Article 1A of the Geneva Convention.

[62] For the purpose of determining, specifically, which acts may be regarded as constituting persecution within the meaning of Article 9(1)(a) of the Directive, it is unnecessary to distinguish acts that interfere with the ‘core areas’ (‘forum internum’) of the basic right to freedom of religion, which do not include religious activities in public (‘forum externum’), from acts which do not affect those purported ‘core areas’.

[63] Such a distinction is incompatible with the broad definition of ‘religion’ given by Article 10(1)(b) of the Directive, which encompasses all its constituent components, be they public or private, collective or individual. Acts which may constitute a ‘severe violation’ within the meaning of Article 9(1)(a) of the Directive include serious acts which interfere with the applicant’s freedom not only to practice his faith in private circles but also to live that faith publicly.

[64] That interpretation is likely to ensure that Article 9(1) of the Directive is applied in such a manner as to enable the competent authorities to assess all kinds of acts which interfere with the basic right of freedom of religion in order to determine whether, by their nature or repetition, they are sufficiently severe as to be regarded as amounting to persecution.

[65] It follows that acts which, on account of their intrinsic severity as well as the severity of their consequences for the person concerned, may be regarded as constituting persecution must be identified, not on the basis of the particular aspect of religious freedom that is being interfered with but on the basis of the nature of the repression inflicted on the individual and its consequences, as observed by the Advocate General at point 52 of his Opinion.

[66] It is therefore the severity of the measures and sanctions adopted or liable to be adopted against the person concerned which will determine whether a violation of the right guaranteed by Article 10(1) of the Charter constitutes persecution within the meaning of Article 9(1) of the Directive.

[67] Accordingly, a violation of the right to freedom of religion may constitute persecution within the meaning of Article 9(1)(a) of the Directive where an applicant for asylum, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment by one of the actors referred to in Article 6 of the Directive."

93. The court went on to observe at [69] to [71] the objective and subjective factors to be taken into account:

"[69] Given that the concept of 'religion' as defined in Article 10(1)(b) of the Directive also includes participation in formal worship in public, either alone or in community with others, the prohibition of such participation may constitute a sufficiently serious act within the meaning of Article 9(1)(a) of the Directive and, therefore, persecution where, in the country of origin concerned, it gives rise to a genuine risk that the applicant will, inter alia, be prosecuted or subject to inhuman or degrading punishment by one of the actors referred to in Article 6 of the Directive.

[70] In assessing such a risk, the competent authorities must take account of a number of factors, both objective and subjective. The subjective circumstance that the observance of a certain religious practice in public, which is subject to the restrictions at issue, is of particular importance to the person concerned in order to preserve his religious identity is a relevant factor to be taken into account in determining the level of risk to which the applicant will be exposed in his country of origin on account of his religion, even if the observance of such a religious practice does not constitute a core element of faith for the religious community concerned.

[71] Indeed, it is apparent from the wording of Article 10(1)(b) of the Directive that the scope of protection afforded on the basis of persecution on religious grounds extends both to forms of personal or communal conduct which the person concerned considers to be necessary to him – namely those 'based on ... any religious belief' – and to those prescribed by religious doctrine – namely those 'mandated by any religious belief'."

94. The first two questions therefore were answered by the court in terms that Article 9(1)(a) of the Directive must be interpreted as meaning that:

“- not all interference with the right to freedom of religion which infringes Article 10(1) of the Charter is capable of constituting an ‘act of persecution’ within the meaning of that provision of the Directive;

- there may be an act of persecution as a result of interference with the external manifestation of that freedom, and

- for the purpose of determining whether interference with the right to freedom of religion which infringes Article 10(1) of the Charter may constitute an ‘act of persecution’, the competent authorities must ascertain, in the light of the personal circumstances of the person concerned, whether that person, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment by one of the actors referred to in Article 6 of the Directive.”

95. Turning to the third question which the court considered concerned the situation where an applicant has not already been subject to persecution or direct threats of persecution on account of his religion. The court urged that the assessment of the extent of the risk, to be carried out with vigilance and care “...will be based solely on a specific evaluation of the facts and circumstances, in accordance with the Rules laid down in particular by Article 4 of the Directive”.

96. Echoing the approach of the Supreme Court in *HJ (Iran)* and *RT (Zimbabwe)*, the court observed at [78] to [80]:

“[78] None of those rules states that, in assessing the extent of the risk of actual acts of persecution in a particular situation, it is necessary to take account of the possibility open to the applicant of avoiding the risk of persecution by abstaining from the religious practice in question and, consequently, renouncing the protection which the Directive is intended to afford the applicant by conferring refugee status.

[79] It follows that, where it is established that, upon his return to his country of origin, the person concerned will follow a religious practice which will expose him to a real risk of persecution, he should be granted refugee status, in accordance with Article 13 of the Directive. The fact that he could avoid that risk by abstaining from certain religious practices is, in principle, irrelevant.

[80] In the light of the above considerations, the answer to the third question referred in both cases is that Article 2(c) of the Directive must be interpreted as meaning that the applicant’s fear of being persecuted is well-founded if, in the light of the applicant’s personal circumstances, the competent authorities consider that it may reasonably be thought that, upon his return to his country of origin, he will engage in religious practices which will expose him to a real risk of persecution. In assessing an application for refugee status on an individual basis, those authorities cannot reasonably expect the applicant to abstain from those religious practices.”

97. The court was ruling on the questions before it and we do not consider that in para [79], it was limiting the risk category to those persons who are able to establish that they *will* follow a pattern of behaviour that will expose them to persecution as opposed to those who would wish to but would not because of persecution risk. Otherwise the



obligation will be on a person to be unreasonably expected to show a reckless intention despite the risks involved. That is not the basis on which the right to religious freedom is intended to be preserved and protected or the basis on which protection is provided under the Refugee Convention. The Court of Justice makes clear as did the Supreme Court in *HJ (Iran)* that concealment is not an answer if the reason is a fear of harm. Further, the use of the adverb “reasonably” in para [80] is a reflection of the standard of proof rather than introducing a test of *reasonableness* to the enquiry how someone will conduct themselves on return. We do not see therefore that the Court of Justice was suggesting a different approach from that of the Supreme Court in *HJ (Iran)*.

69. The ultimate question in these appeals is that of internal relocation. Paragraph 339O of the Immigration Rules, which is intended to incorporate the Directive, states:

- ‘(i) The Secretary of State will not make:
  - (a) a grant of asylum if in part of the country of origin a person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or
  - (b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.
- (ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.
- (iii)(i) applies notwithstanding technical obstacles to return to the country of origin or country of return.’

70. In *SSHD v AH (Sudan) and Others* [2007] UKHL 49 the House of Lords pointed out that the test to determine whether internal relocation was available was the test set out in *Januzi v SSHD* [2006] UKHL 5, namely that the decision maker should decide whether, taking account of all relevant circumstances pertaining to the claimant and his or her country it would be reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him or her to do so. The test was one of great generality.

## **Discussion**

### *Country expert evidence and letter from the British Embassy*

71. We have been assisted by the written evidence of Dr Ballard and the oral and written evidence of Dr Giustozzi. No other oral evidence was given as the Secretary of State conceded the Article 8 element of the claims before the hearing. There was no challenge to the suitability of either Dr Ballard or Dr Giustozzi to be treated as country experts although we considered this issue for ourselves in light of the need for an expert to (1) demonstrate that they are, in reality, an expert in relation to those matters on which they are expressing an opinion; (2) demonstrate that they have current and reliable knowledge on those matters; (3) identify their sources; and (4) give adequate reasons for arriving at the conclusions they expressed.

