

Situation in Afghanistan

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1. Introduction

This report updates my letter of 4 March 1998. As stated in the asylum procedure report of 14 April 1998, you wish to receive further information on the position of the UNHCR and the policy of the European partners with regard to admission and return of Afghan asylum-seekers. In addition to the general developments which have taken place since then, the report will look in particular at the situation in certain towns and regions and at the position of former Communists in Afghanistan. It will then consider the position of Afghans in Pakistan and Iran and on the "return policy" of a number of EU partners as well as the UNHCR's position on return.

Unless otherwise stated, the content of my letter of 4 March 1998 is still valid. Where appropriate, certain passages from the previous official report have been quoted.

2. Country information

2.1 Political developments/security situation

In the part of Afghanistan which was under Taliban control at the time of my previous report dated 4 March 1998 (ref. DPC/AM-67526) little has changed as far as the human rights, political, military and security situations are concerned. ⁽¹⁾

Now that the Taliban have about 90% of the country under their control, it is possible to speak of de facto Taliban rule in Afghanistan. ⁽²⁾ This does not alter the fact that within the movement there are regional differences of interpretation with regard to policy and how to implement it; for example, in Kabul there is stricter control of the observance of Taliban decrees than in other towns.

In the areas not controlled by the Taliban, local warlords, grouped together in the

⁽¹⁾ As regards "home schools" for girls as mentioned in footnote 60 of my letter of 4 March 1998, the Taliban ordered their closure in June 1998. As far as is known, this order applies only to Kabul. See also my answers to questions on this subject from the Tweede Kamer (Lower House) Tweede Kamer 1997-1998, Aanhangsel van de Handelingen 1426). In Herat 40% of girls are currently still benefiting from elementary education thanks to the "home schools".

⁽²⁾ At present the Taliban government is regarded as the legitimate government of the country only by Saudi Arabia, the United Arab Emirates and Pakistan. A representative of the government of the exiled President Rabbani occupies Afghanistan's seat in the United Nations General Assembly (UNGA).

United Islamic Front for the Salvation of Afghanistan (UIFSA, also known as the Northern Alliance) still rule the roost. ⁽³⁾ Both in areas under Taliban control and UIFSA areas there are reports of some administrative structure, a justice system, police, schools and social institutions. ⁽⁴⁾ There are still reports of misuse of authority, however. The Taliban has the monopoly of power in the greater part of Afghanistan and is in the process of imposing its rule in these regions. ⁽⁵⁾

In February and May 1998 parts of Northern Afghanistan (particularly the province of Takhar) were hit by severe earthquakes which claimed thousands of victims and made about 50 000 people homeless. ⁽⁶⁾

In April 1998 American UN Ambassador Richardson visited both North and South Afghanistan. He persuaded the Taliban to begin talks with the Northern Alliance. The Afghan parties seemed willing to talk to each other. The neighbouring countries also showed a greater willingness to exchange ideas in order to find a political solution to the conflict in Afghanistan. ⁽⁷⁾ However, talks between the Taliban and representatives of the UIFSA, which began in Islamabad on 26 April 1998, have so far been unsuccessful.

On the occasion of the Eid-al-Adha celebration at the beginning of April 1998 the Taliban released about 118 prisoners of war in Kandahar. ⁽⁸⁾ Those released were given a laissez- passer by the Taliban to enable them to return to their homes

⁽³⁾ The UIFSA consists of the following factions: Hezb-i-Wahdat under the leadership of Abdol-Karim Khalili; Jamiat-i-Islami under the leadership of Burhanuddin Rabbani and Massoud, Harakat-i-Islami under the leadership of Mohammad Asef Mohseni and Junbish-i-Melli under the leadership of Dostam. The UIFSA also receives support from independent individuals and non-party militia. The UIFSA is also referred to as the United Islamic and National Front for the Salvation of Afghanistan.

⁽⁴⁾ See also BAFL report June 1998.

⁽⁵⁾ Some local commanders in the east (particularly in Nuristan) do not accept Taliban rule and refuse to be bought off. In one valley in Nuristan in the province of Kunar the Taliban was banished by a regional Pashtun (Fourczai) commander.

⁽⁶⁾ See also the report of the UN Secretary-General (19 June 1998, S/1998/532).

⁽⁷⁾ Consultations on this subject took place under the leadership of the special UN envoy for Afghanistan, Lakhdar Brahimi, in the "six plus two" Group, consisting of China, Iran, Pakistan, Tajikistan, Turkmenistan, Uzbekistan, the United States and Russia.

⁽⁸⁾ ICRC report, 6 April 1998.

unhindered. At the same time the Taliban renewed its offer of amnesty to commanders fighting for the UIFSA.

In May 1998 after a blockade of nine months the Taliban let through some food convoys to Hazarajat. ⁽⁹⁾ This enabled the World Food Programme to supply a limited amount of grain, but it was not enough to satisfy local needs.

