

**Comments on the Operational Guidance Note on Afghanistan (April 2009), prepared for Still Human Still Here by Jo Pettitt, Research Information and Policy Unit (RIPU) of the Immigration Advisory Service (IAS)**

1. This document has been prepared by members of the Still Human, Still Here campaign. It is being published, along with the COI referred to within it, to help legal practitioners representing asylum seekers. It is meant to be used as a guide to some of the COI available. It was prepared 25 March 2010. There is, however, no guarantee that the COI referred is comprehensive and it should not be a substitute for case specific COI research.
2. **THIS DOCUMENT IS A GUIDE FOR LEGAL PRACTITIONERS OF RELEVANT COI, WITH REFERENCE TO THE OPERATIONAL GUIDANCE NOTE ON AFGHANISTAN ISSUED IN APRIL 2009. THIS DOCUMENT SHOULD NOT BE SUBMITTED TO UKBA, THE TRIBUNAL OR IN PROCEEDINGS. LEGAL PRACTITIONERS ARE WELCOME TO SUBMIT THE COI REFERED TO IN THIS DOCUMENT.**

**Overview**

3. From a review of the April 2009 Afghanistan Operational Guidance Note (OGN) two cross cutting issues stand out as particularly problematic and of relevance to most if not all Afghan asylum claimants: **sufficiency of protection** and **internal relocation**, both with particular reference to Kabul. Most asylum cases from Afghanistan, as can be seen from the breakdown of main categories of claim in the OGN, arise from the claimants' fear of non-state actors and the inability of claimants to access adequate protection from state security forces. In addition the overall security environment in the country gives rise to claims for humanitarian protection from those who fall outside the protection of the Refugee Convention.
4. All asylum claimants, whatever their profile, will be returned to Kabul, at least in the first instance, and in most cases Kabul will be proposed by UKBA as a suitable internal relocation alternative where the claimant fears the actions of non-state actors elsewhere in the country or because the overwhelmingly negative security environment makes other parts of the country inaccessible. It should be noted that it was conceded by UKBA that for the purposes of International Humanitarian Law there is a state of internal armed conflict in Afghanistan that extends to the whole territory of the country.<sup>1</sup>
5. In deciding asylum cases, UKBA regularly seeks to assert that, despite the state of internal armed conflict in Afghanistan, the situation in Kabul is sufficiently distinct to offer an adequate level of protection to most asylum claimants (the exception being single women and female heads of household without a male support network) and a standard of life that is reasonable and not unduly harsh.<sup>2</sup> The current OGN supports this position in the guidance it gives on sufficiency of

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<sup>1</sup> In *GS (Existence of Internal Armed Conflict) Afghanistan* CG [2009] UKAIT 00010

<sup>2</sup> The leading UK cases dealing with the issue of internal relocation and definitions of reasonableness and undue harshness are *Januzi v. Secretary of State for the Home Department & Ors* [2006] UKHL 5 (15 February 2006) and *AH (Sudan) & Ors*

protection and internal relocation for most categories of claim. The information and the guidance in the OGN on these issues are almost entirely generic and are discussed in more detail below.

6. The guidance on sufficiency of protection and internal relocation contained in the OGN is based on flawed reasoning and inadequate evidence.
7. Two further issues arise in the current OGN, which merit attention. These relate to **Minors returning in their own right** and to **Returns**.
8. The claims of unaccompanied minors are considered in Section 4 of the OGN, Discretionary Leave, in which it is stated that minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should be granted Discretionary leave. However no specific guidance is given about whether such care and support arrangements exist in Afghanistan and minimal COI is cited.
9. With regard to Returns, the issue of the importance of the existence of family and community support structures when considering the viability of return is addressed in the OGN, but with reference to a dated version of the UNHCR eligibility guidelines. Furthermore the clarity of the guidance on this matter and its applicability to all categories of potential returnee is distorted in a subtle but significant way by the wording of the OGN. The use of the most recent UNHCR eligibility guidelines is therefore recommended, as well as amendments to the wording (see relevant section below) in order to provide guidance which more accurately reflects the UNHCR advice on which it is based.