72. There was a challenge by Mr Tarlow to the weight to be given to certain aspects of the written evidence of Dr Giustozzi based upon the fact the information recorded therein originates from a series of interviews conducted by an associate in Afghanistan with whom he has worked in the past. A copy of that person's C.V. was requested at the hearing and later provided. That shows the researcher is as Dr Giustozzi described him in his oral evidence. Having considered the substance of the report and other available material we find the researcher is not a country expert, but that is not his role. The interviews were commissioned by Dr Giustozzi and formed part of the basis of the report together with other information in the public domain. Having assessed the weight he was prepared to give to all the evidence Dr Giustozzi provides his expert opinion in his report.
73. The Appellants challenged the weight to be given to the letter from the British Embassy dated 29<sup>th</sup> December 2013 on the basis it was from an anonymous source. This is a situation faced by other tribunals in this jurisdiction and guidance on the correct approach to such evidence is to be found in cases such as MD (Ivory Coast) v Secretary of State for the Home Department [2011] EWCA Civ 989. In this case the Upper Tribunal heard evidence on whether the claimant, as a lone woman, would face a real risk of sexual violence at roadblocks in Abidjan. The panel considered a report from a political officer at the Foreign and Commonwealth Office (the "FCO") which opined that road-blocks no longer posed a serious safety problem despite there still being instances of petty police corruption. The appeal grounds criticised the Tribunal for accepting anonymous evidence of diplomats about country conditions. The Court of Appeal found that this kind of evidence had been considered extensively by the European Court of Human Rights in NA v the United Kingdom [2008] ECHR 616 and it had nothing to add. Such evidence should not be accepted or rejected because it comes from diplomatic sources but it should be considered with and related to the evidence as a whole. The weight and value to be attached to a political officer's letter had to be assessed in accordance with the guidance contained in NA and TK (Tamils – LP updated) Sri Lanka CG [2009] UKAIT 0049. Although the Tribunal in the present case had not referred to NA, it adopted the approach described in that case. It treated the political officer's letter not as expert evidence but as akin to other kinds of country information. It considered whether it should attach weight to the fact that the British Embassy had vouchsafed that one of its staff had furnished the evidence in good faith and concluded that it should. The panel also considered the provenance of the information and, most importantly, concluded that the weight to be attached to that evidence was a matter for the Tribunal to determine. Therein lay its expertise (paras 35 – 48).
74. In the more recent case of CM (Zimbabwe) v SSHD [2013] EWCA Civ 1303 it was held that the Upper Tribunal was entitled to rely on anonymous evidence in the report of a fact-finding commission on Zimbabwe notwithstanding Sufi and Elmi v UK [2011] ECtHR 83187/07. The latter case had simply drawn attention to the obvious truth that anonymity of information was likely to inhibit the forensic possibility of challenging it. Whilst it was open to a judge to give no weight to unsupported anonymous evidence because no realistic assessment could be made of its reliability, there was no general rule that uncorroborated material could never be relied on in a country guidance case. Whether it was relied on would depend on the

circumstances. Generally the effect of anonymity would go to the weight to be attached to the material in question.

75. In line with the above appeals we reject the submission that no weight should be attached to the Embassy letter. Dr Giustozzi refers to this evidence in his report as noted above and makes no such suggestion. We have attached weight to the letter particularly where its contents are consistent with other parts of the background evidence. However we have not accepted all that is said in the letter but have considered its contents in the round together with the available evidence before us. Some of the content of the letter is reflected in the appellants' own evidence such as that to be found at page 91 of their bundle relating to the provision of additional land outside Kabul for the Sikh community.
76. Although Dr Ballard did not attend to give evidence we attached weight to his report in relation to the historical experiences of Sikhs and Hindus in Afghanistan and as a record of the difficulties experienced in more recent times, although noting that the report is four years old, as this accords with other aspects of the evidence we have been asked to consider, but we do not find Dr Ballard's evidence to be determinative and, having considered all the material with the degree of care required in an appeal of this nature, we reject his assertion that all members of the Sikh and Hindu faiths are at risk in Afghanistan. In particular we do not find such a claim to be substantiated as at the date of hearing for the reasons set out below.
77. We found Dr Giustozzi to be a measured and impressive witness who took care to answer questions as accurately as possible. We have found his evidence helpful and have attached weight to his opinion. We do not however accept that his opinion is determinative either in isolation or when considered together with all the other material we have been asked to consider especially as it is based in part on evidence of events that occurred seven to eleven years ago as demonstrated in paragraph 40. In particular we do not find the claim that all Sikhs and Hindus are at risk in Afghanistan to be substantiated as at the date of hearing for the reasons set out below.

#### *General approach*

78. It is not disputed before us that historically members of the Sikh and Hindu community in Afghanistan have been subjected to what may be perceived as acts of persecution by both state and non-state actors. The material we have been asked to consider demonstrates that the number of such incidents has reduced (but this might be explained by the reduction in the Sikh and Hindu population) and there is currently little material to support a claim of official state sponsored persecution. The material does support a finding that there is ongoing harassment of and discrimination against some members of the Sikh and Hindu community in Afghanistan, as set out above, but the evidence includes very few examples of recent acts of harm or threats of harm sufficient to satisfy the necessary test. We bear in mind Dr Giustozzi's point that this is an area that has not been prioritised by the media for reporting but when we consider all the material available to us, we find it of note that there is little to suggest that there have been continuing recent incidents of harm toward Sikhs/Hindus. Although Dr Giustozzi has described a picture of

'intensive harassment' at page 12 of his report, he has not supported this by drawing attention to specific examples of individuals being repeatedly harassed. Expropriation has been said to have almost stopped because the most valuable properties have already been taken away. Under the heading 'post-2005 violence and harassment' Dr Giustozzi focuses on examples of violence up to 2010 and references to more recent years are vague and generalised. This is notwithstanding the fact that Dr Giustozzi's researcher carried out three interviews in December 2013-January 2014 with senior members of Sikh and Hindu communities. We accept that whilst the subject group diminishes in size opportunities to inflict harm may also decrease and note that the small number of Sikhs and Hindus who remain in Afghanistan have been reported to be even more vulnerable to abuse (see UNHCR report 2013), but the lack of evidence of such ongoing issues is a relevant consideration. Perhaps the best evidence in support of the existence of a current real risk from the perspective of the appellants is to be found in the Respondents OGN of 2013 which we set out above.

79. Many members of these communities have left Afghanistan as a result of past recorded events and refer to their previous lives in Afghanistan and the loss of status, economic opportunities, and properties. However notwithstanding these past events, the relevant question is whether it can be shown that by reason of being Sikhs or Hindus and/or wishing to practice their religion they face a real risk of serious harm at the date of the hearing. We accept that such serious harm can include either specific acts or an accumulation of adverse circumstances such as discrimination, which exists in an atmosphere of insecurity and fear. It is necessary, however, for a distinction to be made between the migration which has occurred from Afghanistan as a result of a desire to find better economic opportunities than those available in Afghanistan and migration driven by fear of a human rights violations tantamount to persecution.
80. The fact that there has been persecution of Sikhs and Hindus in the past does not allow a Sikh or Hindu in Afghanistan to succeed with a claim to be entitled to refugee status per se, although paragraph 339K of the Immigration Rules which states "The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated", must be considered for those who have experienced past persecution. Both those to whom 339K may be applicable and those to whom it is not, would need to face a real risk of harm sufficient to engage the Conventions on return, from which the State is either unwilling or unable to offer them protection. This has to be assessed on the basis of the material provided at the date of the hearing before us.

#### *State sponsored persecution*

81. The evidence indicates that the relationship between the governments of Afghanistan and India is an important element of Afghan political life. The Indian Government has made substantial financial contributions and provided assistance to the Afghan Government and it appears accepted that it is not in the interests of Afghanistan

generally to let it be known that members of these religious minorities are without protection, as it may result in a breakdown of relationships at the highest level. Such international considerations may provide the explanation for why President Karzai was supportive of the idea of including members of the Sikh and Hindu community within the legislative assemblies and why, when the issue of harassment of the Sikh funeral procession arose, he directly ordered the police to attend to protect the mourners. We find it is also as a result of such considerations that there is no clear evidence of official state sponsored persecution to the extent that there may have been with previous governments in Afghanistan.

*Serious harm – non-state actors*

82. We do not find the material provided supports a finding that all Muslims are hostile to members of these religious groups. The historical analysis refers to a tradition in which all religions were able to live in harmony in Afghanistan. There is no evidence showing that such attitudes do not remain in existence both amongst state and non-state actors today. In a news article headed “Tough Times for Afghan Hindus and Sikhs” [Appendix A. Item 7] there is reference to the problems encountered by these groups but also the following:

‘Yet some people still have fond memories of a time when Muslims and Hindu communities lived peacefully together. “We shared our happiness and grief” said Badshah, a Muslim shopkeeper in the town of Khost. “When we go to India now, we stay in their homes. They are proud Afghans. They are hospitable. They worked alongside us to address problems. I miss them.”

Samiterai, a Hindu from Khost currently living in Kabul, said “we were so friendly with our Muslim brothers that we never even thought about who we were or who they were. We were all the same, Afghans.’

We accept the evidence of government initiatives such as the allocation of land to enable a new settlement to be built on the outskirts of Kabul which includes an area to allow cremation to be undertaken away from residential areas and the proposal that a parliamentary seat be reserved for members of these groups even though it was rejected as being unconstitutional. The Afghan Constitution prohibits the allocation of benefits based upon ethnic lines. The letter from the British Embassy also refers to other initiatives and an alleged lack of knowledge of or failure to mention the same in interview, by those interviewed by Dr Giustozzi’s researcher, does not mean such initiatives do not exist or are not representative of a more positive attitude existing at the level of the Executive in Afghanistan towards the Sikh and Hindu minority than may have been the case in the past. It was put to Dr Giustozzi in his oral evidence that within the government there is a desire to promote tolerance between the different communities in Afghanistan which he accepted.