Although the food situation in Hazarajat still leaves something to be desired, there is evidence of some improvement. Since the lifting of the blockade of the area and the partial victory by the Taliban it is once again possible for the local population to trade with the surrounding areas. ⁽¹⁰⁾ However, food convoys are still not being allowed through.

During the summer offensive (July/August 1998) the Taliban took over the provinces of Badghis, Fariyab, Jozjan, Takhar, Baghlan, Kunduz, Samangan and Balkh, including the town of Mazar-i-Sharif, site of the headquarters of the Northern Alliance. On Sunday 2 August 1998 Taliban troops conquered the town of Shibergan from General Dostam, who then fled. On 11 August 1998 the town of Taloqan, headquarters of General Massoud, also fell. The UIFSA currently controls only about 10% of Afghan territory, including the provinces of Badakhshan, Kapisa and parts of Parwan, Bamyān, Ghazni and Uruzgan. ⁽¹¹⁾ The town of Bamyān, bastion of the Shiite Hezb-i-Wahdat faction, was conquered by the Taliban in September 1998. The UIFSA is nevertheless in a position to bombard Kabul with rocket attacks from a distance of 25 kilometers. ⁽¹²⁾

In the North fighting is currently also continuing between Taliban troops ⁽¹³⁾ and Massoud's troops. Although the security situation in large areas of Northern Afghanistan is unsatisfactory (see also paragraph 3.5), the situation in the south

⁽⁹⁾ The area in question includes the province of Bamyān and parts of the provinces of Ghor, Wardak, Uruzgan and Ghazni.

⁽¹⁰⁾ It is thus possible to finance the purchase of food from outside the area (source: UN Weekly Update, 20 October 1998).

⁽¹¹⁾ Situation as at the end of August 1998. In October 1998 fierce fighting again broke out between Massoud and the Taliban. It was concentrated mainly around the Panshir Valley, in the north of the province of Baghlan and in the south of the province of Takhar.

⁽¹²⁾ For example on 4 September 1998, when heavy fighting broke out between the Taliban and General Massoud's troops.

⁽¹³⁾ Often supported by commanders who have deserted from Hezb-i-Islami.

has stabilised. In areas over which the Taliban has already held sway for some years the security situation has become settled.

Position of NGO and UN staff

On 20 July 1998 practically all NGOs (non-governmental organisations) withdrew from Kabul. This was the lowest point in the conflict between the Taliban and the NGOs. The Taliban obliged the NGOs operating in Kabul to occupy the empty buildings belonging to a high school on the edge of the city. There was no water or electricity supply on the spot and the buildings were uninhabitable owing to lack of maintenance and looting. The costs of repair were to have been borne by the NGOs but they had no funds available for the purpose and already possessed adequate accommodation in the city. When the NGOs left Kabul for Pakistan, two local UN workers in Jalalabad were killed. ⁽¹⁴⁾

After the surprise attack by the United States on training camps for terrorists in Afghanistan (on 20 August) violent anti-Western sentiment resulted in the evacuation of the remaining international NGO and UN staff. The security situation made it impossible for the NGOs to remain. After the rocket attack there were demonstrations in many places, including the town of Jalalabad where the office of the World Food Programme (WFP) was damaged. In Kabul a UN vehicle was held up by Taliban militia and shot at, which resulted in an Italian UN official being killed and a Frenchman wounded. Local UN staff attempted to continue implementing UN programmes as best they could. The International Red Cross (ICRC) was the only other international organisation which remained in Afghanistan with a limited international staff. ⁽¹⁵⁾ Recently a number of international NGO staff returned to the towns of Kandahar, Jalalabad and Herat.

On 23 October the Taliban and the UN concluded an agreement in Islamabad on the safety and room for manoeuvre of UN organisations in Afghanistan. This agreement must make it possible for the UN to return to Afghanistan in the near future.

⁽¹⁴⁾ The Taliban agreed to UN envoy Brahimi's request for an inquiry after the murder of the Italian lieutenant-colonel and two local UN workers.

⁽¹⁵⁾ The ICRC supports around seven hospitals in Afghanistan. It is also very much involved in the frequent exchanges of prisoners (of war) and has access to all the prisons in Afghanistan.

The capture of Mazar-i-Sharif

Although the anti-Taliban parties officially cooperated in the UIFSA, they continued to fight among themselves for control of Mazar-i-Sharif. This situation came to an end when the Taliban captured the town on 8 August 1998. The United Nations, the US State Department and Amnesty International reported that Taliban fighters, ⁽¹⁶⁾ after capturing the town, had murdered many members of the Shiite Hazara minority, including women, children and elderly people. It was alleged that more than a thousand people had been killed. ⁽¹⁷⁾

When the town was captured, around 45 Iranians, including ten diplomats, a journalist and some lorry drivers fell into the hands of the Taliban. It is known that nine Iranian diplomats and the journalist were murdered. A number of lorry drivers were freed. ⁽¹⁸⁾ These events have considerably increased the tension between the Taliban and the Teheran Government. ⁽¹⁹⁾

During his visit to Kandahar in mid-October 1998 UN envoy Brahimi spoke for the first time to Taliban leader Mullah Omar. The Taliban agreed that there should be an international investigation into the events in Mazar-i-Sharif during its capture by the Taliban and an inquiry into the deaths of the Italian UNSMA representative in Kabul and two local UN employees, on condition that the mass murders of Taliban fighters in May 1997 were also investigated. During these talks Mullah Omar agreed to the release of all Iranian prisoners in Afghanistan.

