

1215708 [2012] RRTA 1084 (6 December 2012)

DECISION RECORD

RRT CASE NUMBER: 1215708
DIAC REFERENCE(S): CLF2012/153368
COUNTRY OF REFERENCE: Afghanistan
TRIBUNAL MEMBER: Melissa McAdam
DATE: 6 December 2012
PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Afghanistan applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] July 2012.
3. The delegate refused to grant the visa [in] October 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Entry Interview with Departmental Delegate

20. [In] May 2012 the applicant was interviewed by an officer of the Department of Immigration. At the interview he submitted a copy of his Taskera. The Department officer made written notes of the interview and the following is a summary of these notes.
21. The applicant was born in [date deleted: s.431(2)] in [Village 1], Jaghori District, Ghazni Province, in Afghanistan. He lived there all his life until he left Afghanistan in approximately January 2012.
22. The applicant is Hazara and Shia Muslim. He is not married. His father was killed in an [accident] about twelve years ago. His mother, [name deleted: s.431(2)], [sisters], [names deleted: s.431(2)], and his [brother], [name deleted: s.431(2)], live in his village in Jaghori. He has [sisters], [names deleted: s.431(2)] who live in Pakistan. He has another sister, [name deleted: s.431(2)], who lives in [another] village in Jaghori District.

23. The applicant has had no education apart from one year of religious lessons.
24. He worked on his family farm from about 1996 until 2000. From 2000 until January 2012 he had a chicken shop in [Location 2].
25. The applicant left Afghanistan because the Taleban caught him on the roads where he had been selling chickens to the police at check points. The Taleban asked the applicant why he sold chickens to the police. This was in the morning around 7 am when he was coming from an area called [Location 3]. He was in a vehicle with a Pashtun man who was from Ghazni. The Taleban separated him from the Pashtun man and took the applicant to [Location 4]. He was taken to a mosque at night. He escaped from the mosque by saying he had to go to the toilet and running through an open gate. He ran to a road and flagged down a car to take him to [Location 5]. The next day he got a bus back to Ghazni. He feared the Taleban would find and kill him so he sold his car and went to Kabul. From Kabul he travelled to Australia.
26. The Taleban had detained the applicant once before about three months previously. The Taleban had closed the road but the applicant and some others travelled on it. They were stopped by the Taleban and held for two nights.
27. The applicant believes he will be killed if he returns to Afghanistan.

Protection Visa Application

28. The applicant lodged his Protection Visa application [in] July 2012. With his application he submitted copies of his *Taskera* identity card and business records for his chicken business. The following is a summary of the information he provided in his application.
29. He was born in [year deleted: s.431(2)] in [Village 1] in Jaghori District, Ghazni Province, Afghanistan. [Village 1] is south west of [Location 2] and is surrounded by mountains. About [number deleted: s.431(2)] families live there.
30. In about 2000 the applicant's father went to Pakistan for work. He was killed about one year later in an [accident]. The applicant's [relative] then supported the family until the applicant was old enough to support them.
31. The applicant's father had bought two vacant shops in [Location 2]. In [date deleted: s.431(2)] the applicant sold one of the shops and used the money to open a chicken butcher shop, selling chicken meat. The applicant bought live chickens from Ghazni City which he transported to [Location 2]. His workers would then slaughter the chickens to sell in the shop.
32. The applicant also supplied live chickens to some of the shops in other [villages], because the shopkeepers did not have vehicles to go to Ghazni to get the chickens themselves. He was sometimes stopped by thieves who would take his money.
33. Around August 2011 the applicant was travelling from [Location 2] to Ghazni City to buy chickens. There were three other vehicles travelling with the applicant. When they arrived in [Location 6] they were stopped by the Taleban. The Taleban arrested everyone in the vehicles and kept them overnight. The Taleban told them they should not have travelled that way as the road was closed. The applicant and the others apologised and said they didn't know and wouldn't do it again. The Taleban took their details and photos and let them go.

34. About one and a half months later the applicant was again travelling from [Location 2] to Ghazni to buy chickens. A Pashtun man, [Mr A], was with him who was travelling to his home in Ghazni. At about 7.30 in the morning they reached [Location 6] and they were stopped by the Taleban. [Mr A] spoke Pashto to the Taleban. One of the Taleban took the applicant's mobile phone and Taskera and then took the applicant and [Mr A] to a house. At about 10 o'clock the Taleban took [Mr A] somewhere. The applicant was driven by car to a mosque where he was beaten and questioned. The Taleban accused the applicant of supplying chickens to the government.
35. At about midnight the applicant said he had to go to the toilet and he escaped. He got a car to take him to [Location 4] and [Location 5]. From there he got a bus back to Ghazni. He went to the chicken farm and saw his car was there. He found [Mr A] there who told the applicant that he thought the applicant would be killed by the Taleban so he drove the applicant's car back. The Taleban had let [Mr A] go because [Mr A] is Pashtun.
36. The applicant was afraid the Taleban would trace him so he decided to leave. He sold his car in Ghazni and then went to Kabul where he arranged to leave Afghanistan through a people smuggler.
37. He fears he will be killed by the Taleban who have identified him as a shopkeeper who has assisted the government. The Afghan authorities cannot protect him.

Interview with Departmental Delegate, 20 July 2012

38. [In] July 2012 the applicant was interviewed by a delegate of the Department of Immigration. The Tribunal has listened to an audio recording of that interview, summarised below.
39. The applicant confirmed he was a citizen of Afghanistan and no other country. He had an Afghan passport in his own name and photo which was obtained for him by a smuggler.
40. He has [married sisters] living in Pakistan.
41. His home town in Afghanistan is [Village 1]. He has lived there all his life. The names of some surrounding towns or villages are [town names deleted: s.431(2)]. There are about [number deleted: s.431(2)] houses in his village. The nearest bazaar is [Location 2] which is about fifteen minutes' drive from his village.
42. He had submitted documents for his business including the business licence and taxation records. There was no specific procedure for opening a business in Afghanistan. A person goes to the local council and tells them he or she wants to open a business and the council gives the person a licence. The applicant got his licence from [Location 2] council. It cost 300 Afghani. People run businesses without licences in Afghanistan but meat or butcher shops need a licence. The applicant's business name was "[name deleted: s.431(2)]" and this name was on his licence.
43. The applicant explained that the tax documents were not really tax records but more accounting records for his company.
44. The applicant operated his shop seven days a week. He opened the shop around 6 am and closed it when it became dark. He had one other employee to help him who would do the

slaughtering and look after the shop when the applicant went to Ghazni. The applicant's brother also helped him in the shop.

45. The applicant would travel to Ghazni about two times a week to get supplies for his shop. He got his chickens from the one supplier in Ghazni. He would also drive to other villages to sell chickens in the afternoon when it was cooler and less dusty for the chickens.
46. The applicant sometimes supplied chickens to government checkpoints or the garrison in [Location 6]. The garrison is below [Location 3], in the [area deleted: s.431(2)], and the applicant would pass through it on his way to and from Ghazni. Police worked in the garrison and would sometimes buy chickens from him.
47. The applicant had problems with the Taleban on the roads when he travelled. The first time was in August 2011. The [Location 6] road had been blocked because the government checkpoint or garrison had been attacked. Later the mayor told them it was open again and they could travel on it. The applicant was travelling from [Location 2] bazaar to Ghazni City to get chickens and was stopped by the Taleban in the [Location 6] area. They detained him for one night and day. Other cars travelling on the road were also pulled over by the Taleban. The people in the vehicles were all Hazaras and they were all detained overnight.
48. The Taleban asked them all why they were on the road. They told the Taleban they were from different remote areas. The Taleban beat them and took their photos and identity details but let them go. The applicant went on to Ghazni City and returned to [Location 2] via a different route.
49. The most direct route between [Location 2] and Ghazni City takes about five hours. Another route takes about seven hours but there are also Taleban along this route.
50. The next time the Taleban detained the applicant he was travelling from [Location 2] to Ghazni City. A Pashtun man, [Mr A], who is an accountant for the chicken supply company was with the applicant as the applicant was driving him back to Ghazni. They were stopped by the Taleban at [Location 6]. The Taleban took the applicant and [Mr A] to a house and separated them. The applicant was then driven somewhere else about one and a half or two hours' drive away. He was taken into a mosque. It was the middle of the night.
51. The Taleban questioned the applicant about cooperating with the government by supplying them with chickens. The Taleban beat the applicant and said they would kill him. At first there were many Taleban there but later in the night there was only one. The applicant went to the toilet and escaped from there. At dawn he reached [Location 7] bazaar. From [Location 7] bazaar he took a car to the [Location 5] area and from there he got on a bus to Ghazni.
52. In Ghazni the applicant went to the farm where [Mr A] worked to tell them [Mr A] had been captured by the Taleban. When he got to the farm he saw his car and [Mr A] there. [Mr A] told the applicant the Taleban had released him. [Mr A] told the Taleban he was the car's driver and they let him drive away without any hassle.
53. The applicant has had the chicken shop for about two years. Before he had the chicken shop he worked on his father's farm. The applicant started the chicken shop because there was drought which affected the farms. They dig channels for water but there is no water. The drought has lasted for three years and is still getting worse. It is not possible to grow

anything on his land. He couldn't give up the chicken shop and run his farm because of the drought.