83. Notwithstanding the evidence of incidents of continuing hostility against some members of the Sikh and Hindu community, we do not find it established on the evidence that merely by reason of being a Sikh or Hindu in Afghanistan there is a real risk of serious harm from non-state actors in Afghanistan even to the lower standard of proof applicable to appeals of this nature. We refer in this regard to the limited

nature of the evidence provided of actual specific incidents of such ill treatment toward Sikh and Hindu individuals since 2005 and more specifically in recent times as set out above. Notwithstanding that the majority of the evidence before us related to members of the Sikh faith, Sikhs and Hindus are viewed as one by many in Afghanistan as stated above, they both form religious minorities and are treated in a similar manner as a result, both worship in the same religious buildings. No submissions were received during the course of the hearing inviting us to separate the two groups or to suggest that they should not be considered together for the purposes of this guidance. In doing so we note the decline in actual numbers of members of these religious groups remaining in Afghanistan although we also appreciate this may increase their vulnerability. This can be contrasted with the figures available to the Tribunal in SL and Others for the period around 2005 as considered in DSG and others. Dr Giustozzi referred to an escalation in such events since 2005 but we have not been taken to actual evidence of specific incidents to support a claim of such escalation. We also note that there have been some limited returns from India who wish to conduct business activities in Afghanistan. This lends support to our view that hostilities against members of the Sikh and Hindu communities have not escalated and in fact have reduced in frequency.

84. Although it is very difficult to provide a definitive estimate of the numbers of Sikhs and Hindus remaining in Afghanistan the evidence before us supports, as agreed by the parties, the following clear finding: the population has significantly reduced due to emigration from Afghanistan and the numbers left are unlikely to be above 3,000. We accept that as numbers shrink, remaining members may be more vulnerable to exploitation, and have taken this into account when making our findings.

#### *Harassment and discrimination*

85. We accept that in certain circumstances harassment can amount to persecution especially if it involves the infliction of some mental or physical cruelty. In the case of Gladys Maribel Hernandez, Immigration Appeal Board of Canada decision M8101212, January 6, 1983, it was found:

‘The criterion to establish persecution is harassment, harassment that is so constant and unrelenting that the victims feel deprived of all hope of recourse, short of flight, from government by oppression’.

86. The above is consistent with the provisions of Article 9 of the Qualification Directive applied by the United Kingdom, Directive 2004/83/EC, which states:

*‘Article 9*

#### **Acts of persecution**

1. Acts of persecution within the meaning of article 1 A of the Geneva Convention must:

(a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation

cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or

(b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a)

2. Acts of persecution as qualified in paragraph 1, can, *inter alia*, take the form of:

(a) acts of physical or mental violence, including acts of sexual violence;

(b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner ;

(c) prosecution or punishment, which is disproportionate or discriminatory;

(d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2);

(f) acts of a gender-specific or child-specific nature;

3. In accordance with Article 2(c), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1.'

It is also the case that neither the Refugee Convention nor the Qualification Directive is intended to protect against all forms of harm.

87. We accept that some members of the Sikh and Hindu community in Afghanistan may continue to suffer harassment and discrimination at the hand of Muslim zealots. Such acts include name calling, spitting, the throwing of stones and rocks, threats and acts of violence. On occasions in the past, such acts have been far more serious and included abductions for ransom or to forced conversion to Islam, seizure of land properties and killings.
88. The frustration felt by members of these religious minority groups, according to the evidence, appears to be based upon a combination of a weariness of discrimination and lack of economic opportunities. Such anxiety was said to be increasing in light of the prospect of the withdrawal of foreign troops from Afghanistan by the end of 2014 [Appendix A. Item 2]. An article written on 15 April 2009, five years ago, records complaints by members of the Sikh community that despite the guarantee for the safeguarding of their religious and social rights in the Afghan constitution and laws the behaviour of their Muslim countrymen is not satisfactory [Appendix A. Item 34]. A named Sikh woman who is also a member of the AIHRC maintains that it is due to these reasons that the migration of Afghan Sikhs and Hindus abroad has not yet stopped. This feeling is reinforced by a recorded comment made by Avtar Singh, stated to be a well-known Sikh figure in Afghanistan and a member of the Afghan

Senate (Misharano Jirha) who noted that although in the recent years the social life of Sikhs and Hindus has improved there still remain numerous problems for these religious minorities and that Sikh religious sites which have been destroyed during the civil war had not yet been restored or reconstructed [Appendix A. Item 34].

89. It is clear that a Hindu or Sikh Afghan male is able to go about his day-to-day business although he may from time to time be the subject to verbal abuse and harassment. If he has a business and property there is a risk of being subjected to demands for money by way of extortion by corrupt individuals and in extreme circumstances may be subjected to further more serious threats or acts of violence. Such incidents are rare now as the most valuable properties are seen to have already been taken away from Sikhs. Whether such events or combination of these events and other forms of discrimination amount to persecution such as to entitle an individual to a grant of international protection is fact sensitive, and will depend upon the individual's particular characteristics, wealth and background.

#### *Sufficiency of protection*

90. In relation to Sikh or Hindu individuals who do experience persecution or harassment and discrimination capable of crossing the threshold into serious harm (based upon the Horvath/Hathaway approach that persecution = serious harm + ineffective protection), whilst there may be a willingness at governmental level to provide protection we do not find it established on the evidence that at a local level members of the Afghan police are willing, even if able, to provide them such protection to the level required in Refugee Convention/Qualification Directive terms. There is evidence in the materials provided [Appendix A. Items 10 and 33] of police corruption. We accept the evidence that it is reasonably likely that complaints made directly to the police of harassment by members of the Sikh and Hindu community have been ignored. In the event of intervention that has occurred this has mainly been as a result of a specific instruction that they do so issued at the highest level. There is also evidence that some of those involved in 'Mafia style' gangs responsible for land seizures and exploitation of members of these groups, based upon a perception of wealth, have been members of the police or security forces past or present who specifically target members of the Sikh and Hindu communities as a result of the fact that they are perceived as religious minorities with little or no means to respond to protect themselves. It has not been shown that representations made by members of the community holding posts in the administration have secured adequate protection, the common complaint recorded in the evidence is that notwithstanding these concerns being brought to the attention of those in authority, very little is done to remedy the situation in practice.

#### *Women*

91. In relation to the role of women it is noted in the Rawa News article dated 11<sup>th</sup> July 2013 and headed 'Tough Times for Afghan Hindus and Sikhs' that it is alleged that Sikh women cannot go out of their houses. Dr Giustozzi in his evidence refers to the fact he has never seen a single Sikh woman, identifiable as such, on the streets in Afghanistan and would not expect to do so. The role of women within Hindu and



Sikh families within Afghanistan appears to be based around the home and family life.

92. Dr Giustozzi also referred to Sikh and Hindu women not leaving the house unless properly covered, as with most if not all women in Afghanistan, in order to avoid an adverse reaction amongst some members of the Muslim community. We accept that a Sikh or Hindu woman not 'properly attired' may be subjected to abuse and harassment on the streets in Afghanistan but the evidence clearly indicates that this is the same for all women, whatever their religious persuasion, including Muslim women. It was submitted that such a requirement may give rise to an HJ (Iran) issue. Whilst our attention was not drawn to Y&Z by the parties we can confirm that we have considered the application of the HJ (Iran) issue to the religious context although this argument was not adequately developed before us and fails to distinguish between members of these religious groups who choose not to go out alone or covered as that is the way they ordinarily behave and those that may be forced to hide a fundamental element of their belief(s) to avoid persecution.
93. Nevertheless we do consider that a Sikh or Hindu single woman without family protection from a husband, other male member of the family, or within a family unit in which there is no male member of the household able to provide effective protection, may be entitled to international protection based upon threats and related acts as a result of their perceived vulnerability as a member of a minority religious group with no form of available protection against such. In this respect we note the evidence regarding abductions of women and female children and forced conversions to Islam. Credible threats of any form of violence or serious harm (including forced marriage involving forced conversion or not), where there is inadequate protection should entitle that person to a grant of international protection.