The murders of Hazaras during the capture of Mazar-i-Sharif seem to be directly related to the murders of around 2000 Taliban fighters in 1997 in Mazar-i-Sharif and the surrounding area. It is becoming increasingly clear that Hazaras are being discriminated against compared with the other ethnic groups in Afghanistan. The

⁽¹⁶⁾ As far as is known, these were atrocities committed by local Hezb-i-Islami commanders, who had joined the Taliban.

⁽¹⁷⁾ According to Amnesty, thousands of Hazaras were murdered: Amnesty International, ASA 11/07/98 of 3 September 1998.

⁽¹⁸⁾ After initial denials, the Taliban leaders admitted the deaths of the Iranian diplomats. According to Mullah Omar, however, the deaths were not ordered by the army leadership but by local Taliban commanders. The UN Rapporteur for Afghanistan intends to investigate these events.

⁽¹⁹⁾ UN envoy Brahimi has mediated between the Taliban and Iran. Iran called for return of the three remaining bodies of the Iranian diplomats (which has since taken place), the release of all Iranian prisoners and apologies from the Taliban.

Iranian Government, which regards itself as the protector of the Hazaras, will step up the pressure on the Taliban to discuss their position. The Taliban in Kandahar seem to be sensitive to this pressure.

The Taliban Government has let it be known that it will apply the Taliban rules to the newly conquered areas in the north as well. Mullahs have therefore been sent to the north to adapt the administration and the justice system. The Taliban's influence will be noticeable and will put an end to the relatively liberal climate in Mazar-i-Sharif.

2.2 Situation in certain areas of Afghanistan

Further to my letter of 4 March, the situation in a number of regions of Afghanistan is considered below.

2.2.1 Northern Afghanistan

The advance of Taliban troops and the desertion of local warlords mean that the area actually under the control of the anti-Taliban coalition is constantly decreasing. Currently the UISFA area consists of only part of Hazarajat in Central Afghanistan⁽²⁰⁾ and the provinces of Badakhshan (part), Kapisa and Parwan in the north-east. Although the population here mainly consists of Tajiks (Badakshani and Pamiri), Pashtun and Ismaeli also live in these provinces. The Pashtun are in the minority here, but nevertheless are able to live unmolested in the area and some even occupy leading positions.⁽²¹⁾ When the front was in Bangi the main road between Faizabad and Taloqan was out of use. However, it was possible to travel over smaller roads from Kunduz to Taloqan and Faizabad. Despite the fighting at the front line, trade continued unabated.⁽²²⁾

⁽²⁰⁾ Since the capture of the town of Bamyan in September 1998 this area is also gradually being taken over by the Taliban. Satellite telephones and radios are used in the administration of this region. Nearly every commander has access to a satellite telephone.

⁽²¹⁾ For example, the head doctor at the Faizabad hospital is a Pashtun.

⁽²²⁾ Neue Zürcher Zeitung, 7 April 1998.

2.2.2 Kunduz

Since the summer of 1997 the town of Kunduz and the surrounding region has been in the hands of the Taliban. The population - for the most part Pashtun - has adapted to the new circumstances. The governor of Kunduz, a Pashtun, was formerly chief of police under Massoud. Other Pashtun who formerly served under Massoud are now also in the service of the Taliban. There are reports that many Uzbeks and Tajiks have been dismissed from government service in the province of Kunduz and have had to make do with less important jobs. Dismissal from government service is thought to be only on grounds of ethnic background. The fact that someone worked for the Communists or Massoud is of no importance to the Taliban in this context. To prevent individuals achieving too powerful a position, the Taliban often rotate senior officials. In contrast to the other areas under their control, the Taliban have not disarmed the population in Kunduz.

2.2.3 Baghlan

Until August 1998 the governor of Baghlan was the Pashtun Bashir Baghlani, who belonged to the Hezb-i-Islami faction of former Premier Hekmatyar, a subsection of the UIFSA. Although he was supposed to be fighting on the side of Massoud, he allowed the Taliban free access in the summer of 1997 so that they could capture Kunduz.

The Kayan Valley, to the south of Baghlan, is the home base of the Ismaeli leader Sayed Mansur Naderi, head of the local Ismaeli militia. This militia occasionally fought on the side of Dostam. The Kayan Valley is easy to defend. The Ismaeli have their own values and customs; the use of alcohol is permitted and women do not wear the veil. The centre of this Ismaeli enclave is Pul-i-Khumri (currently also in the hands of the Taliban). The area has, by Afghan standards, a very good infrastructure (a university, various schools, libraries, good roads, medical facilities). Some time ago the Aga Khan Foundation opened an office in the area. In the autumn of 1998 Baghlan was partially captured by the Taliban; at the moment of writing the consequences of the new situation there were still unknown.