54. The applicant needs to carry his Taskera to operate his business and buy supplies but even carrying a Taskera is considered a crime by the Taleban.
55. He has his name tattooed on his arm in case he is ever killed so he can be recognised and someone will tell his family.

Delegate's decision, 4 October 2012

56. The delegate accepted the applicant's claimed identity and that he is a citizen of Afghanistan. He found the applicant was credible and accepted his claims regarding what had happened to him in Afghanistan. He accepted the applicant would be at risk of persecution by the Taleban if he travelled through [Location 6] again in the foreseeable future and that he may be imputed with a pro-government political opinion through selling chickens to the police. He found however that it would be reasonable for the applicant to cease transporting chickens, or to hire a driver to transport the chickens, or to buy chickens locally, or to stop selling chickens and instead sell other goods. He found that if the applicant stopped driving outside of Jaghori he would be safe in Jaghori and so he did not have a well-founded fear of persecution.
57. He was not satisfied there were substantial grounds for believing that, as a necessary and foreseeable consequence of being removed to Afghanistan, there was a real risk the applicant would suffer significant harm.

Review

58. An application for a review of that decision was lodged with the Tribunal [in] October 2012. The applicant was represented in relation to the review by his registered migration agent.

Country Information

59. The Tribunal considered available country information including the information submitted on behalf of the applicant and other information as set out below.

Situation in Jaghori and Ghazni

60. The population of Jaghori district has been estimated at approximately 150,000¹ by an Afghanistan government source, and by a returnee development worker cited by the FIS² at some 250,000 inhabitants. Ethnically, Department of Foreign Affairs and Trade (DFAT) sources have stated that the district is 100% Hazara, but one DFAT source adds that one Jaghouri village is populated mainly by Pashtuns. Jaghori district is surrounded by the districts of Malestan, Navor, Qara Bagh, Moqor and Gilan. Both Moqor and Gilan districts

¹ Provincial Development Plan: Ghazni Provincial Profile' circa 2007, Islamic Republic of Afghanistan: Ministry of Rural Rehabilitation and Development website, p.1.

² Finnish Immigration Service 2009, *The Current Situation in the Jaghori District of Ghazni*, 10 December, p.1.

contain the 'Ibrahim Gilzai Pashtun' group. Jaghori province is also bordered by the 'Argahandab' and 'Daychopan' districts of Zabul province which contains the 'Turan Ghilzai Pashtun' group. The districts surrounding Jaghori to the north, north-east and east have larger Pashtun populations.³

61. The FIS report also states that there are Pashtun enclaves of villages in the border areas⁴. Similarly, the Cooperation for Peace and Unity (CPAU) report, dated April 2009, states that towards the outskirts of Jaghori there are enclaves of villages, called *mahalla*, suburbs or areas of a village occupied by a distinct ethnic group, including Pashtuns.⁵
62. The *Program for Culture & Conflict Studies*, 2010, "Provincial Overview – Ghazni", 18 October, reports that Ghazni has a mixed ethnic population of Hazaras and Pashtuns and the tribal groups include *Ghilzai* and *Kuchi* Pashtuns. The Governor and Deputy Governor of the province at the time of the report were Pashtuns. The source also provides a 2008 map which lists the various tribes that reside in Ghazni province and the districts in which a majority of them inhabit. The map notes that the 'Dai Chopan Hazara', 'Hazara', 'Chahar Dasta Hazara', 'Turan Ghilzai Pashtun' and 'Ibrahim Gilzai Pashtun' and 'Uzbek' tribes inhabit Jaghori province.
63. Economically, agriculture is the main income source in Jaghori district.⁶ Agricultural production includes wheat, potatoes, onions and walnuts. Villages are also engaged in handicrafts.⁷
64. The FIS report states that Jaghori is a somewhat secure area, where the Taliban is not able to effectively act but shows an interest in disrupting the district.⁸ FIS reports that the main problem for Jaghori is getting in and out of it and the Taliban has focussed on the Qarabagh to Jaghori road. Sources cited by DFAT in February 2009 also refer to the main road from Jaghori to Ghazni city through Qarabagh as appearing to be the insurgents' main focus.⁹
65. The CPAU¹⁰ states that, despite the pervasive influence of the Taliban in Ghazni province, the Taliban remains on the outskirts of Jaghori and do not control the district. The CPAU report concludes, however, that the Taliban has an influence in Jaghori with its attacks on education in other areas of Ghazni and attacks on the Kabul-Kandahar highway preventing aid and development projects reaching the district. CPAU also reported there is an extremely low government presence in the district.

³ DIAC Country Information Service 2009, *Country Information Report No. 09/14 – CIS Request No. AFG 9509; Situation for Hazaras in Ghazni, Uruzgan and Dai Kundi Provinces*, (sourced from DFAT advise of 2 February 2009), 3 February.

⁴ Finnish Immigration Service 2009, *The Current Situation in the Jaghori District of Ghazni*, 10 December, p.1.

⁵ Cooperation for Peace and Unity (CPAU) 2009, *Conflict analysis: Jaghori and Malistan districts, Ghazni province*, April, p.10.

⁶ Finnish Immigration Service 2009, *The Current Situation in the Jaghori District of Ghazni*, 10 December, p.1.

⁷ Provincial Development Plan: Ghazni Provincial Profile' circa 2007, Islamic Republic of Afghanistan: Ministry of Rural Rehabilitation and Development website.

⁸ Finnish Immigration Service 2009, *The Current Situation in the Jaghori District of Ghazni*, 10 December, p.3.

⁹ DIAC Country Information Service 2009, *Country Information Report No. 09/14 – CIS Request No. AFG 9509; Situation for Hazaras in Ghazni, Uruzgan and Dai Kundi Provinces*, (sourced from DFAT advise of 2 February 2009), 3 February, para.R.2.

¹⁰ Cooperation for Peace and Unity (CPAU) 2009, *Conflict analysis: Jaghori and Malistan districts, Ghazni province*, April.