### *Children*

94. In relation to Sikh and Hindu children a number of areas of concern arise from the evidence we have been asked to consider. The evidence indicates that there have been occasions of Hindu and Sikh families not sending their children to school in Afghanistan, especially girls, as a result of the fear of harassment and ill-treatment which is corroborated by the evidence. Within the state system where children of all denominations are taught there is evidence of requirements to learn and recite the Koran, discrimination, and lack of adequate education facilities. In areas where numbers warrant, such as Kabul, special schools have been set up to provide education for children by Sikh teachers and some children are taught within the Gurdwara as a result. Such education is only provided however up to and including primary level with the requirement that at secondary level children will be taught within the state system where they become exposed to problems referred to in the evidence unless an individual's family has the means to pay them to be educated privately. If credible evidence is provided of a real risk of such ill-treatment and harassment to a child on return sufficient to prevent them receiving a proper education, which is shown to be a fundamental element of their personal identity, that they wish to pursue, rather than a child not being further educated as a result of the traditional belief that they will continue within a family business and therefore do

not require to be further educated or for some other reason, then this may amount to such serious discrimination either on its own or cumulatively with other forms of discrimination such as to cross the threshold of persecution. However, this is a fact sensitive issue that must be considered in each case.

95. In relation to children, the UNHCR in the 2013 report identify a number of potential areas of concern at pages 57-62 including child-specific forms of persecution, including under-age recruitment, child trafficking, bonded or hazardous child labour, domestic violence against children, forced and/or underage marriage, child prostitution and child pornography, and the systematic denial of education. The position of the UNHCR in relation to children is summarised as being:

'Depending on the particular circumstances of the case, UNHCR considers that children falling under the following categories may be in need of international refugee protection:

- a) Children from areas where either AGEs or elements of the ANSF use underage recruitment;
- b) Children from social milieus where bonded or hazardous child labour is practised;
- c) Victims of violence against children, including sexual and gender-based violence, as well as children from social milieus where such violence is practised; and
- d) School-age children, particularly girls. Depending on the individual circumstances of the case, they may be in need of international protection on the ground of their membership of a particular social group, their religion and/or their (imputed) political opinion.

Asylum claims made by children, including any examination of exclusion considerations for former child soldiers, need to be assessed carefully and in accordance with the UNHCR Guidelines on child asylum claims.'

#### *Land seizures*

96. Members of the Sikh and Hindu community have undoubtedly suffered land seizures. We have referred above to the expert evidence regarding this problem and one of the most common complaints arising from members of the community both within and outside Afghanistan relates to the difficulties encountered in trying to recover land that has been seized. A former representative of Hindus in the constitutional Jirga, Charan Singh, is recorded as stating "all our efforts to get back to these lands were in vain. When we went to the government institutions, no one helped us" [Appendix A. Item 28]. A quote from a parliamentarian and lawyer in the same article refers to Afghanistan's constitution granting equal rights to citizens, claiming there is no discrimination amongst Afghan citizens, and that Hindus are also entitled to these rights, although the evidence supports a finding that the general rule of law is neglected in relation to such issues and the application of the law on effective means of redress remains a problem. Dr Giustozzi in his oral evidence stated he was unaware of any Sikh successfully recovering land that had been seized in the past.

97. It is asserted before us that the issue of land seizure remains a problem in most provinces of the country, of which not only the government of Afghanistan but also the Afghanistan Independent Human Rights Commission (AIHRC) are fully aware. It is stated this group has studied the seizure of land in Kabul and noted that Hindu lands were mainly seized in the Kart-e-Parwan area with there being cases even after a final decision of the High Court [Appendix A. Item 28] which may be indicative of a lack of effective judicial remedy for those affected.
98. There are however examples in the appellant's own bundle of incidents where Sikhs have retained valuable property and where the relationship between Sikhs and the local Muslim community appears to be more in line with that which existed in the past. By way of example we refer to an article in the New York Times written by freelance journalist based in New Delhi entitled "Shrinking Numbers and Growing Persecution Threatens Sikhs and Hindus in Afghanistan" dated 6 November 2013 [Appendix A. Item 2] which towards the end of the report notes:
- 'Despite the bleak prospects that faced Sikhs and Hindus in Afghanistan, a handful of these minorities have endured three decades of conflict to stay in their home country, having forged relationships with Muslims that eclipsed religious persecution.
- One Sikh family lives quietly in a fortress like home with high in mud walls on the outskirts of Kabul. Guarding it is a Muslim family headed by [...] who has served as chief custodian of their property and 24 hectares of farmland for 17 years.
- The Muslim family is left in charge when the Sikh family moves to India during the Afghan winter months. A large man with a bushy beard, [...] said that in his employers absence, he had warded off bribes and intimidation by local Mafia groups attempting to take over the land.
- "We have a special bond of trust between us. I would never work for anyone else" he said.'
99. Other evidence relied upon by the appellants records that a Gurdwara in Helmand province is looked after and maintained by a Muslim family during the week when not in use by members of the local Sikh community.
100. We accept the evidence that, in theory at least, there are systems within Afghanistan through the administration and the courts where individuals who have lost land can pursue claims to recover that land. The Embassy letter referred to above, when addressing this issue, states that alternative housing options are being provided although this will take time. The properties were not only taken by Muslims as some fellow Sikh community members or other people from the surrounding area are also said to be responsible. Most who have lost land get the issue resolved through relevant legal systems and have regained their land, however, some do not claim their property fearing the party grabbing their land would harm them. In relation to alternative accommodation options, currently there is a lack of shelter for some Sikhs who have been living in Gurdwaras across the country.

101. The material we have seen supports a finding that it is a criminal activity that disproportionately impacts upon Sikhs rather than an act of persecution based upon religious identity. There may be those who lodge claims to attempt to recover their land who are threatened as a result. Such are unlikely to be provided with effective protection but we note the substantial decrease in numbers of such seizures as noted above.

#### *Cremation*

102. In relation to religious issues a considerable amount of material has been provided relating to difficulties that have been experienced by members of the Sikh community in cremating their dead. Cremation is an integral part of the religious beliefs in Sikhism and Hinduism. We have not been referred to any specific evidence indicating that cremation needs to be undertaken in any particular place, such as next to water, although members of the Hindu faith do scatter the ashes of the deceased in a river or similar site. The act of cremation is viewed as a celebration of the completion of life rather than as lamenting the passing of an individual. According to religious rituals the bodies of those above two years of age are to be burnt whereas anyone below this age is to be buried.

103. The material we have been provided with indicates that cremation has occurred within Afghanistan, throughout the country, ever since there has been a Sikh population in Afghanistan. The area within Kabul where cremation traditionally occurred was originally on the outskirts of the city but is now in an area which has become developed, resulting in complaints about the smell of the burning bodies. There is evidence of funeral processions being stoned in relation to which, upon the direct order of President Karzai, a police escort was provided. The appellants' own material also records incidents of bodies requiring to be cremated being taken from Kabul to other places within Afghanistan such as Khost province, Jalalabad city and Ghazni province and at times even across the border to neighbouring States.

104. The letter relied upon by the Secretary of State, from the British High Commission, refers to the provision of a defined site in negotiation with the Muslim community which should allow cremations to continue. Although Dr Giustozzi noted that such provision was not referred to by the person interviewed by his researcher, the appellants' own material from other sources confirms the provision of an alternative site in Kabul. We have not been furnished with evidence of alternative sites being made available elsewhere as that was not within the scope of the hearing. There is recognition that an appropriate location for cremation has been something that members of this community have been promised for some time and indeed the appellants' bundle contains a reference to a number of residents of Qalacha area confirming that land for cremation has been provided but that due to the influx of population, people no longer want bodies to be burned near their homes. Residents have indicated that smoke arising from the cremation makes people feel ill and has a bad smell. The provision of some degree of support is also noted in the appellants bundle in an article headed "Tough Times for Afghan Hindus and Sikhs" dated 11 July 2013 in which Avtar Singh, described as chairman of the National Council of Hindus and Sikhs, is recorded as stating "when we take our dead bodies to the

crematorium, we take the police with us. Even so, local people throw stones at us. They disrespect our dead". The same article records the residents of Qalacha insisting that they have no problems with Hindus and Sikhs, only with the cremations.