2.2.4 The Panshir Valley

The Panshir Valley is the base of Ahmad Shah Massoud. Its geographical position makes the area difficult to capture and it has therefore remained outside the fighting. It is estimated that around 200 000 people live in the Panshir Valley. The valley is

about one hundred kilometers long and the entrances are guarded by Massoud's troops. After Massoud's retreat from Kabul many Tajiki followed him to the valley. Massoud has appointed Panshiri to the most important (administrative) posts. He seems to trust people from his immediate entourage most. This has had negative results for Tajiks from Badakhshan. Attacks on Kabul take place without the help of Tajiks from Badakhshan since Massoud feels that he cannot rely on them totally. ⁽²³⁾ The villages in the valley are administered by local commanders and mullahs who select young men to go to the front and fight for several months. The rules laid down by the mullahs in the Panshir Valley are not very different from those of the Taliban. Thanks to animal husbandry (sheep) and agriculture, the Panshiri are to a large extent self-sufficient.

2.2.5 Herat

The trading town of Herat has been under Taliban control since September 1995. The town is 150 kilometers from the Iranian border at the crossroads of the trade routes to Turkmenistan and Iran. The security situation in Herat has improved over the last six months but a curfew is still in force. The bazaars are well stocked with goods, including food. Agricultural produce (vegetables, fruit and wheat) is of Afghan origin and most other consumer articles come from Iran and Turkmenistan. Prices are high. Trading generates a lot of money, which is then invested. Bazaars are extended and roads repaired.

3 Human rights

Introduction

All armed groups in Afghanistan have been involved in human rights violations. No section of Afghan society has been spared the terror. Particular targets have been: members of rival ethnic and religious groups, women with higher education, academics, senior officials under the previous government and journalists. When territory was captured there were reports of revenge attacks on the local population as a whole. Especially in places where there is still fighting and where traditional structures have been destroyed, there is a danger of looting, extortion, robbery and other crimes of violence. In the course of the civil war thousands of civilians died in

⁽²³⁾ This despite the fact that Rabbani, Massoud's (former) political leader, is a Tajik from Badakhshan.

artillery bombardments and tens of thousands were wounded. Not one faction seems to have made a real effort to avoid civilian targets. On the contrary, there is evidence that some factions deliberately chose civilian targets in order to punish the local population for loyalty to a rival militia.

The fact that in the meantime hundreds of thousands of refugees have returned (and are scattered throughout the whole country) seems to show that the danger of being a victim of human rights abuses or acts of war is not regarded as too high in every case.

Abuse of human rights through arbitrary violence has also decreased in reality: the power of most warlords in the Taliban-controlled area has been curbed. ⁽²⁴⁾

In general, it can be stated that personal security has increased since the advent of the Taliban and there are fewer and fewer reports of robberies. The scale of human rights abuses perpetrated by the Taliban has also remained dependent on the progress of their actions on the battlefield. At times when they seem to be advancing steadily, we can note an increase in the number of human rights abuses (non-judicial executions, imprisonment without trial, unlawful entry, etc.), both in the area in which fighting is taking place and in the capital, Kabul. ⁽²⁵⁾ The risk groups (see paragraph 3.4) are primarily the victims.

3.1 Judicial process ⁽²⁶⁾

The Afghan form of Islamic law (Shari'a) is currently applicable throughout Afghanistan. ⁽²⁷⁾ The courts are organised according to a hierarchical structure: firstly

⁽²⁴⁾ This does not apply to the areas controlled by the anti-Taliban coalition where local warlords are still fighting among themselves.

⁽²⁵⁾ These human rights abuses are thought to have taken place after the news broke of mass graves in the north. The Hazaras were reported to have killed about two thousand Taliban fighters there. On page 9, paragraph 27, of his report of 19 June 1998 (A/52/957) UN Rapporteur Paik also mentions the rape of at least three Hazara children in Kabul.

⁽²⁶⁾ See also my letter of 4 March 1998.

⁽²⁷⁾ When the Communists were in power the legal system was partly based on the Shari'a. Shortly before the end of his regime, Najibullah introduced legislation stipulating that the administration of justice must not conflict with the Shari'a.

local courts, then provincial courts (High Courts) and finally the Supreme Court in Kabul. ⁽²⁸⁾ The role of the Supreme Court principally consists of checking the verdicts of lower courts against the Shari'a. In cases in which the death penalty is imposed it has also always been possible to submit a plea for clemency to the Taliban leader, Mullah Omar. ⁽²⁹⁾

Most trials lack the minimum requirements for fairness. Judges apparently pronounce sentence on the basis of a combination of their own understanding of the Shari'a and the Pashtun tradition of the code of honour. A balanced procedure is not always guaranteed.