66. A March 2012 Department of Foreign Affairs and Trade (DFAT) update on the Hazara community in Afghanistan notes that '[s]ecurity in Ghazni had deteriorated in the past six months'. It adds that '[c]urrently the situation was stable – winter was traditionally a quieter period with less fighting' and that 'violence would likely pick up in the spring', noting that this 'applied across the province'. With reference to Jaghori district the report noted that '[v]iolence was not noticeably worse in the predominantly Hazara districts (Jaghatu, Nawr, Jaghori, Malistan)'. It noted that 'the Hazara community did not face systemic violence or an existential threat'.¹¹

67. Recent reports from the Afghanistan NGO Safety Office (ANSO) note ongoing attacks by insurgent groups in Ghazni throughout 2011 and 2012.¹² The ANSO report, covering the period 1-14 April 2012, provides the following information on security incidents in Ghazni:

Incident levels continue to rise, primarily as AOG [Armed Opposition Groups] in the province are markedly more active and IMF/ANSF [International Military Forces / Afghan National Security Forces] operations take on a higher tempo to combat this trend. Beyond the numerical increase, however, the incident profile remained much the same as in previous reports, with a variety of direct and indirect attacks targeting patrols, check posts and most prominently DACs [District Administrative Centre].¹³

68. According to a 7 October 2011 IHS Jane's report on Afghanistan, Ghazni province ranked 4th for insurgent attacks between the period 1 July 2010 and 30 June 2011, below Helmand, Kandahar and Nangarhar provinces.¹⁴ According to the ANSO fourth quarterly data report for 2011 Ghazni had the second highest number of armed opposition group attacks of any province for that calendar year.¹⁵

69. The most recent UNHCR eligibility guidelines for assessing the international protection needs of asylum seekers in Afghanistan provides an overall security assessment highlighting that 'in light of the worsening security environment in certain parts of the country and increasing number of civilian casualties, UNHCR considers that the situation can be characterised as of generalised violence in Helmand, Kandahar, Kunar and parts of Ghazni and Khost provinces'.¹⁶

70. The US Department of State's (USDOS) 2011 Country Report on Human Rights for Afghanistan notes that nomads reportedly attacked and burned 27 Hazara villages in April 2011. A June 2011 report of that attack from the *Hazara People* website states that 'hundreds of armed Kuchis (nomads) attacked Nahur district of Ghazni Province, looting and burning down 26 villages and killing five people'. The report adds:

According to a member of Ghazni Provincial Council, some days ago Taliban in coordination with Kuchis, blow up the mobile phone antenna towers, so that people of the area do not report

¹¹ Department of Foreign Affairs and Trade 2012, Afghanistan – Hazara Community Update, 12 March.

¹² Afghanistan NGO Safety Office 2011, 'Quarterly Data Report Q.4 2011'; Afghanistan NGO Safety Office 2012, 'ANSO Report – Issue 89, 1-15 January; Afghanistan NGO Safety Office 2012, 'ANSO Report – Issue 90, 16-31 January; Afghanistan NGO Safety Office 2012, 'ANSO Report – Issue 91', 1-15 February; Afghanistan NGO Safety Office 2012, 'ANSO Report – Issue 92', 16-29 February; Afghanistan NGO Safety Office 2012, 'ANSO Report – Issue 93', 1-15 March; Afghanistan NGO Safety Office 2012, 'Quarterly Data Report Q.1 2012', March; Afghanistan NGO Safety Office 2012, 'ANSO Report – Issue 94', 16-31 March.

¹³ Afghanistan NGO Safety Office 2012, 'ANSO Report – Issue 95', 1-14 April.

¹⁴ IHS Jane's 2011, *Afghanistan: An IHS Jane's Special Report*, 7 October, p.14.

¹⁵ Afghanistan NGO Safety Office 2011, 'Quarterly Data Report Q.4 2011'.

¹⁶ UN High Commissioner for Refugees, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 17 December 2010, HCR/EG/AFG/10/04, UNHCR Refworld.

the incident and call for help from outside the district. Zorawar Zahid, Police Chief of Ghazni while talking to the Outlook Afghanistan confirmed the attacks and said Police has [sic] sent deployment to the area, and help has been asked from Police in Jaghori and Qarabagh districts.¹⁷

71. Professor William Maley of the Australian National University has written extensively on the risk of persecution for Hazaras in Afghanistan. In relation to the situation in Ghazni, he writes:

Many asylum seekers in Australia have come from the province of Ghazni. The Taliban are now extremely active in large parts of Ghazni. As early as 20 May 2003, it was described by Todd Pitman in an Associated Press despatch as ‘a hotbed of suspected Taliban activity southwest of Kabul’. The former governor was assassinated in 2006, and an analysis in April 2006 concluded that ‘A fierce Taleban led insurgency in recent months has placed Ghazni, which lies just 135 km south of Kabul, among the most volatile provinces in southern Afghanistan’: Borhan Younus, Taleban Call the Shots in Ghazni (Kabul: Afghan Recovery Report no.213, Institute for War and Peace Reporting, 25 April 2006). The situation since then has become even worse (see Christoph Reuter and Borhan Younus, ‘The Return of the Taliban in Andar District: Ghazni’, in Antonio Giustozzi (ed.), *Decoding the New Taliban: Insights from the Afghan Field* (London: Hurst & Co., 2009) pp.101-118).

... No part of Ghazni can realistically be considered safe for Hazaras, even in districts where they might seem numerically predominant. Most disturbingly, a June 2010 study by the highly regarded Afghanistan Analysts Network warns of a risk to these areas: ‘The Taleban successfully have infiltrated Northern and Northeastern Afghanistan and destabilised certain areas, mainly in Kunduz province. Now, there are signs that they might attempt to push forward into mainly Hazara-settled areas [in] the central region. The main road into Jaghori, an important Hazara area, has been blocked raising fears of a new economic blockade or event an attack’ (Thomas Ruttig, *A New Taliban Front?*(Kabul: Afghanistan Analysts Network, 18 June 2010)).

... Finally, travel for Hazaras remains extremely dangerous, and claims that roads are ‘open’ need to be treated with great caution. On 3 December 2011, I received the following observation from a very highly respected Kabul-based observer: ‘Dozens of Hazaras have been killed or abducted and never heard of while travelling between Ghazni and Jaghuri and also through Wardak province to Behsud and Bamyan. Ghulam Hussain Naseri, a Hazara member of parliament from Behsud, reported on November 10 that 10 Hazaras were forced off vans and buses going to the Hazarajat in Wardak and killed in dreadful manners in front of other travelers during the preceding 10 days’¹⁸

72. The BBC Monitoring Service article, 2011, “Afghan MPs express concerned about transition in insecure Ghazni Province”, 27 November, reports:

The Afghan government is expected to start the second phase of transfer of security responsibility from the NATO troops to the Afghan forces. One of the provinces selected for the transition of security responsibility is the insecure Ghazni Province. MPs from Ghazni say 13 among the 18 districts of the province are completely insecure and the transition process in these districts is impossible. They warn that the security situation will be worse if transition process takes place in the province.

¹⁷ Daiyar, A 2011, ‘Armed Kuchis Burn 26 Villages, Kill 5 in Ghazni, *Hazara People International Network*, 19 June, <<http://www.hazarapeople.com/2011/06/19/armed-kuchis-burn-26-villages-kill-5-in-ghazni/>> Accessed 27 June 2012.

¹⁸ Maley, William. 2011, ‘On the Position of the Hazara Minority in Afghanistan’, 7 December <<http://bmrsg.org.au/wp-content/uploads/2011/10/Maley-Hazaras-Opinion-Updated2.pdf>> Accessed 18 July 2012 (\\NTSSYD\REFER\Research\2012\Web\AFG On the Position of the Hazara Minority in Afghanistan.pdf)

A former MP from Ghazni Province Khyal Mohammad Hosseini says in the current situation, Ghazni has the worst situation among other Afghan provinces and it is the most insecure province. He says with the foreign military pullout from the province, residents of Ghazni would not be able to live in peace and security even for one day.

According to Mr Hosseini, Ajrestan District is under Taleban control and the routes to Jaghuri and Malestan districts are blocked now. He says: the government has no control over districts of Ghazni where Pashtuns reside and the security of centre of Ghazni Province is not guaranteed. Therefore, how the transition process would be implemented there.

Mr Hosseini says the people of Ghazni Province are in a bad condition, as they are not with Taleban but cannot cut relations with the Taleban. He adds the government has no presence in districts, particularly in the insecure districts to defend the people. According to Mr Hosseini, the Taleban's control over Ghazni Province is in a way that it seems the province has been transferred to the Taleban before being shifted to the government forces.

... Now, five districts of Ghazni appear secure, but these districts are also surrounded by the insecure districts and their residents are unhappy with the situation. Now, Jaghuri, Malestan and Nawar are the secure districts of Ghazni, but residents of these districts need to pass Qarebagh and Gilan districts. Over the past 10 years, tens of vehicles have been stolen on Qarebagh road and the Taleban usually block the routes to these districts. The Afghan national army and police forces, government employees and personnel of non-governmental organizations cannot pass these routes.