105. When the evidence is viewed as a whole we find that there is insufficient evidence to support the appellants' claims that the Sikh and Hindu community have been deliberately targeted to the extent that they are unable to perform religious ceremonies such as cremations. The objection to cremations, and inappropriate reactions, appear to be based upon a more practical issue in that as the population of Kabul has expanded the traditional cremation ground is now within a residential area prompting numerous complaints when cremation occurs. It appears from the evidence that the Afghan government, working with the local authorities, are taking steps to address this issue by making alternative provision and taking steps to ensure that cremation can continue in the interim. We also find the evidence supports a finding that there appears to be protection provided by way of a police escort for funeral processions, albeit that this does not prevent some occasions when stones are thrown and an abusive response from some locals. The evidence relating to objections to cremation was also limited to Kabul and we were not taken to any evidence to suggest that the difficulties experienced there regarding cremations are replicated elsewhere. Whilst objection to the cremations may be seen by members of this community as being a further example of discrimination we find that even when viewed in the round with other discriminatory behaviour, it cannot be said that all members of the Sikh and Hindu community in Afghanistan are at real risk of persecution or such cumulative discrimination such as to amount to persecution. The evidence above supports the view that this is likely to be a short-term issue with the provision of land on the outskirts of Kabul and therefore away from the more highly developed residential areas.

### *Temple*

106. We were referred in the evidence to the fact that the Gurdwara used by Sikhs and Hindus in Kabul is also under threat of demolition. This is the Temple that is used by both faiths. We find, in relation to this issue, that if this is so it has not been established that this is for reasons relating to persecution. It is as a result of the redevelopment of Kabul. Available information indicates that the reason for the demolition is due to a proposal to build a superhighway through the land occupied by this particular building, and others.
107. A number of religious buildings were destroyed in the civil war, as were many non-religious structures, and the Indian government provided funds for reconstruction. Not all have been rebuilt but it has not been established that this is as a result of any act of discrimination and, even with the declining population of these religious groups, it has not been shown that there are difficulties with those remaining preventing them from worshipping in the Gurdwara in the places in which they live.
108. Some may claim that when attempting to access the Temple they are subject to ill-treatment or the threat of ill-treatment. Whether this is sufficient to found a claim may depend upon the nature of the alleged difficulties, the location of the Temple and its surroundings, the level of devotion of the particular individual, the

importance of religious identity to the individual concerned, and whether the alleged ill-treatment realistically prevents such a person from attending and undertaking worship. Were a Sikh or Hindu credibly claims that they are unable to attend the Temple and that such attendance is an important aspect of their religious identity, and the reason for this is a credible fear of serious harm or the threat of serious harm, then consideration should be given to this in accordance with Y&Z (supra).

### *Employment opportunities*

109. As with many aspects of this country the evidence relating to economic reality for Sikhs and Hindus is contradictory. On the one hand there is evidence of members of the Sikh and Hindu community holding positions within the legislative bodies and various community and other influential groups, holding trading licences and having viable businesses, owners being able to retain land and property or to rent accommodation for themselves and their families and being able to send remittances to families living abroad, in places such as India. On the other hand, there is evidence of poor members of the community being unable to earn a living and having to live in the Gurdwara which, in accordance with the tradition of Sikh and Hindu hospitality, provides food aid, shelter, and a degree of companionship and protection. The evidence indicates that the declining numbers and economic well-being of those remaining in Afghanistan has an impact on the ability of the Gurdwara to continue to provide such hospitality and support as it is itself dependent upon donations to be able to meet its own financial needs and purchase food and other items.
110. A family without adequate resources is unlikely to be able to pay for private education which may be relevant when considering the situation of Sikh and Hindu children in Afghanistan whom it is proposed to return if receiving such education is demonstrated to be fundamental to that person's identity. There is also evidence that a Muslim is unlikely to employ a member of the Sikh or Hindu community in place of a Muslim, out of fear of potential reprisal or loss of business, indicating difficulties in securing an income with which to fund accommodation or essentials such as food, heating, clothing. The evidence we have been able to consider indicates that there is nothing in the law, the attitude of the Afghan government, or in theory preventing a member of either of these faith groups returned to Afghanistan from being able to set up their own businesses but whether they are able to do so will depend upon the availability of adequate funding, their ability to secure business premises in the light of possible hostility or opposition from Muslim traders who may see them as competition or not wish to rent premises out to them, making it difficult for them to pursue what has now become the remaining traditional trade of shopkeeper/trader. Whether an individual is in such a position is fact specific and they will have to satisfy the Tribunal that they are without economic means especially if they have paid a considerable sum of money to come to the United Kingdom, that they will not be able to re-establish themselves economically, and the impact upon family members as a result. Such individuals may also be required to provide appropriate evidence to show that there are no alternatives such as being supported by NGOs or through the Gurdwara and that any impact upon them, if destitution is alleged, is such that the threshold of Article 3 ECHR will be breached.

111. In relation to families with children it may be possible to establish that it is not in the best interests of such children to be returned, even if the threshold of Article 3 is not breached, if the degree of hardship and destitution is such that it leads to unjustifiably harsh consequences on return for such family members. As with all cases any assessment of the best interests of children will have to be balanced against the public interest if it is a consideration of a private life argument.

#### *Position of the Afghan Government on returnees*

112. Within the recent bundle [Appendix C] are a number of documents referring to this issue. An article published on [kabulblogs.wordpress.com](http://kabulblogs.wordpress.com) dated 28<sup>th</sup> February 2015 [Appendix C. Item 13] refers to a meeting with a Mr Rasooli, described as the Head of Returnee Department in the Ministry of Refugees and Repatriation, and his reference to a number of returnees being refused permission to disembark at Kabul and being returned to the removing countries (Netherlands and Norway) as their return was in breach of the current Memorandum of Understanding (MoU) between the departing countries and Afghanistan, because they were for example ill or women without any support in Afghanistan.

113. It is reported that at a meeting with the Afghan Minister for Refugees and Repatriation, a Mr Hossein Alami Balkhi, it was claimed some returning countries were breaching the terms of the MoU by deporting women and children as well as those who cannot return to their provinces of origin.

114. A copy letter from the Ambassador for the Islamic Republic of Afghanistan based in London, dated 6<sup>th</sup> March 2015 [Appendix C. Item 1] goes further in stating that the current stance of the Ministry of Migration and Repatriation Affairs on this issue is as follows:

‘The ministry of Migration and Repatriation Affairs of Afghanistan has decided to reconsider the terms of the existing Memorandum of Understandings’ through diplomatic channels and requested partner countries to suspend deportation of Afghan Migrants until decided otherwise, where the Ministry can provide the necessary services to returning Afghans. Until that time the Ministry cannot accept responsibility regarding any Afghan Deportee.’

#### *Internal relocation*

115. If there is a real risk of persecution in the individual’s home area then consideration must be given to whether there is a viable internal relocation option. Whether there is a viable relocation option will depend upon the safety in the place of relocation and whether that option is reasonable based upon all the facts of the case. In Januzi (supra) at [20], citing UNHCR guidance, Lord Bingham explained the relevant considerations will be medical care, the ability to earn a living and find accommodation, taking particular account of family links, ethnic affiliations, the ability to live a life at least at subsistence level, and whether support might be forthcoming from sources in the country of origin or abroad. UNHCR intervened in AH Sudan (supra) and their contribution was found to be helpful by Baroness Hale [20]:

'...the correct approach when considering the reasonableness of [internal relocation alternative] is to assess all the circumstances of the individual's case holistically and with specific reference to the individual's personal circumstances (including past persecution or fear thereof, psychological and health condition, family and social situation, and survival capacities). This assessment is to be made in the context of the conditions in the place of relocation (including basic human rights, security conditions, socio-economic conditions, accommodation, access to health care facilities) in order to determine the impact on that individual of settling in the proposed place of relocation and whether the individual could lead a relatively normal life without undue hardship.'

116. The particular concerns applicable to members of the Sikh and Hindu communities that we have already noted above will have to be considered with the required degree of anxious scrutiny in relation to the area in which it is proposed that the individual can move to. For the avoidance of doubt these include: gender; availability of family support/protection; availability of support from others; likely financial circumstances; access to accommodation; level of religious devotion and practical accessibility to a suitable place of worship, and; access to education for children. In addition, we consider that the nature, extent, duration and impact of any past persecution and / or harassment is likely to be a particularly relevant factor to take into account when assessing the reasonableness of internal relocation for a member of the Sikh or Hindu communities. This is because the evidence indicates that some of these individuals have suffered persecution and / or harassment in relation to which they have been unable to get protection from the authorities, over a prolonged period. As Kirby J in the High Court of Australia in SZATV v Minister of Immigration and Citizenship [2007] HCA 40 observed "...the support mechanisms available if an applicant has already been traumatised by actual or feared persecution...will need to be weighed in judging the realism of the hypothesis of internal relocation".
117. It is also important to bear in mind that partly because of their declining number, access to extended family / community / charity / religious support is generally very difficult for members of the Sikh and Hindu communities in Afghanistan. It is likely to be even more so upon relocation. As a consequence of this the practicability of settling elsewhere and the availability of meaningful support must be carefully considered. Those members of the Sikh or Hindu communities without access to an independent income are unlikely to be able to reasonably relocate because of depleted support mechanisms. It follows that such individuals are unlikely to have a viable internal relocation alternative.
118. As noted above, whether a person will be accepted on return may depend upon the availability of support, which is a fact sensitive assessment. We have not been provided with any up to date guidance published by the Respondent regarding this, but note an article dated 6<sup>th</sup> February 2015 by European Council on Refugees and Exiles (ECRE), titled "Norway not to return families at risk in their home area to parts of Afghanistan with no support" in which it is reported that Norway will not return families with children who would face persecution in their home areas to areas of Afghanistan where they do not have sufficient networks or resources. This is in accordance with the 2013 UNHCR Guidelines calling for the internal flight



alternative in Afghanistan to only apply where the individual can expect to benefit from meaningful support of their own family, community or tribe in the area of possible relocation, and consistent with our own assessment (although our own assessment has been restricted to members of the Sikh and Hindu communities).