3.2 Abuse and torture

The 1997 Amnesty International report records torture on a large scale in prisons and detention centres.

In Afghanistan the following punishments may be imposed: fines, floggings (with a cane or whip), imprisonment, amputation and execution. ⁽³⁰⁾ In most cases floggings and executions take place in public. The Friday punishments in the stadium in Kabul attract a lot of interest.

Theft of goods is said to be punishable by amputation of a hand, a leg or a foot. In minor cases a single finger may be amputated. ⁽³¹⁾

3.3 Death penalty

The penalty for murder is death. It is possible in murder cases for the family to pardon the murderer after the court procedure with the result that the sentence is not carried

⁽²⁸⁾ According to the Chief Justice of Jalalabad, 250 judges are attached to the Supreme Court in Kabul. Between 3 and 30 judges are said to be employed per case. Many of these judges occupied the same post under the Mujahedin and some even under the Communists.

⁽²⁹⁾ According to the Chief Justice, every impending execution should be referred to him.

⁽³⁰⁾ The punishment for drinking alcohol is said to be eighty lashes with a whip or cane. Amnesty International reports that on 27 February 1998 an unmarried woman received one hundred lashes for having sexual relations with a married man. On 13 March 1998 an unmarried man was also sentenced to one hundred lashes for having sexual relations with a woman to whom he was not married. An Afghan official stated that the man would have been condemned to death (by stoning) if he had been married. ASA 11/03/98.

⁽³¹⁾ According to Afghan sources, amputation is used as a punishment in cases of theft of goods worth more than 10 koran Dinars. In its report, ASA 11/03/98, Amnesty International cites various examples of amputation as a penalty for theft.

out. Other crimes for which the death penalty is mandatory are rape, adultery and drug dealing.

The death penalty is also imposed for proven homosexuality. In April 1998 Amnesty International reported that in the preceding months at least five people had been sentenced for "sodomy" ⁽³²⁾ and killed.

3.4 Position of specific groups

The Afghan population has become used to years of acts of war and the war culture. Changes in leadership affect the rural population less than might be supposed, since the new rulers preserve local village and clan structures. The overwhelming majority of the population in the Taliban area are therefore leading, by rural Pashtun standards, what is in their eyes a normal existence. Those who submit without problems to the presence of the Taliban and conform to Taliban standards have nothing to fear by way of repression, repercussions or persecution. Obviously this cannot be expected of everyone and the following risk groups can therefore be identified.

3.4.1 Former prominent Communists

The Taliban very quickly brand those whom they deem to be exhibiting "anti-Islamic behaviour" as Communists. This denomination has, however, nothing to do with possible previous membership of the Communist Party. ⁽³³⁾ Those who have simply been members of the DPPA and are not currently behaving in an "anti-Islamic" manner have in principle nothing to fear from the Taliban.

The first risk group is made up of people who do not conform to the Taliban rules. In this case former membership of the Communist Party can be an additional aggravating factor. People belonging to the Khalq faction of the Communist Party are reported to

⁽³²⁾ Afghanistan: Flagrant Abuse of the Right to Life and Dignity, Amnesty International, ASA 11/03/98. The condemned men were made to stand against a stone wall which was then knocked down with bulldozers so that they were buried under the rubble. As far as we know, this form of execution has taken place only once.

⁽³³⁾ The raids carried out by the Taliban in Kabul (see p. 36 of my letter of 4 March 1998) were also intended to track down people who were well-known because of their high positions as Communists and those who exhibited "anti-Islamic" behaviour.

run less of a risk here than those belonging to the Parcham faction. ⁽³⁴⁾ This is connected with dissension between the various Pashtun tribes which was also present in the DPPA.

The second risk group is made up of prominent Communists such as former Ministers, certain judges, law officers, high-ranking soldiers, intellectuals and other well-known personalities. Because of their previous activities such people do in general have something to fear from the present authorities, sometimes also in neighbouring Pakistan. ⁽³⁵⁾ High-ranking individuals who are personally held responsible for acts of violence against the Mujahedin and the civilian population during the Communist period may therefore be the victims of revenge attacks. ⁽³⁶⁾

It should be noted that among these groups are some individuals who now work for the Taliban. There are people working for the authorities in the Taliban area and in the UIFSA area who formerly occupied (leading) posts in the Communist Party or the KHAD. ⁽³⁷⁾ They are in no danger if they have renounced their past, shown remorse and joined the Taliban (or the UIFSA).

3.4.2 Soldiers who have not joined the Taliban ⁽³⁸⁾

This relates to Mujahedin fighters or soldiers from the former (Communist) army who are now fighting under a commander attached to the anti-Taliban coalition.

⁽³⁴⁾ The Democratic People's Party of Afghanistan consisted of two factions. See official report of 4 March 1998.

⁽³⁵⁾ For example, the AFP press bureau reported on 9 July 1998 that a former Afghan minister from the time of Najibullah, Nazar Mohammed, had been murdered in the Pakistan town of Quetta by persons unknown.