73. The CPAU report¹⁹ includes the following:

Relations between the predominantly Pashtun Taliban and the Hazara continued to deteriorate with a number of alleged killings and reprisal attacks by both groups in the Hazarajat and northern Afghanistan .

... Towards the outskirts of Jaghori are other communities including Pashtuns who occupy enclaves of villages called occupied by a distinct ethnic group... The Taliban is also infiltrating the outskirts of this region, including in the border areas of Jaghori district where villages are home to both Hazara and Pashtun communities. They have also established their presence in the ethnically mixed district of Qarabagh, neighbouring Jaghori.

... Reports indicate that due to this difficulty the Taliban have had in penetrating Hazara areas they are to some extent actively fuelling tensions between Hazara and Pashtun communities in Ghazni in an attempt to further their control by making inter-community relations volatile and fragile. This tactic of dividing communities in regions they seek to control is one employed successfully by the Taliban as they extended their reach across the country in the 1990's ...

Developments in Taliban tactics over the past two years include an increased reliance on suicide and roadside attacks, and the exploitation of existing ethnic and cultural tensions to divide communities in regions, thus facilitating Taliban infiltration and control by weakening established social and leadership structures. This approach is exemplified by reported attacks on parts of Jaghori which have included killing key community figures' family members, kidnappings, and killing Hazara labourers from Jaghori working in nearby Pashtun areas.

General situation for Hazaras

¹⁹ Cooperation for Peace and Unity (CPAU) 2009, *Conflict analysis: Jaghori and Malistan districts, Ghazni province*, April.

74. The 2011 US Department of State (USDOS) report on *Human Rights Practices* released in May 2012, notes for Afghanistan that “societal discrimination against Shia Hazaras continued along class, race, and religious lines in the form of extortion of money through illegal taxation, forced recruitment and forced labor, physical abuse and detention”.²⁰
75. Of Hazaras, Kazem-Stojanovic noted that they were “[a]lways more at risk because their ethnicity can be observed by their facial features. ...[T]his makes them susceptible to violent attacks on a daily basis and widespread daily discrimination. Their accent is also very easily identifiable which puts them at greater risk when moving around the country”. She went on to say that Hazaras were “more at risk than other ethnic groups” in Afghanistan. They were “treated more violently” and were “more at risk of death when involved in confrontations with Taleban or other militia forces”, apart from where Hazara militias had control. She stated that Hazaras were “likely to be attacked or killed by Taleban at checkpoints” Majority-Hazara areas were considered relatively safe but Hazaras were at risk outside these, currently shrinking, safe areas. They had “no safe passage”. Their movements were limited because of the danger of travelling, for example, to market. Such protection as there was in predominantly Hazara areas was afforded by a local warlord, a protection which she suggested was unreliable.²¹
76. In March 2012, DFAT provided an update on the Hazara community in Afghanistan which drew upon advice from range of government and non-government sources that found:
- Hazaras continued to face societal discrimination in Afghanistan. But the community was not being persecuted on any consistent basis. Hazaras considering emigration were principally influenced by long-term economic considerations rather than any immediate risk of persecution. The group did not face systemic violence or any existential threat. Limited employment and advancement opportunities also inhibited returning refugees. But there were no significant protection issues for returnees.²²
77. The growing religious and political influence of the Hazara community in Afghanistan was also noted by the United States Commission on International Religious Freedom (USCIRF). In its 2012 report on religious freedom the USCIRF stated that:
- Hazara Shi‘a Muslims participate fully in public life, including in parliament and in senior positions in the Karzai government. Fifty-nine of 249 parliamentary seats are held by Hazara Shi‘a Muslims.²³
78. The DFAT update also notes that Hazaras have become politically active in Afghan society with 20 percent of the lower house of the national assembly occupied by Hazaras - a relatively high proportion for a community who made up an estimated 10 per cent of the total population, and the recent nomination of two Hazara ministers to President Karzai's Cabinet.²⁴
79. In contrast to this advice, Professor William Maley claimed in a paper dated 7 December 2011 that Hazaras in Afghanistan continue to experience abuse. Professor Maley maintained

²⁰ US Department of State 2012, *Afghanistan: Country Reports on Human Rights Practices 2011*, 24 May Sec.6.

²¹ Kazem-Stojanovic, H. Researcher, Asia Pacific Programme, Amnesty International, International Secretariat, Presentation to IMR, Sydney, 8 October 2010.

²² Department of Foreign Affairs and Trade 2012, *Hazara Community Update*, 12 March

²³ United States Commission on International Religious Freedom 2012, *Annual Report 2012*, p.287

[http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)

²⁴ Department of Foreign Affairs and Trade 2012, *Hazara Community Update*, 12 March

that security assessments by DFAT and non-government agencies such as the United Nations High Commissioner for Refugees (UNHCR) tended to under report the scale of abuse experienced by Hazaras due to the danger of conducting first hand field research. According to Professor Maley positive assessments of security for Hazaras in 2009 and 2010 “are suspect in the light of more recent developments” and he argued that this is particularly the case for Hazaras living in Ghazni province and Kabul.²⁵

80. DFAT has reported that Hazaras are subjected to greater scrutiny than members of other ethnic groups when detained at checkpoints or ambushes on these roads, and noted that if detained by Pashtun criminals rather than Taleban, they had less ability to negotiate a safe release than members of other ethnic groups.²⁶
81. Recent news articles reported the capture and killing of five Hazaras in Ghazni Province by the Taleban in October. Radio Free Europe/Radio Liberty, 2012, “Five civilians gunned down in east Afghanistan”, 27 October, reported:

Reports from Afghanistan say five civilians travelling in a bus in the eastern province of Ghazni have been shot dead. Provincial officials said Taleban militants stopped the bus on October 26 in the Andar district, pulled out five people, and killed them on the spot. Police recovered the bodies on October 27 from the roadside. Deputy Governor Mohammad Ali Ahmadi said the five dead were from the ethnic Hazara minority.

Relocation within Afghanistan

82. The most recent UNHCR eligibility guidelines provide the following information regarding relocation:

The traditional extended family and community structures of Afghan society continue to constitute the main protection and coping mechanism. Afghans rely on these structures and links for their safety and economic survival, including access to accommodation and an adequate level of subsistence. Furthermore, the protection provided by families and tribes is limited to areas where family or community links exist. As documented in studies on urban vulnerability, the household and the extended family remain the basic social network in Afghanistan and there are indications that existing traditional systems of sharing and redistribution are less effective in the extended urban family. It is, therefore, unlikely that Afghans will be able to lead a relatively normal life without undue hardship upon relocation to an area to which he or she is not fully protected by his/her family, community or tribe, including in urban areas of the country. This is particularly true for unaccompanied women and children, and women single head of households with no male protection. In addition, relocation may also be unavailable for ethnic groups to areas where they would constitute a minority.²⁷

83. The UNHCR’s 2012 *Country Operations Profile* for Afghanistan indicates that the situation for returnees is severely hampered by ongoing security concerns. The report states:

Insecurity, political instability and economic and social problems are likely to continue in 2012 and may increase as international forces transfer security responsibilities to national partners.

²⁵ Maley, W 2011, ‘On the Position of the Hazara Minority in Afghanistan’, 7 December
<<http://bmrsg.org.au/wp-content/uploads/2011/10/Maley-Hazaras-Opinion-Updated2.pdf>

²⁶ CX246263: AFGHANISTAN: Situation in Ghazni Province - views of Member of Parliament: 15 July, 2010; CX272986 AFGHANISTAN: Road security in Ghazni., 21 September, 2011.

²⁷ UN High Commissioner for Refugees, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 17 December 2010, HCR/EG/AFG/10/04, UNHCR Refworld, p.39.

Military operations, including those in response to violent incidents and armed fighters, may cause further displacement. Efforts to access and provide immediate and timely humanitarian assistance to the newly displaced may be hampered by insecurity. Currently, the UN has direct access to less than half the country. Though UNHCR has put in place innovative measures to expand its reach, including through partners, access to people of concern remains precarious. UNHCR will continue to review its operational environment to ensure staff safety and security. Appropriate mitigation measures may have significant resource implications.