## **Conclusions**

119. We summarise our findings, relevant to providing country guidance in relation to these religious minorities in Afghanistan, currently living in Afghanistan or in relation to which it is proposed they should be returned to Afghanistan, as follows:

- (i) Some members of the Sikh and Hindu communities in Afghanistan continue to suffer harassment at the hands of Muslim zealots.
- (ii) Members of the Sikh and Hindu communities in Afghanistan do not face a real risk of persecution or ill-treatment such as to entitle them to a grant of international protection on the basis of their ethnic or religious identity, per se. Neither can it be said that the cumulative impact of discrimination suffered by the Sikh and Hindu communities in general reaches the threshold of persecution.
- (iii) A consideration of whether an individual member of the Sikh and Hindu communities is at risk real of persecution upon return to Afghanistan is fact-sensitive. All the relevant circumstances must be considered but careful attention should be paid to the following:
  - a. women are particularly vulnerable in the absence of appropriate protection from a male member of the family;
  - b. likely financial circumstances and ability to access basic accommodation bearing in mind
    - Muslims are generally unlikely to employ a member of the Sikh and Hindu communities
    - such individuals may face difficulties (including threats, extortion, seizure of land and acts of violence) in retaining property and / or pursuing their remaining traditional pursuit, that of a shopkeeper / trader
    - the traditional source of support for such individuals, the Gurdwara is much less able to provide adequate support;
  - c. the level of religious devotion and the practical accessibility to a suitable place of religious worship in light of declining numbers and the evidence that some have been subjected to harm and threats to harm whilst accessing the Gurdwara;

- d. access to appropriate education for children in light of discrimination against Sikh and Hindu children and the shortage of adequate education facilities for them.
- (iv) Although it appears there is a willingness at governmental level to provide protection, it is not established on the evidence that at a local level the police are willing, even if able, to provide the necessary level of protection required in Refugee Convention/Qualification Directive terms, to those members of the Sikh and Hindu communities who experience serious harm or harassment amounting to persecution.
- (v) Whether it is reasonable to expect a member of the Sikh or Hindu communities to relocate is a fact sensitive assessment. The relevant factors to be considered include those set out at (iii) above. Given their particular circumstances and declining number, the practicability of settling elsewhere for members of the Sikh and Hindu communities must be carefully considered. Those without access to an independent income are unlikely to be able to reasonably relocate because of depleted support mechanisms.
- (vi) This replaces the county guidance provided in the cases of K (Risk – Sikh - Women) Afghanistan CG [2003] UKIAT 00057 and SL and Others (Returning Sikhs and Hindus) Afghanistan CG [2005] UKAIT 00137.

### **Application of country guidance to these Appellants**

120. At the hearing Mr Tarlow made no specific submissions relating to the appellants individually, preferring instead to focus on the issue of country conditions, and nor were they called to give oral evidence or to be cross-examined. We have, therefore, assessed the risk on return and entitlement to a grant of international protection on the basis of our core findings set out above. The statement of agreed facts accepted the Article 8 claims as detailed below.

#### *First, second and third appellants*

121. The first appellant entered the United Kingdom on 26<sup>th</sup> January 2003. He was granted exceptional leave to remain as an unaccompanied minor until 31<sup>st</sup> December 2005. On 30<sup>th</sup> November 2005 he applied for further leave to remain which was refused and an appeal against the refusal dismissed by Immigration Judge Milligan-Baldwin in a determination of 8<sup>th</sup> October 2007. Adverse credibility findings were made and on 11<sup>th</sup> June 2008 he left the UK and returned to Afghanistan under the Voluntary Departure Scheme.

122. The first appellant left Afghanistan again in July 2011 and returned to the United Kingdom with his wife and daughter on 4<sup>th</sup> December 2011 without leave. They claimed asylum at port on arrival. The claim was refused and an appeal to the First-tier Tribunal dismissed on 13<sup>th</sup> June 2012. The core of the claim is that the family are

pharmacists and with the financial assistance the first appellant received from the Voluntary Departure Scheme he was able to set up his own pharmacy. That business failed and he then went to work for his father in Kabul. In May 2011 the pharmacy provided a medicine in which an ingredient was missing. A report showed that entire batch supplied to the pharmacy was faulty as a result of which the supplier of the medicine, a Mr Aziz, and the police were informed. Mr Aziz's warehouse was raided and thereafter Mr Aziz was convicted and sentenced to ten years imprisonment.

123. The first appellant's father then began to receive threats which were reported to the police who refused to help. Mr Aziz is said to be a man with links to parliamentarians. The family moved to another area and were told that men in police uniforms had visited their house and broke the windows. In July 2011, as a result, the entire family left Afghanistan and flew to Moscow where his brothers were living illegally.

124. An appeal against the refusal of his claim was heard by First-tier Tribunal Judge Batiste and rejected. That determination was set aside by Upper Tribunal Judge Taylor in January 2013 on the basis that a more detailed examination of the background material was required than had been undertaken by Judge Batiste when assessing risk on return. The factual findings of the Judge are preserved which are summarised in paragraphs 35 of the determination in the following terms:

'35. I have tried to consider the issue of credibility in the round. I have considered all the factors raised in the preceding paragraphs. When considered together they do fundamentally undermine the credibility of the appellant's account. The issues raised are not peripheral but go to the core of the appellant's account. I find that the appellant is not a credible witness and I find his account of events that occurred to be a fabrication. As such I reject each and every aspect of the appellants claim other than the fact that he is from Afghanistan and may be of the Sikh faith. As such I do not accept that he is at risk from Mr Aziz or from any friends or associates of his. I reject the claimed threat in its entirety.'

125. The Judge also did not accept that the first appellant did not have a family network to return to, as there was an uncle living in Kabul, or that there were no relatives who would be able to provide support for him.

126. We are obliged to assess prospective risk for the first appellant and members of his family on the basis of the findings of fact that have already been made. They have family living in Kabul who they can turn to for support. As support is available from family it has not been shown this family will be destitute on return. A lack of prospects of employment within the family has also not been established – there are family members to turn to for support. We do not find that the first, second and third appellants are at real risk of persecution or discrimination (on an individual or cumulative basis) amounting to persecution upon return. They are reasonably likely to have the support of family members and our findings based upon the background evidence do not give rise to a real risk of persecution in light of this. We bear in mind that the third appellant child is due to commence primary school and will face a risk of bullying within the state educational system. It has not however been

established that available resources will not enable the child to attend a private school. This is not a case in which the child will be deprived of an education. There is a potential risk to the second appellant as a Sikh women but the evidence does not establish that the necessary threshold to entitle her to international protection has been crossed on the evidence available to us for reasons we have already set out above. Drawing all the relevant threads together we are not satisfied that the first, second and third appellants are at real risk of persecution or discrimination amounting to persecution upon return to Afghanistan.

127. As stated above, the Article 8 element was accepted by Mr Tarlow based upon the family life the members of this family have with each other in the UK, elements of dependency and the private life formed since their arrival. On the basis of the concession in relation to the Article 8 alone these appellants must succeed.

#### *Fourth appellant*

128. In relation to the fourth appellant, he entered the United Kingdom in December 2006 and claimed asylum in Croydon on 18<sup>th</sup> December 2006. His claim was refused and he appealed to the First-tier Tribunal. First-tier Tribunal Judge Foudy found him to be credible with a well founded fear of persecution in Jalalabad by non state agents on account of his Sikh religion but found relocation to Kabul was possible. In 2010 further submissions regarding the reasonableness of relocation were rejected by the respondent and the fourth appellant's further appeal was considered by First-tier Tribunal Judge Ruth.