⁽³⁶⁾ Hence, the former head of the KHAD in Kandahar (currently head of the Taliban intelligence service, "Estikhbarat") reported that former Communists and KHAD members suspected of carrying out large-scale torture and murder were imprisoned there.

⁽³⁷⁾ The Communist intelligence service, KHAD, has been defunct since 1992. Since that date, agents and (middle-ranking) executives have not been active as such. Specific questions as to whether an individual asylum-seeker occupied a position in the KHAD and may have committed human rights offences are extraordinarily difficult to answer. It must be borne in mind that this security service employed around 150 000 people and operated in secret.

⁽³⁸⁾ The Taliban militias are still well paid. A soldier at the front earns \$60 and a commander \$160. A MiG pilot earns \$500 per completed flight. MiG pilots are employed by all warring parties and therefore do not fight each other in the air.

High-ranking officers from the Communist period who have been personally accused of involvement in human rights abuses are also a risk group.

Ordinary soldiers and officers from the Communist army who have now left the service are not at risk simply because they served in the Communist army.

3.4.3 Women with secondary and higher education

On this point, see the official reports of 4 March and 21 April 1998.

3.4.4 Other risk groups

- * those who set themselves up in opposition to the Taliban
- * those who have studied in the former Soviet Union
- * people who were brought up in the former Soviet Union and
- * Afghans married to citizens of the former Soviet Union.

All these groups may be accused of "un-Islamic behaviour" by the Taliban. People who belong to the above categories but have complied with the Taliban rules obviously have nothing to fear.

Other vulnerable groups in Afghanistan are members of specific ethnic, religious or political groups who find themselves in areas controlled by a movement hostile to them. In the Taliban areas this applies to Tajiks and Hazaras.

There are no indications of large-scale persecution in Afghanistan on ethnic grounds. It is, however, clear that the Hazaras in Mazar-i-Sharif have become the victims of Pashtun troops out for vengeance.

As already mentioned in the previous official report, most Hindus and Sikhs left Afghanistan before 1992. Only a few then settled in Pakistan. The majority, however, found a safe haven in India.

3.5 Alternative settlement within the country

While for many Afghans (especially the rural Pashtun) it is possible to settle again the part of Afghanistan ruled by the Taliban (often after living for years in Iran and/or Pakistan), for others, especially the urban, well-educated middle and upper classes, it is difficult if not impossible to comply with the way of life ordered by the Taliban. It is therefore relevant to ask whether they would be welcome elsewhere

in Afghanistan and would be able to establish a viable existence there. Mazar-i-Sharif was truly a bastion of relative liberalism for many. Many saw the town as an alternative place in which to settle and many inhabitants of Kabul - including those who previously had no links with the town - moved to Mazar where they lived for a long time in relative freedom. The remaining UNFSA areas in the north could also be regarded as a place of alternative settlement by people who were fleeing the Taliban, mainly on ethnic grounds. The recent developments in North Afghanistan mean that it is now no longer possible to speak of an internal settlement alternative for those who claim to have grounds to fear the Taliban. It is, however, true that the clan structures in Afghanistan are so strong that in some cases a person's own clan can offer protection against an external threat.

4. Return

4.1 Situation of Afghans in Pakistan

There are around 1,2 million Afghans resident in Pakistan. They are free to come and go as they please and have access to the labour market. Pakistan has not returned any Afghan refugees to Afghanistan in the last twenty years, apart from criminals, and continues to take in Afghan refugees. About 75% of the Afghan refugees in Pakistan originate in the Afghan Pashtun areas. The remaining 25% are mainly from Kabul and Mazar-i-Sharif ⁽³⁹⁾.

Although Pakistan is not a party to the Refugee Convention, there is de facto compliance with the Convention ⁽⁴⁰⁾.

The Pakistani authorities drew up guidelines at the beginning of the 1980's in which it was explicitly stated that Afghans should be treated as refugees within the meaning of the Refugee Convention. These guidelines are still in force.

Afghan refugees are not systematically registered by the Pakistani authorities or by the UNHCR. At the beginning of the 1990's, the Pakistani authorities did however issue "passbooks" to Afghan refugees, which were needed to obtain food aid. In addition, Afghan refugees can apply to the Pakistani authorities (Commissioner for

⁽³⁹⁾ Source: UNHCR Pakistan.

⁽⁴⁰⁾ Reference is also made to the Convention in Pakistan's secondary legislation.