Sustainable reintegration is facing new challenges as competition for land, water, natural resources and employment grows sharper. Access to employment is frequently constrained by the lack of social and economic networks. Moreover, the overwhelming development needs in the country make it increasingly difficult for UNHCR to secure sufficient resources to support returning refugees.²⁸

84. An April 2012 article from the Danish Refugee Council (DRC) describes returning Afghan refugees settling in slum like conditions with little to no resources or assistance. The report states:

Most of the returnees end up in one of the rapidly growing tent- and mud house settlements, alongside a quarter million internally displaced (IDPs) Afghans, who are also trying to make a living in the urban slum areas. "The returning Afghans have nothing to return to. There are no schools, no access to medical aid, no water. They live in mud houses and sleep directly on the ground. Children are freezing to death as a consequence of their miserable living conditions," says Ann Mary Olsen, head of the international department of the Danish Refugee Council (DRC) after visiting the settlements in Kabul.²⁹

85. The 2012 DFAT Hazara community update notes that '[n]one of our contacts considered there were significant protection issues for returnees - although returning was considered a failure and therefore not spoken of widely in communities'. It also noted that 'Hazaras outside of the Hazarajat were more vulnerable and avoided travel outside their immediate communities',³⁰

Kabul

86. Many Afghans return or relocate to Kabul due to their concerns about security or economic prospects in other parts of Afghanistan.³¹ In six years, Kabul experienced a three-fold increase of its population, from 1.5 million in 2001 to 4.5 million in 2007, and estimates reaching over 5 million people today.³²
87. There are, according to commentators in Kabul, different factors affecting an internally displaced person (IDP)'s ability to settle down in Kabul, including his or her resources, network in the city and job opportunities. Commentators stress that support mechanisms such

²⁸ UNHCR 2012, *Country Operations Profile – Afghanistan*, <<http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486eb6>> Accessed 5 July 2012.

²⁹ Danish Refugee Council 2012, *Afghan refugees return to absolutely nothing*, 13 April

³⁰ Department of Foreign Affairs and Trade 2012, *Afghanistan – Hazara Community Update*, 12 March.

³¹ Metcalfe, V, Haysom, S & Martin, E 2012, *Sanctuary in the city? Urban displacement and vulnerability in Kabul*, HPG Working Paper, June, pp.1,7 <<http://www.odi.org.uk/resources/docs/7722.pdf>> Accessed 10 October 2012; also Majidi, N. 2011, 'Urban Returnees and Internally Displaced Persons in Afghanistan', *Middle East Institute & Foundation pour la Recherche Strategique*, 25 January, pp.7-8, Refugee Cooperation website <http://www.refugeecooperation.org/publications/afghanistan/pdf/01_majidi.pdf> Accessed 17 November 2011

³² Majidi, N. 2011, 'Urban Returnees and Internally Displaced Persons in Afghanistan', *Middle East Institute & Foundation pour la Recherche Strategique*, 25 January, p.1, Refugee Cooperation website <http://www.refugeecooperation.org/publications/afghanistan/pdf/01_majidi.pdf> Accessed 17 November 2011

as social networks, ethnic communities and extended family links are crucial for the prospects of integration and security in Kabul and they have an impact on people's access to employment and food security.³³ Most people live within their own ethnic groups. People who do not have social networks will have difficulties as there is no support from the government.³⁴

88. The IOM in Kabul advised that since Kabul is now such a large city, it may be difficult for a single person to establish his own new networks, but since all ethnic groups have their own communities in Kabul, young men will usually be able to find their own ethnic community when they come to the city.³⁵ The ethnic community tends to integrate the newcomers within the group and provide protection for them.³⁶ The International Police Coordination Board (IPCB) has also stated that it is easier to hide in a city of five million people than in a local village.³⁷
89. Regarding the security situation in Kabul, the city is relatively safe compared to the provinces, according to various sources interviewed by the Danish Immigration Service in 2012.³⁸ UNHCR in Kabul advised that "in general Kabul could be an option for safety, but to what extent the city could be a safe place for a person fleeing a conflict depends on the profile of the person and the nature of the conflict the person has fled from."³⁹ DFAT has noted that "there is a cohesive Hazara community in Kabul, and a Hazara human rights contact assessed that it would be relatively easy for new arrivals to integrate into the city, where they can move freely."⁴⁰
90. A recent study, however, foreshadows possible law and order problems in Kabul when most of the international forces leave in 2014:

As the transition to full Afghan security authority progresses, tensions over land and resources, social problems, including crime, drug addiction and unemployment, and the widespread

³³ Danish Immigration Service 2012, *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process: Report from Danish Immigration Service's fact finding mission to Kabul, Afghanistan, 25 February to 4 March*, May, p.10

³⁴ Danish Immigration Service 2012, *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process: Report from Danish Immigration Service's fact finding mission to Kabul, Afghanistan, 25 February to 4 March*, May, p.10

³⁵ Danish Immigration Service 2012, *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process: Report from Danish Immigration Service's fact finding mission to Kabul, Afghanistan, 25 February to 4 March*, May, p.10

³⁶ Danish Immigration Service 2012, *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process: Report from Danish Immigration Service's fact finding mission to Kabul, Afghanistan, 25 February to 4 March*, May, p.10

³⁷ Danish Immigration Service 2012, *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process: Report from Danish Immigration Service's fact finding mission to Kabul, Afghanistan, 25 February to 4 March*, May, p.10

³⁸ Danish Immigration Service 2012, *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process: Report from Danish Immigration Service's fact finding mission to Kabul, Afghanistan, 25 February to 4 March*, May, p.6

³⁹ Danish Immigration Service 2012, *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process: Report from Danish Immigration Service's fact finding mission to Kabul, Afghanistan, 25 February to 4 March*, May, p.6

⁴⁰ Department of Foreign Affairs and Trade (DFAT) 2010, *Country Information Report No. 10/60 – CIS Request No. AFG10736: The Hazara*, (sourced from DFAT advice of 28 September), 29 September

disaffection and marginalisation of the urban poor – all in the very heart of the capital – present a major challenge to long-term security and stability in Afghanistan.⁴¹

91. According to the Ministry of Refugees and Repatriation in Kabul, the main problem in Kabul is employment for people coming from the provinces or returning from abroad.⁴² The Afghan Independent Human Right Commission has pointed out that the employment rate is very low in Afghanistan: 36 % of the workforce is unemployed and another 36 % is earning less than one dollar a day. Kabul has a relatively better employment rate, but people coming from the provinces or returning from abroad will have difficulties in finding sustainable jobs.⁴³ DFAT agrees that there are limited employment opportunities for returnees as well as a perception of discrimination against Hazaras.⁴⁴
92. In November 2011, *IRIN News* noted that refugees were discouraged from returning to Afghanistan by the “lack of opportunities for livelihoods and shelter” and “insecurity in some parts of the country”, as well as “[a] lack of clinics, drinking water and poor education facilities in their places of origin”.⁴⁵ In February 2012, *IRIN News* reported that “[m]any returnees end up living in informal settlements or begging on the street”.⁴⁶ In relation to Hazara returnees to Afghanistan, DFAT stated in March 2012 that “[l]imited employment and advancement opportunities also inhibited returning refugees”.⁴⁷
93. In Kabul, housing is expensive meaning that many arrivals are forced to live in extremely bad conditions either in tents or mud houses and have done so for the last 8-10 years.⁴⁸ According to the Danish Refugee Council in Kabul, the Afghan authorities do not seem to be willing to provide any help in the informal settlements mainly because the government want these people to go back to their areas of origin.⁴⁹
94. Approximately 80% of Kabul’s population is estimated to reside in unplanned informal settlements covering 69% of the city’s residential land. It is estimated that Kabul’s population is growing at an estimated 150,000 people per year. The informal settlements generally lack safe water, sanitation, transportation, schools, health clinics, electricity, and other facilities

⁴¹ Metcalfe, V, Haysom, S & Martin, E 2012, *Sanctuary in the city? Urban displacement and vulnerability in Kabul*, HPG Working Paper, June, p.2 <<http://www.odi.org.uk/resources/docs/7722.pdf>> Accessed 10 October 2012