129. In the document "Statement of Facts" submitted for the hearing it is noted that the findings of fact in relation to this family are preserved from the First-tier Tribunal and accepted. It is therefore not disputed before us that this family would be at risk of persecution if returned to Jalalabad and the only question upon which a ruling is sought is whether they can reasonably be expected to relocate internally to Kabul.

130. In paragraph 11 of the determination First-tier Tribunal Judge Ruth summarised the core of the claim in the following terms:

"The appellant is a Sikh and had been working in his father's textile shop in Jalalabad. He and his family had long experience of harassment, beatings and discrimination at the hands of the majority population in Jalalabad but the situation markedly deteriorated around ten years ago when the appellant's father was killed in a sectarian attack. The appellant himself was subsequently abducted by the Taliban and only returned to the family after his brother had paid a substantial ransom. In 2006 the appellant and his family came under pressure from a local Muslim who wished to marry the appellant's daughter. They received death threats and decided to sell the family shop and leave Afghanistan."

131. Both the fourth appellant and his wife have a number of health issues and receive ongoing medical treatment in the United Kingdom. The family have no remaining relatives in Afghanistan and in particular no contacts or relatives in Kabul.

132. In his witness statement dated 29 July 2010 the fourth appellant states that both his wife and daughter are with him in the United Kingdom. At that time his daughter

was studying in year 13 having achieved good grades at GCSE and was therefore in education in the United Kingdom with good prospects of reaching her full potential if she is permitted to complete her education. As stated above the prospects of that occurring in Afghanistan for a Sikh are very limited at secondary or university level unless such a person is willing to study within the existing state system where the evidence indicates there is a high degree of likelihood of discrimination and the possibility of such a person being targeted based upon their religious beliefs, which may include abduction, forced marriage, or other forms of ill-treatment. It has not been established on the evidence that resources or facilities exist that will enable such an education to be obtained in a more conducive environment in this case.

133. We find no real risk of state sponsored persecution against this family established on return. There is evidence of the possibility of harassment as noted above and of facilities to worship in the Temple. The first appellant is 64 and is not fit for manual/mental labour, assuming such employment is available, and it has not been established that he will have the contacts in Kabul that will be required to enable him to re-establish the family, even assuming there is evidence of available capital or the required mental strength to open another trading facility in light of his accepted experiences in Jalalabad.
134. Unlike the first three appellants, the fourth appellant has no direct means or ability to support his family and it is likely that he will have to turn to the Temple for support. We comment above on the resource issues in relation to the tradition of support provided by the Temple, which is enshrined in the beliefs and practices of these religious groups, which is funded by donations from an ever dwindling and economically challenged congregation. The evidence also refers to a number of individuals already having sought the support of the Temple and the overcrowding that occurs there already as a result.
135. The situation of the fourth appellant's wife and daughter will be similar with the additional factor that they are unlikely to be able to leave the very difficult conditions at the Temple without male support to provide a form of protection, although whether this is credible and effective from an elderly gentleman with his own health needs is debatable.
136. Having assessed the situation of the fourth appellant and his two dependents we find it would be unreasonable to expect them to relocate to Kabul. He has no family or other contacts there and his circumstances are such that will find it very difficult to survive economically in the absence of access to an independent income. He is likely to have to resort to living in the Temple with his family with little or no contact with the outside world. We find that when his circumstances are considered cumulatively they support a finding he will be prevented from living a relatively normal life without undue hardship. We find internal relocation in such circumstances not to be reasonable.

## **Decision**

137. **The First-tier Tribunals have been found to have erred in law and its decisions have been set aside. We remake the decisions as follows. The appeals of the first**

**second and third Appellants are dismissed under the Refugee Convention and Humanitarian protection but allowed under Article 8 ECHR. The appeal of the fourth appellant is allowed under the Refugee Convention as well as under Article 8.**

**Anonymity**

138. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. We make that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 20<sup>th</sup> August 2015

## SCHEDULE OF BACKGROUND AND EXPERT EVIDENCE

### APPENDIX A

#### Documents before the Upper Tribunal – Appellants’ Bundle

Item	Document	Date
1	“Expert report” by Dr Antonio Giustozzi	1 February 2014
2	“Shrinking numbers and growing persecution threaten Sikhs and Hindus in Afghanistan” Reported by The New York Times India Ink.	6 November 2013
3	“Taliban deny killing Shushmita Banerjee, But Hindu Sikhs vanishing from Afghanistan” reported by Palash Ghoshon.	6 September 2013
4	“Minority Report” reported by Afghanistan Today.	16 August 2013
5	“Hindus, Sikhs of Afghanistan angered by Afghan Parliament decision”, reported by Khaama Press.	31 July 2013
6	“Sikh girls in Afghanistan face difficulty in finding Mr Right” reported by IBN Live.	31 July 2013
7	“Tough times for Afghan Hindus and Sikhs – dwindling community struggles to maintain identity”, reported by RAWA News.	11 July 2013
8	“Afghan Sikhs, already marginalised, are pushed to the brink”, reported by Los Angeles Times.	10 July 2013
9	Upper Tribunal (Immigration and Asylum Chamber) <u>DSG &amp; Others (Afghan Sikhs: departure from CG) Afghanistan [2013] UKUT 148 (IAC)</u>	4 April 2013
10	“Afghan police accused of corruption and child abuse”. Reported by the BBC News, Asia.	25 February 2013
11	“Afghan police ‘sell weapons to Taliban, are addicted to drugs and kidnap and rape of young boys” reported by Mail Online.	25 February 2013
12	“World Report 2013: Events of 2012” Report by Human Rights Watch	2013
13	“Charity warns of religious attacks” by Robert Cumber.	12 October 2012
14	“Citing Taliban strife, Afghan Sikhs and Hindus ask UN for asylum”, reported by Heath Druzin Stars and Stripes.	8 August 2012
15	“Human Rights Features”.	3 July 2012
16	“Sikh man deported to Afghanistan returned to UK”, reported by the Guardian.	3 July 2012
17	“Sikh’s Detention Reveals Flaws in Afghan Justice, Nation’s Religious Intolerance”, reported by Washington Post.	30 January 2012

18	"Afghan police 'Killers and Corrupt'", article by Rafael Epstein and Jeremy Kelly.	13 September 2011
19	"Billions Spent on Afghan Police But Brutality, Corruption Prevail", article by Reuters.	24 August 2011
20	"Afghan Hindu and Sikhs, Their situation and recommendations for the assessment of claims", UNHCR Regional Representation for Western Europe Brussels.	July 2011
21	"Afghan Sikhs, Risk on return to Kabul" by Roger Ballard.	20 May 2011
22	"The history and current position of Afghanistan's Hindus and Sikh Population" by Roger Ballard.	18 May 2011
23	"Oxfam Accuses Afghan Police of Torture and Child Sex Abuse", article by the Daily Telegraph.	10 May 2011
24	"Amnesty International Calls on Afghan Authorities to Investigate Human Rights Violations by the Government" Report	25 January 2011
25	"The History And Current Position of Afghanistan's Hindus And Sikhs Population" Reported by Roger Ballard CASAS	2011
26	"The State of the World's Human Rights" Amnesty International Report.	2011
27	"Only one Hindu left in Khost", reported by Maiwand Fida, Pajhwok, Afghan News, dated 18th October 2010	18 October 2010
28	"Afghan Hindus, the Most Deprived in Afghanistan", written by Parwiz Shamal.	9 August 2010
29	"Afghan Police Failings Fuelling Taliban Recruitment, Say UK Army Chief's" article by the Guardian.	3 June 2010
30	"Corruption, not insecurity, biggest concern for Afghan – UN Report", article by UN News Centre.	19 January 2010
31	"Afghanistan: Investigate Death in Custody" Human Rights Watch Report.	21 December 2009
32	"Afghan Corruption a Political Obstacle", article by the BBC News.	18 November 2009
33	"Afghan Police: Corrupt and Brutal, And still Not Fit for Purpose", article by the Guardian.	6 November 2009
34	"The Hindus have no Proper Place for Cremation", reported by RAWA News.	24 October 2009
35	"Is Afghanistan A Narco-state?" article by The New York Times.	27 July 2008
36	"Sikhs and Hindus claim persecution", Reported by Chris Sands, Foreign Correspondent – The National.	17 May 2008
37	Afghan Sikhs under threat: A brief history", reported by Jagmit Singh.	Undated
38	"No Human Rights in Afghanistan, especially no rights for Afghan Hindus/Sikhs" reported by <a href="http://www.rights-4-afghanhindus-and-sikhs.com">http://www.rights-4-afghanhindus-and-sikhs.com</a>	Undated
39	Roger Ballard CV	Undated
40	"Sikhs struggle under Afghan Intolerance" reported by the Washington Post.	Undated