Afghan Refugees) for a "Shanakhti" pass (ID card), which gives their presence in Pakistan official status ⁽⁴¹⁾. Only a limited number of Afghan refugees hold such a pass, which in any case is not necessary to be able to work and reside in Pakistan. Afghans may apply for a provisional residence permit, but this too is in practice not necessary. In the North West Frontier Province and in Baluchistan, many Afghans have settled freely. It is true that in principle, Afghans who wish to settle in other parts of Pakistan must often apply for a residence permit ⁽⁴²⁾ in order to do so, but in practice they are largely left undisturbed. Many Afghans live in refugee settlements around Peshawar in just the same conditions as the rural Pakistani population. In the city itself there are districts with high concentrations of Afghans. The economic activities of Afghans in Pakistan have always been extensive: Karachi has a large Afghan colony and Peshawar (only 50 km from the border) has traditionally had strong connections with Afghanistan. In Pakistan's North West Frontier Province, road haulage and transport is to a large extent in the hands of Afghans, who are also conspicuous in construction and even in agriculture. Many refugees appear to be fully integrated into Pakistani economic and social life after years of residence in Pakistan. A number of Afghans come to Europe after having spent a long period in Pakistan, claiming to have had difficulties in establishing a livelihood there.

Mention should be made here of the economic opportunities enjoyed by Afghans in Pakistan: a work permit is not required and industries employ many Afghans (agriculture, construction). Landowners for example in an area north-west of Islamabad admit openly that if all the Afghans were suddenly to return home en masse this would disrupt the local Pakistani economy in no uncertain manner. It should also be pointed out in this context that in and around Karachi there are over a million Afghans who are completely integrated into the local economy.

The office of the UNHCR in Pakistan maintains only a list of Afghans who approach the organisation, amounting to a few thousand people. Where political problems

⁽⁴¹⁾ Even where Afghans in Pakistan hold Pakistani documents (Shanakhti pass or even a Pakistani passport), this does not mean that they are registered with the Pakistani authorities as Afghan refugees. Because of the widespread corruption in Pakistan such documents are easy to obtain.

⁽⁴²⁾ See also the report by the Danish fact-finding mission which visited Afghanistan and Pakistan from 1 to 29 November 1997, in which reference was made to Afghans being seized in Islamabad and subsequently transported to the NWFP or to Baluchistan.

are concerned, it may very well be that a number of Afghans for various reasons probably need to avoid cities such as Peshawar or Quetta. The UNHCR, in close collaboration with the Norwegian Government, has the means to offer these Afghans an alternative settlement possibility within Pakistan (Lahore, Rawalpindi, etc). The UNHCR implements this alternative settlement programme with care: all those concerned are given a full hearing, and help is offered only in those cases in which the reasons are judged sufficient. In a small number of cases, the UNHCR concludes that settlement outside Pakistan would be the best solution. Contact is then made with Western embassies with the aim of settling the persons in question outside the region. The numbers involved are tiny: fewer than one hundred per year (of the 1,2 million Afghan refugees in Pakistan). From this it may be concluded that any Afghan claiming to fear oppression in Pakistan need not hesitate to apply to the office of the UNHCR, which will examine his or her individual case. Unilateral departure from Pakistan must accordingly be placed in its proper context⁽⁴³⁾. Nearly all Afghans who have been some time in Pakistan have legal residence there.

The Taliban's recent victories during the summer offensive have strengthened the position of Taliban supporters in Pakistan⁽⁴⁴⁾. Supporters of the UIFSA parties also appear to be coming under pressure in Pakistan.

Return

A declaration is appended to the EU-Pakistan Cooperation Agreement (which has not yet come into force), in which Pakistan gives a commitment to conclude return and readmission agreements with individual EU Member States. Pakistan does not appear at present to be officially prepared to readmit Afghans who have been resident for a long period in an EU Member State. The fact that a number of Afghans hold Pakistani travel documents makes little difference, as the great majority of such documents are thought to have been obtained illegally,

⁽⁴³⁾ In this context reference may be made to the ExCom Conclusion on Irregular Movements (1989/58), in which it is clearly stated that refugees who have found protection in a first country of asylum do not automatically have the right to seek further asylum elsewhere. In accordance with this principle, Germany for example sends Afghans arriving in Frankfurt by air from Karachi back to Karachi after a short procedure. The United Kingdom would also return Afghans to Pakistan should they arrive in the UK without a visa.

⁽⁴⁴⁾ Large numbers of pupils from the Koran schools in the Afghan refugee villages in Pakistan voluntarily join the Taliban.

according to the Pakistani authorities ⁽⁴⁵⁾. This does not mean that they are turned back at the Pakistani border, or that problems arise in any other way. Afghans can travel in and out of Pakistan without great difficulty, not only to Afghanistan, but also to the Gulf States for example.

4.2. Iran

In Iran there are estimated to be 1,4 million Afghans ⁽⁴⁶⁾. Only 2% of these live in camps (of which there are seven). The great majority of the Afghan refugees live spread throughout the country. Many Afghans live in Teheran, Isfahan and Kerman in particular. Only the poorest groups remain in the provinces of Khorassan and Zahedan. While large groups of Afghan families enter Iran, many Afghans also return to Afghanistan. The UNHCR distinguishes three categories of repatriates from Iran: (a) assisted returnees (10-15 families per week), (b) unassisted returnees (circa 1000 persons per month) and (c) deportees (200-300 families per month). The UNHCR is currently holding discussions with the authorities in Teheran regarding personal identity documents for refugees. In addition to pre-revolutionary refugee documents there are permanent ID cards, temporary ID cards, "green cards" and "blue cards" in use. It is not clear what rights and obligations are attached to the possession of such documents. Since 1992, the Iranian authorities no longer issue identity cards to Afghan refugees.