⁴² Danish Immigration Service 2012, *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process: Report from Danish Immigration Service’s fact finding mission to Kabul, Afghanistan, 25 February to 4 March*, May, p. 13

⁴³ Danish Immigration Service 2012, *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process: Report from Danish Immigration Service’s fact finding mission to Kabul, Afghanistan, 25 February to 4 March*, May, p. 13

⁴⁴ DIAC Country Information Service 2010, *Country Information Report No. 10/60 – AFG10736: The Hazara*, (sourced from DFAT advice of 28 September 2010), 29 September

⁴⁵ ‘Numbers of returnees down’ 2011, *IRIN News*, 9 November <<http://www.irinnews.org/Report/94174/AFGHANISTAN-Numbers-of-returnees-down>> Accessed 6 August 2012

⁴⁶ ‘Bracing for mass evictions from Pakistan’ 2012, *IRIN News*, 27 February <<http://www.irinnews.org/Report/94959/AFGHANISTAN-Bracing-for-mass-evictions-from-Pakistan>> Accessed 6 August 2012

⁴⁷ Department of Foreign Affairs and Trade 2012, *Hazara Community Update*, 12 March

⁴⁸ Danish Immigration Service 2012, *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process: Report from Danish Immigration Service’s fact finding mission to Kabul, Afghanistan, 25 February to 4 March*, May, p. 12

⁴⁹ Danish Immigration Service 2012, *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process: Report from Danish Immigration Service’s fact finding mission to Kabul, Afghanistan, 25 February to 4 March*, May, p. 12

and services.⁵⁰ Accordingly, the arrival of displaced populations had increased pressure on local infrastructure and city services, while the issue of the right to land in informal settlements had led to heightened tensions and confrontation.⁵¹

95. The June 2012 Afghanistan NGO Safety Report⁵² had information of an attack by anti-government militants on a Kabul hotel in which fifteen civilians were killed. Other security incidents in Kabul during 2012 reportedly include:

- People killed and injured after protests spread over the burning of copies of the Koran at a US airbase⁵³
- Two senior US officers were shot dead in the interior ministry building in Kabul. The Taliban said in a website statement that it carried out the attack in response to the Koran burnings.⁵⁴
- The Taliban mounted a co-ordinated attack on NATO's headquarters and the Afghan parliament in April. Three civilians were killed and 65 injured.⁵⁵
- At least seven people were killed at a guesthouse used by international organizations in an attack by Taliban militants, shortly after a surprise visit to Afghanistan by U.S. President Barack Obama.⁵⁶
- The Mullah Dadullah Front, an extremist militant group that operates mainly out of southern Afghanistan claimed responsibility for the assassination of Arsala Rahmani, a former Taliban official who had become an influential member of the Afghan High Peace Council.⁵⁷
- Five insurgents believed to have been planning attacks in central Kabul were killed in a gun battle.⁵⁸
- A teenage suicide bomber killed at least six people near the headquarter of the Nato-led international coalition (Isaf) in Kabul. A number of children were among the dead.⁵⁹

⁵⁰ Macdonald, I. 2011, 'Landlessness and Insecurity: Obstacles to Reintegration in Afghanistan', *Middle East Institute & Foundation pour la Recherche Strategique*, 9 February, pp.6-7, Refugee Cooperation website <http://www.refugeecooperation.org/publications/afghanistan/pdf/04_macdonald.pdf> Accessed 2 Oct 2012

⁵¹ Majidi, N. 2011, 'Urban Returnees and Internally Displaced Persons in Afghanistan', *Middle East Institute & Foundation pour la Recherche Strategique*, 25 January, p.10, Refugee Cooperation website <http://www.refugeecooperation.org/publications/afghanistan/pdf/01_majidi.pdf> Accessed 17 Nov 2011

⁵² ANSO Report, 2012, Issue 100, 16-30 June, [http://www.ngosafety.org/store/files/The%20ANSO%20Report%20\(16-30%20June%202012\).pdf](http://www.ngosafety.org/store/files/The%20ANSO%20Report%20(16-30%20June%202012).pdf)

⁵³ BBC News: Four die in Afghanistan Koran burning protests, 22 February 2012 <http://www.bbc.co.uk/news/world-asia-17123464>

⁵⁴ BBC News: Nato pulls out of Afghan ministries after Kabul attack, 25 February 2012 <http://www.bbc.co.uk/news/world-asia-17165410>

⁵⁵ Guardian: Taliban launches largest attack on Kabul in 11 years, 15 April 2012 <http://www.guardian.co.uk/world/2012/apr/15/Taliban-largest-attack-kabul>

⁵⁶ RFE/RL - Radio Free Europe/Radio Liberty: NATO Says Repels Attack By Burkha-Clad Insurgents On Kabul Base, 2 April 2011

⁵⁷ RFE/RL - Radio Free Europe/Radio Liberty: Rogue Afghan Insurgent Group Enters Political Scene, 22 May 2012.

⁵⁸ BBC News: 'Five insurgents killed' in Kabul gun battle, 2 August 2012 http://www.bbc.co.uk/news/world-asia-19090416#sa-ns_mchannel=rss&ns_source=PublicRSS20-sa

- Afghan militants claimed responsibility for a suicide car-bomb attack near the international airport in Kabul that killed 12 people, including at least eight foreigners. Another 11 Afghan civilians were reportedly wounded.”⁶⁰

State protection

96. Sources indicate that Afghan security forces struggle to provide effective state protection in Afghanistan, including in Ghazni Province. Attacks by insurgent groups are consistent and widespread with security forces themselves often the target of attacks.
97. Nationally, state protection is said to be compromised by corruption, ineffective governance, a culture of impunity, a weak rule of law and a widespread reliance on traditional dispute resolution.⁶¹ Official impunity and lack of accountability were pervasive, as were abuses of power by unofficial, traditional militias. There was limited independent, judicial, or external oversight of security and police organisations, and of crimes or misconduct committed by security and police officials, including torture and abuse.⁶² Concerns also exist regarding the loyalty and cohesion of the ANP with recruitment driven by factional, ethnic and partisan connections, particularly in Afghanistan’s Northern provinces.⁶³ The International Crisis Group reported that the Taleban had taken advantage of the corruption in the Afghan security agencies and infiltrated entire units of the police and army in central eastern provinces such as Kabul.⁶⁴
98. The US Department of State’s 2011 Country Report on Human Rights for Afghanistan notes that attacks by the Taleban and other insurgent groups continue unabated and that abuses of power by Government authorities are widespread. The report states:

The Taleban and other insurgents continued to kill record numbers of civilians, using improvised explosive devices, car bombs, and suicide attacks. The Taleban increasingly used children as suicide bombers. Antigovernment elements also threatened, robbed, and attacked villagers, foreigners, civil servants, and medical and nongovernmental organization (NGO) workers. In some areas insurgents maintained considerable power as a result of the government’s failure to assert control.

Official impunity and lack of accountability were pervasive, as were abuses of power by unofficial, traditional militias. Unofficial militias reportedly beat, robbed, and killed rural dwellers with impunity. Observers believed that ALP and ANP personnel were largely unaware of their responsibilities and defendants’ rights under the law. According to UNAMA, accountability of NDS and ANP officials for torture and abuse was weak, not transparent, and rarely enforced. There was limited independent, judicial, or external oversight of the NDS and

⁵⁹ BBC News: Kabul attack: Bomber kills children near Nato base, 8 September 2012

http://www.bbc.co.uk/news/world-asia-19528417#sa-ns_mchannel=rss&ns_source=PublicRSS20-sa

⁶⁰ RFE/RL - Radio Free Europe/Radio Liberty: 12 Killed In Afghan Suicide Bombing, 18 September 2012.