41	"Summary of the DVD produced by Pritpal Singh – Mission Afghanistan".	Undated
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## APPENDIX B

### Documents before the Upper Tribunal – Respondent’s Bundle

Item	Document	Weblink	Date
1	Radio Free Europe/Radio Liberty	<a href="http://www.rferl.org/content/afghan-hindu-sikh/25095406.html">http://www.rferl.org/content/afghan-hindu-sikh/25095406.html</a>	4 September 2013
2	Minority Rights Group International; State of the World’s Minority and Indigenous Peoples 2013; Events of 2012	<a href="http://www.minorityrights.org">http://www.minorityrights.org</a>	September 2013
3	Wakht News Agency	<a href="http://wakht.af/en/index.php/social-culture/4510-hundus-sikh-enjoy-equal-rights-khazi.html">http://wakht.af/en/index.php/social-culture/4510-hundus-sikh-enjoy-equal-rights-khazi.html</a>	13 August 2013
4	UNHCR Eligibility Guidelines for assessing the International Protection Needs of Asylum Seekers from Afghanistan	<a href="http://www.unhcr-northerneurope.org/no_cache/resources/legal-documents/guidelines-and-positions/eligibility-guidelines.html?cid=3490&amp;did=998&amp;sechash=1b060617">http://www.unhcr-northerneurope.org/no_cache/resources/legal-documents/guidelines-and-positions/eligibility-guidelines.html?cid=3490&amp;did=998&amp;sechash=1b060617</a>	6 August 2013
5	Los Angeles Times	<a href="http://articles.latimes.com/2013/jun/10/world/la-fg-afghanistan-sikhs-20130611">http://articles.latimes.com/2013/jun/10/world/la-fg-afghanistan-sikhs-20130611</a>	10 June 2013
6	Hindu American Foundation; Hindus in South Asia and the Diaspora: A survey of Human Rights 2013	<a href="http://www.hafsite.org/sites/default/files/HH_R_2012_Final.pdf">http://www.hafsite.org/sites/default/files/HH_R_2012_Final.pdf</a>	5 June 2013
7	US Department of State International Religious Freedom Report for 2012: Afghanistan.	<a href="http://www.state.gov/j/drl/rls/irf/religiousfreedom/#wrapper">http://www.state.gov/j/drl/rls/irf/religiousfreedom/#wrapper</a>	20 May 2013
8	Freedom in the World 2013; Afghanistan	<a href="http://www.freedomhouse.org/report/freedom-world/2013/afghanistan-0">http://www.freedomhouse.org/report/freedom-world/2013/afghanistan-0</a>	May 2013
9	Institute for War and Peace Reporting	<a href="http://iwpr.net/report-news/afghan-sihks-and-hindus-face-discrimination-school">http://iwpr.net/report-news/afghan-sihks-and-hindus-face-discrimination-school</a>	28 July 2011
10	Deccan Herald	<a href="http://www.deccanherald.com/content/54680/afghan-siks-face-threats.html">http://www.deccanherald.com/content/54680/afghan-siks-face-threats.html</a>	24 February 2010

## APPENDIX C

### Documents before the Upper Tribunal – County Information Bundle 28<sup>th</sup> May 2015 - filed (on behalf of appellant TG)

Item	Document	Date
1	Afghan Embassy Letter	6 March 2015
2	Radio Free Europe/Radio Liberty, Suicide-Bomb Blast Kills Dozen In Jalalabad, In Afghan East	18 April 2015
3	United Nations News Centre, Afghanistan condemns 'brutal' suicide attack in Jalalabad	18 April 2015
4	United Nations Assistance Mission in Afghanistan (UNAMA), Press Release: Latest UNAMA figures show continuing record high civilian casualties	12 April 2014
5	United Nations News Centre, UN official 'shocked' by killing of aid worker in Afghanistan	11 April 2015
6	D+C Development and Cooperation (Germany), Civil strife: " Bandits in uniform"	5 April 2015
7	Voice of America News, Suicide Bomber Strikes Afghan Capital	29 March 2015
8	Norwegian Refugee Council (NRC), Displaced women and girls trapped in Afghanistan's cities	23 March 2015
9	United Nations News Centre, Afghanistan: UN condemns brutal killing of mentally ill woman	20 march 2015
10	Radio Free Europe/Radio Liberty, UN: IS Appears To Have Presence in Afghanistan	17 March 2015
11	Voice of America News, No Signs of Peace Talks as Afghan Fighting Season Nears	13 March 2015
12	Radio Free Europe/Radio Liberty, 13 Killed in Afghan Bombing	11 March 2015
13	Kabulblogs.wordpress.com, Afghan minister for refugees and repatriation warns against forced returns	28 February 2015
14	Voice of America News, Report: Afghan Civilian Deaths Rose 25 percent in 2014	18 February 2015
15	European Asylum Support Office (EASO) EASO publishes a Country of Origin Information Report on security situation in Afghanistan	13 February 2015
16	International Committee of the Red Cross (ICRC), Afghanistan: Escalating violence brings increased suffering to war-weary Afghans	9 February 2015
17	International Organisation for Migration (IOM), Sharp Increase in Afghans Returning form Pakistan Raises Concerns	6 February 2015
18	European Council on Refugees and Exiles (ECRE), Norway not to return families at risk in their home area to parts of Afghanistan with no support	6 February 2015
19	Radio Free Europe/Radio Liberty, Insurgents Kill 15 in Afghan Attacks	29 January 2015
20	Voice of America News, 3 US Defence Contractors Shot Dead at Kabul Airport	29 January 2015
21	Afghanistan Independent Human Rights Commission (AIHRC), The prosecutor of Appeal Court of Nangarhar Province was killed	11 January 2015
22	Radio Free Europe/Radio Liberty, Officials blame Afghan Troops For Wedding Bloodbath	2 January 2015
23	Radio Free Europe/Radio Liberty, NATO Holds Ceremony Formally	29 December

	Ending Afghan Operation	2014
24	Voice of America News, After Pivotal 2014, Afghanistan faces New Challenges With Less Help	22 December 2014
25	Voice of America News, 14 Killed in Attacks in Afghanistan	21 December 2014
26	Radio Free Europe/Radio Liberty, Afghan Sikhs Found in Shipping Container in Britain	17 August 2014
27	Radio Free Europe/Radio Liberty, 'When Are You Going Back?' Afghan Sikhs Strangers in Their Own Land	19 August 2014
28	Afghan Sikhs face an uncertain future – Aljazeera	23 February 2014
29	UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan	6 August 2013
30	Tough Times for Hindus and Sikhs	11 July 2013
31	Radio Free Europe/Radio Liberty, Familiar Faces and Warlords Set to Dominate Afghan Election Campaign	7 October 2013
32	Human Rights Watch, Dispatches: The War in Afghanistan is Escalating, Not Ending	31 July 2013
33	Human Rights Watch, Afghanistan: Escalating Setbacks for Women	16 July 2013
34	Institute for War and Peace Reporting (UK), Tough Times for Afghan Hindus and Sikhs	11 July 2013
35	Hindu American Foundation (USA), Hindus in South Asia and the Diaspora: A Survey of Human Rights 2012:	5 June 2013
36	US Department of State, 2012 Report on International Religious Freedom: Afghanistan	20 May 2013
37	US Commission on International Religious Freedom, United States Commission on International Religious Freedom Annual Report 2013: Afghanistan	30 April 2013
38	Institute for War and Peace Reporting (UK), Afghan Sikhs and Hindus Face Discrimination at School	28 July 2011
39	HJT Research, Sikh asylum seeker jailed in Kabul after being deported from the UK	4 July 2012
40	UK Home Office Border Agency, Operational Guidance Note: Afghanistan (v10 issued June 2012)	7 June 2012
41	US Commission on International Religious Freedom, US Commission on International Religious Annual Report 2012: Afghanistan	20 March 2012
42	Hindu American Foundation (USA), Islamic Republic of Afghanistan – Policy Brief: 2011-2012	14 November 2012
43	Hindu American Foundation (USA), HAF Concerned over Worsening Plight of Afghan Hindus and Sikhs	20 December 2012
44	EurasiaNet, Afghanistan: Dwindling Sikh Community Struggles to Endure in Kabul	20 January 2010
45	Integrated Regional Information. Networks News (IRIN), Sikh, Hindu minorities “disappointed, isolated and oppressed”	18 March 2009