4.3. Policy of other EU countries

Belgium

Belgium takes the view that there is a de facto authority in Afghanistan and on this basis applies the Refugee Convention in matters of asylum relating to Afghans. Belgium does not return asylum seekers to Afghanistan after examining their cases because of practical difficulties such as the lack of Afghan travel documents and the fact that there are no flights to Kabul.

Denmark, France and Ireland

These countries take the view that there is a de facto authority in Afghanistan and on this basis apply the Refugee Convention in matters of asylum relating to Afghans.

⁽⁴⁵⁾ In addition, many Pakistanis in the past obtained passbooks for Afghans. In this way they were able to claim free foodstuffs in their own country (Pakistan).

⁽⁴⁶⁾ There has however never been any registration.

Germany

The Refugee Convention is not applied to Afghans in Germany, as no central authority is considered to exist in Afghanistan.

In cases in which there is a major risk involved in return, Afghans may remain in Germany on humanitarian grounds under Article 53 of the German Aliens Law. Because of the uncertain security situation and problems of a technical nature (no direct flights), Germany only occasionally expels Afghans. Afghans whose application on arrival in Germany can be rejected as manifestly unfounded are often sent back immediately by the same airline. Such cases involve mainly flights from Pakistan or from the United Arab Emirates.

Germany does not in general regard Pakistan and Iran as safe third countries or countries of former residence, unless this is demonstrated on an individual basis, or unless there is reason to assume that the asylum seeker in question has been resident over a long period without persecution in Pakistan or Iran. Rejected Afghan asylum seekers are occasionally expelled.

Sweden

Sweden takes the view that a central authority need not necessarily be a factor in determining refugee status. The possible temporary lack of an authority in a given region of Afghanistan does not represent an obstacle to application of the Refugee Convention in Sweden. Sweden considers Pakistan and Iran to be safe countries of former residence for Afghan refugees. Sweden does not return Afghan asylum seekers who have exhausted all remedies to Afghanistan, but does return them to Pakistan.

United Kingdom

The United Kingdom applies the Refugee Convention to asylum seekers from Afghanistan. The UK regards Pakistan as a safe country of former residence for Afghan refugees who have resided there over a long period.

4.4. Position of the UNHCR

The UNHCR advises that rejected Afghan asylum seekers should not be forcibly returned to Afghanistan.

For many Afghans (particularly the rural Pashtun), it is however certainly possible to settle once more in the Taliban-ruled part of Afghanistan.

The UNHCR gives assistance for the voluntary return of Afghans who have taken

refugee in Pakistan and Iran. In 1997, around 87 000 Afghan refugees voluntarily returned to Afghanistan. The UNHCR return programme assists inter alia in projects promoting reintegration. Organised group returns have priority. During the first seven months of 1998, around 75 000 Afghans returned home. This number included in particular people who returned from the North West Frontier Province of Pakistan to the Taliban-ruled part of Afghanistan. The UNHCR predicts that a total of around 120 000 Afghans will return voluntarily to Afghanistan in 1998 ⁽⁴⁷⁾.

⁽⁴⁷⁾ Report of the United Nations High Commissioner for Refugees, E/1998/7, 27 April 1998.

5. Conclusion

Afghanistan is a mosaic of areas in which local authorities with a high degree of autonomy assume responsibility not only for government and security, but also often for the administration of justice. In contrast to the past, more attention than ever is paid to the *Shari'a* as the source of law.

Since my letter of 4 March 1998, the military situation in Afghanistan has changed. The Taliban has made territorial gains and now rules around 90% of the country. There are still two mutually opposing groups, the Taliban and the movements united under the UIFSA. Fighting is still going on in the north between Taliban and Massoud troops. The military situation in the northern provinces will in all probability be subject even in the future to fluctuations. Although the security situation in large sections of North Afghanistan leaves something to be desired, the situation in the south has stabilised. In the areas in which the Taliban has already held power for several years, the security situation has become settled.

The human rights situation is as bad as ever. In particular the position of women and the quality of justice give cause for concern in this connection.

The Taliban do not appear to be able to take control of the entire territory of Afghanistan and will probably find themselves forced into negotiations with the other groups.

As regards Afghans coming to the Netherlands, it may be affirmed that the majority have lived for some time in Pakistan. The great majority of Afghans who flee to Pakistan live there in safety and are not in danger of persecution or deportation. As stated earlier, Pakistan does not return refugees to Afghanistan, despite the fact that the country is not a party to the Refugee Convention.

For the Minister for Foreign Affairs,

p.p. van Wulfften Palthe

Director responsible for Movement of Persons, Migration and Consular Affairs