⁶¹ UK Home Office 2012, *Operational Guidance Note – Afghanistan*, 20 February, p.3

<http://www.unhcr.org/refworld/pdfid/4f43788a2.pdf> Accessed 2 August 2012

⁶² US Department of State 2012, *Country Reports on Human Rights Practices 2011 – Afghanistan*, 24 May, Section C <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>> Accessed 23 Aug 2012

⁶³ Institute for War and Peace Reporting 2012, *Doubts Over Afghan Police Loyalties*, 17 February, UNHCR Refworld <<http://www.unhcr.org/refworld/country,,IWPR,,AFG,,4f4396b62,0.html>> Accessed 28 March 2012

⁶⁴ Rondeaux, C 2011, *The Growing Danger in Kabul*, 29 June, International Crisis Group <<http://www.crisisgroup.org/en/regions/asia/south-asia/afghanistan/growing-danger-in-kabul.aspx>> Accessed 24 August 2012

ANP as institutions, and of crimes or misconduct committed by NDS and ANP officials, including torture and abuse.⁶⁵

99. The UN Assistance Mission to Afghanistan (UNAMA) report mentioned above notes the following regarding the performance on Afghan local police:

With the start of transition in 2011, Afghan and international military forces relied increasingly on the Afghan Local Police (ALP) to fill gaps in securing rural and remote areas of the country. ALP units have been formed in specific districts where the Afghan National Police or Afghan National Army were not present in sufficient numbers to adequately secure local communities and comprise individuals recruited locally to provide security within a limited geographic area. Costing considerably less to train and maintain than Afghan National Police or Afghan National Army recruits, the ALP numbers 11,066 in 57 districts with the Ministry of Interior authorized to recruit up to 30,000 in 99 districts. According to the International Security Assistance Force in Afghanistan (ISAF), the ALP provides an “enduring physical security presence that operates with local support and national approval and oversight,” is a “key piece in the comprehensive joint Afghan-ISAF counter-insurgency effort”, and “part of the wider Afghan-ISAF security network.”

Throughout 2011, UNAMA received mixed reports on the performance of the ALP and their impact on civilian protection. At year’s end, most interlocutors reported improved security in areas where the ALP operated. Concerns persisted however regarding recruitment of known human rights abusers into the ALP in some areas and inadequate vetting, training, command and control, accountability and oversight.³³ UNAMA documented inappropriate influence by local power brokers in the recruitment and conduct of ALP members in some areas, ALP commanders imposing illegal taxes on some communities in Paktika and Kunduz provinces, and forced recruitment of local residents including children in some districts in Paktika, Farah and Uruzgan provinces. UNAMA received reports of murder, rape, violence and intimidation by ALP forces in Kunduz, Baghlan and Sari-Pul provinces and displacement of civilians in Uruzgan and Sari-Pul provinces caused by ALP abuses.⁶⁶

100. The 2011 IHS Jane’s report notes that Afghan security forces are unable to ensure government control over much of the country. It states:

[E]arly to mid 2011 saw insurgents consolidate and continue to attempt to expand their control of rural areas of Afghanistan in awareness that Afghan security forces remain woefully incapable of ensuring government control of much of the country, let alone the ability to effectively counter the insurgency, and that ISAF troop-contributing nations are already planning withdrawal schedules. Indeed, US President Barack Obama confirmed in late June 2011 that 33,000 US troops would be withdrawn from Afghanistan by September 2012, and early July saw the end of the Canadian deployment to the country.⁶⁷

101. Regarding the level of Taliban control over Ghazni province, the ICG report states:

As in other provinces, the Taliban combines assassination and intimidation to consolidate its hold on Ghazni, particularly targeting local Afghan security forces. Intelligence operations play a major role in such attacks, such as against an Afghan National Police unit in the volatile Khogyani district, south west of the provincial capital in the fall of 2010. Cross-regional cooperation between insurgent commands and infiltration was evident in the manner in which several of the bodies of the officers killed in the incident were later dumped on the roadside in

⁶⁵ US Department of State 2012, *2011 Country Reports on Human Rights Practices*, 24 May, <www.state.gov/j/drl/rls/hrrpt/2011/sca/186457.htm> Accessed 5 July 2012.

⁶⁶ UNAMA 2012, *Afghanistan Annual Report 2011– Protection of Civilians in Armed Conflict*, February, pp.5-6.

⁶⁷ IHS Jane’s 2011, *Afghanistan: An IHS Jane’s Special Report*, 7 October, p.5

<http://jmsa.janes.com/public/jmsa/AFGN_IHSJanes.pdf> Accessed 21 June 2012.

contested areas of Logar and Wardak to warn the local population. Incidents such as these have frightened the local population into submission.

Those who do not actively support the Taleban, as one Afghan security official in Ghazni explained, offer passive support, giving the Taleban wide berth to operate. “90 per cent of the people in Ghazni hate the Taleban but they don’t feel they have a choice. When we’ve travelled to different districts we’ve asked the people what do you want from the government. They say: “We don’t want schools. We don’t want clinics. We want security”⁶⁸

102. In an article in the *Washington Post* dated 23 September 2011,⁶⁹ Anthony Cordesman from the Center for Strategic and International Studies argues that the Afghanistan government is not in a position to survive without a continued US presence and significant foreign aid contribution well beyond the planned 2014 transition. He writes:

We are scoring significant victories against the Taleban in the south and in attacks on key Taleban and al-Qaeda leaders and cadres. It is not clear, however, whether we are making sufficient gains that these threats cannot wait us out until after 2014 or whether the Afghan government can hold such areas and build up civil governance, the rule of law and a functioning economy. ... [I]nsurgents are conducting bombings, assassinations and other operations that intimidate the Afghan people and help drive down U.S. and allied public support for the war. Furthermore, the Karzai government is far from effective and is politically unstable, and Afghanistan faces an election the year we leave. We may be winning tactically, but insurgents may be winning a battle of political attrition that will ultimately be strategically decisive.

103. Professor Saikal of ANU suggests that the Taleban have good reason to be optimistic about the prospects of taking power from the Karzai regime, which could lead to broader ethnic conflict and civil war.⁷⁰ He concludes:

As long as these factors remain in place, the Taleban and their Pakistani backers have good reason to remain hopeful about their chances of succeeding in the end, but a Taleban takeover of power also carries the serious risk of non-Pashtun Afghan population clusters taking up arms once again to defend themselves, with Iran, India and Russia providing support. This would be a development that could plunge Afghanistan into a wider bloody conflict.

FINDINGS AND REASONS

Country of nationality

104. The applicant has provided to the Department a photocopy of his Afghan Taskera to substantiate his claimed identity. The applicant speaks Hazaragi which is spoken by Hazaras in Afghanistan. He has also consistently maintained his birthplace as being in [Village 1] in the Jaghori District of Ghazni Province, Afghanistan. He presented a detailed oral account of his life and residence in Afghanistan. His description of his village and work locale accords

⁶⁸ International Crisis Group 2011, *The Insurgency in Afghanistan’s Heartland*, 27 June, p.18
<<http://www.crisisgroup.org/en/regions/asia/south-asia/afghanistan/207-the-insurgency-in-afghanistans-heartland.aspx>> Accessed 3 July 2012.

⁶⁹ Cordesman, Anthony 2011, ‘Time to get real about the future in Afghanistan’, *The Washington Post*, 23 September <http://www.washingtonpost.com/opinions/time-to-get-real-about-the-future-in-afghanistan/2011/09/21/gIQA0XwtoK_story.html> Accessed 5 July 2012

⁷⁰ Saikal, Amin 2012, ‘A grim future for Afghanistan’, 15 February
<<http://www.abc.net.au/unleashed/3828972.html>> Accessed 5 July 2012.

with available country information⁷¹. The Tribunal is satisfied that the applicant is a Shia Hazara and a citizen of Afghanistan. The Tribunal has therefore assessed the applicant's claims against Afghanistan as his country of nationality for the purposes of the Convention.

105. There is no evidence that the applicant has an enforceable right to enter and reside in any other country and accordingly the Tribunal is satisfied that the applicant does not have any such right.

General comments about credibility

106. The Tribunal accepts that 'applicants for refugee status face particular problems of proof as an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule.' The Tribunal also accepts that 'if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt. (The United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992 at para 196). However, the Handbook also states (at para 203):

The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.

107. When assessing claims made by applicants the Tribunal needs to make findings of fact in relation to those claims. This usually involves an assessment of the credibility of the applicants. When doing so it is important to bear in mind the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims.
108. The Tribunal must bear in mind that if it makes an adverse finding in relation to a material claim made by the applicant but is unable to make that finding with confidence it must proceed to assess the claim on the basis that it might possibly be true (see *MIMA v Rajalingam* (1999) 93 FCR 220).
109. However, the Tribunal is not required to accept uncritically any or all of the allegations made by an applicant. Further, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out. (see *Randhawa v MILGEA* (1994) 52 FCR 437 at 451 per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.)
110. The Tribunal has listened carefully to the applicant's interview with the Department delegate and read the Department's transcript of the applicant's Entry Interview and considered other material submitted by the applicant or on his behalf. The Tribunal finds the applicant has credibly presented his claims in his Protection Visa application. His evidence has been very coherent, detailed, consistent and plausible. He was responsive to questioning and readily able to provide further explanation and detail when required. The Tribunal is therefore satisfied as to the applicant's general credibility.

⁷¹ See eg map: UN Afghanistan Information Service (AIMS) 2002, 'Jaghury District', Afghanistan District map series, May.

Protection claims

111. The applicant claims to fear persecution on return to Afghanistan for reasons of his Hazara ethnicity and Shia religion and his actual or imputed political opinion in support of the government through his action of selling chickens to government forces. The applicant fears the Taleban will capture and kill him if he returns to Afghanistan.
112. The Tribunal accepts that the applicant ran a chicken selling shop in [Location 2] bazaar requiring him to regularly travel to Ghazni city for supplies of chickens. The Tribunal accepts that the applicant sometimes sold chickens to police at a checkpoint along the route in [Location 6]. The Tribunal accepts that the applicant has been stopped by the Taleban while travelling on this route and on one occasion he was detained and taken by the Taleban who beat him and questioned him about selling chickens to the police. The Tribunal accepts the applicant was able to escape at night when only one Taleban was around.
113. The Tribunal accepts that the applicant fled to Ghazni City and from there to Kabul from where he departed Afghanistan.
114. The country information referred to above highlights that the Taleban are actively targeting those that support or are perceived to support the Afghan government and its forces. This country information supports the applicant's fear of harm on return.
115. The applicant has given evidence that if he returns to Afghanistan he would continue to operate a chicken shop or similar as there is no other possible work for him. Available country information⁷² confirms that much of Afghanistan including the applicant's region, has suffered from severe droughts. The Tribunal accepts that as a result of the drought the applicant cannot farm his land. The Tribunal considers that if the applicant returns to his home area he would of necessity have to continue his work selling chickens or something similar and it would not be reasonable to require him to do otherwise.
116. The Tribunal is satisfied that in the course of having to obtain supplies for his shop there is a real chance the Taleban will stop the applicant along the roads in Ghazni Province. The Taleban are able to identify the applicant and know he has been accused of cooperation with the Afghan government forces and of escaping from the Taleban. Given the available information about the Taleban's operations the Tribunal is satisfied there is a real chance the Taleban will again capture and will kill the applicant.
117. Even if the applicant does not resume his work in chicken meat sales the country information referred to above describes the Taleban being on the outskirts of Jaghori District and in control of much of Ghazni Province. The Tribunal is therefore satisfied there is a real chance the applicant will be identified and captured by the Taleban in trying to access his home area in Jaghori.
118. The Tribunal is satisfied that the harm the applicant faces, killing, is serious harm as per s91R(1)(b) of the Act in that it amounts to a threat to his life. The Tribunal is satisfied it involves systematic and discriminatory conduct as it will be done against the applicant selectively and intentionally.

⁷² See e.g. IRIN News Service, 2011, "Analysis: Afghan drought conditions could spell disaster", 21 September; The Guardian, 2011, "UN launches aid appeal for drought-stricken Afghans", 6 October; and Wadsam Afghan Business News Portal, 2012, "Reduction in Agricultural Production in Ghazni", 30 September.

119. The Tribunal accepts that the Taleban wish to harm the applicant because they view him as having cooperated with government forces, by selling to the police, and they impute him with a pro-government political opinion and pro-government activity. The Tribunal is therefore satisfied that the applicant's political opinion, actual and imputed, is the essential and significant reason for the persecution he fears.

Protection

120. The persecution feared by the applicant is from non-state actors, being the Taleban. Harm from non-state agents may amount to persecution for a Convention reason if the motivation of the non-state actors is Convention-related, and the state is unable to provide adequate protection against the harm. Where the state is complicit in the sense that it encourages, condones or tolerates the harm, the attitude of the state is consistent with the possibility that there is persecution: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [23]. Where the state is willing but not able to provide protection, the fact that the authorities, including the police, and the courts, may not be able to provide an assurance of safety, so as to remove any reasonable basis for fear, does not justify an unwillingness to seek their protection: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [28]. In such cases, a person will not be a victim of persecution, unless it is concluded that the government would not or could not provide citizens in the position of the person with the level of protection which they were entitled to expect according to international standards: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [29].
121. Country information confirms that state protection from the Afghanistan government remains weak, unpredictable and vulnerable to significant corruption. The information referred to above highlights the danger in Ghazni Province and the [Location 6] area and the high number of violent incidents which occur there. This indicates to the Tribunal that there is highly inadequate protection by state or international forces, or others, in this region. On this basis the Tribunal finds that protection in accordance with international standards would not be available to the applicant in Ghazni.

Internal relocation

122. The Tribunal has considered whether the applicant could avoid the harm he fears by moving to Kabul or some other area of Afghanistan.
123. The focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country: *Randhawa v MILGEA* (1994) 52 FCR 437 per Black CJ at 440-1. Depending upon the circumstances of the particular case, it may be reasonable for a person to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution. Thus, a person will be excluded from refugee status if under all the circumstances it would be reasonable, in the sense of "practicable", to expect him or her to seek refuge in another part of the same country. What is "reasonable" in this sense must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country. However, whether relocation is reasonable is not to be judged by considering whether the quality of life in the place of relocation meets the basic norms of civil, political and socio-economic rights. The Convention is concerned with persecution in the defined

sense, and not with living conditions in a broader sense: *SZATV v MIAC* [2007] HCA 40 and *SZFDV v MIAC* [2007] HCA 41, per Gummow, Hayne & Crennan JJ, Callinan J agreeing.

124. The available country information indicates that almost all parts of Afghanistan suffer from insecurity, instability, and lack of sufficient infrastructure, resources and services, albeit to varying degrees. Travel on major highways is often dangerous. The country information also indicates that the country-wide situation in Afghanistan is expected to worsen in the near future.
125. The Tribunal has considered whether the applicant could reasonably be expected to relocate to Kabul. As reported by the country information there has been an exponential growth in the population of Kabul over recent years and infrastructure has not kept pace with this growth. Eighty percent of Kabul's population is estimated to reside in unplanned informal settlements which lack safe water, sanitation, transportation, schools, health clinics, electricity, and other facilities and services. Analyses of the current security situation in Kabul fall short of finding it a safe and secure city but at best describe it as *relatively safe* in comparison to other provinces.
126. All of the applicant's family remain in Jaghori. He lacks the reportedly necessary connections to successfully obtain adequate employment and housing in a city like Kabul where housing and employment opportunities are scarce. The Tribunal accepts the applicant's evidence that he is uneducated and has very limited skills for work outside of running a shop and farming. The Tribunal accepts that these minimal work experiences and his lack of education do not well equip him to find work in the over-saturated and competitive job market in Kabul.
127. The Tribunal does not consider that Kabul presents a practical or reasonable relocation option for the applicant given the reservations about its current and future security and the evidence it will be very difficult for the applicant to find adequate housing and subsistence-level work.
128. In light of the available evidence and the applicant's particular circumstances the Tribunal is not satisfied there is a reasonable or safe relocation option for the applicant in Afghanistan.
129. Based upon the country information and taking into account the applicant's particular circumstances, the Tribunal is satisfied that the applicant has a well-founded fear of persecution on return to Afghanistan for reason of his political opinion now or in the reasonably foreseeable future.

CONCLUSION

130. The Tribunal is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

DECISION

131. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.