### **Sufficiency of Protection**

10. Sufficiency of protection is considered in each of the following sections of the OGN:
  - 3. Main categories of claim**
  - 3.6.4 - 3.6.7 Pashtuns**
  - 3.7.4 - 3.7.6 Current or former Hizb-e-Islami (Hakmatyar) members or sympathisers**
  - 3.8.5 – 3.8.7 Current or former Taliban members or sympathisers**
  - 3.9.7 – 3.9.9 Former People’s Democratic Party of Afghanistan (PDPA) supporters**
  - 3.10.4 – 3.10.6 Former KhAD agents**
  - 3.11.4 – 3.11.6 Hindus and Sikhs**
  - 3.3.12.5 – 3.12.7 Fear of warlords**
  - 3.13.6 – 3.13.7 Converts to Christianity**
  - 3.14.5 – 3.14.7 Women**
11. The following standard paragraphs are used in throughout the OGN to address sufficiency of protection [all emphasis added]:

**[...]Sufficiency of protection. A *judicial and legal system with limited function exists in Afghanistan. In Kabul, the police authorities are generally willing to enforce the law, although their ability to do so is limited by inadequate resources and dependent to some extent on the loyalties of individual officers. ISAF works alongside the Afghan Security Forces to maintain***

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[2007] UKHL 49 (14 November 2007). See also Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, 23/07/2003 <http://www.unhcr.org/refworld/docid/3f2791a44.html>

security in and around Kabul and as a result *the general security environment there is much better than in other areas*. [1]

Based on the existence of the limited judicial and legal system, the willingness of the police authorities to enforce the law, and the presence of ISAF, *a sufficiency of protection is generally available in Kabul*. However, each case must be considered on its merits and there will be individual cases where sufficient protection will not be available. For example, in ZN ([2005] UKIAT 00096), the Tribunal found that the Adjudicator was entitled to conclude that sufficient protection would not be available against a warlord who had already shown that he was capable of attacking persons associated with the applicant, and indeed the applicant's own house. Factors to take into account in deciding whether sufficient protection is available to an individual applicant will include whether they, or their would be persecutors, have influential connections in the current administration.

*Sufficient protection is not available, even in Kabul, for single women or female heads of household without a male support network*. For further information on the question of sufficiency of protection for women, see paragraphs 3.14.5 -3.14.7.

[...] 3.14.7 As was found in the case of NS (see below), sufficient protection is not available to applicants who establish a well-founded fear of persecution for reason of being members of the particular social group of women in Afghanistan.

[1]COIS Afghanistan Country Report February 2009 (Human Rights: Security Situation; Security Forces; & Judiciary)

12. In summary, the information given in these paragraphs of the OGN is that there is a *judicial legal system with limited function* in Afghanistan, there is a *general willingness* on the part of under-resourced police officers, depending on the extent of their individual loyalty, to enforce the law in Kabul and that there is *ISAF presence in Kabul*. On the basis of this extremely limited information it is asserted that the security environment is *better than in other areas* and that *a sufficiency of protection is generally available in Kabul* (although it is accepted that this does not apply to single women and female heads of household without a male support network). The source of this information is cited as the February 2009 COIS report.
13. These paragraphs and the guidance contained within them are considered to be problematic in the following ways:
  - a. **The COI or evidential basis of the guidance is extremely limited and not sufficiently transparent.** Given that the COIS report consists of compiled source extracts, the citation of the COIS report does not inform the OGN user about the original source or the currency of the information, unless they check the COIS report itself. Moreover, given the very limited way in which the information is reported, it is impossible to judge whether it accurately reflects the original source. The information given on critical issues is itself very limited and partial and begs more questions than it answers.
  - b. **The assertions on which the guidance is based are not substantiated by the information given.** Specifically, it is suggested that a sufficiency of protection can be provided by a judicial and legal system with *limited function*; a mere *general willingness* on the part of under-resourced police officers, depending on their individual 'loyalty', to enforce the law; and the *presence* (no mention of effective presence) of international forces in Kabul.

- c. **The reasoning of the paragraphs is essentially flawed.** The guidance given in this section is based on flawed reasoning that 1) assumes that a general willingness to enforce the law implies an adequate and consistent ability to do so, particularly when it is stated that there is a lack of resources and universal loyalty among the police forces 2) conflates the presence of ISAF forces in Kabul with their ability to deliver, or to enable the Afghan Security Forces to deliver, effective protection 3) asserts simply that because the security situation is better in Kabul than in other areas, there is a sufficiency of protection in Kabul.
14. There is current country of origin information (COI) on the critical issues in relation to protection in Kabul, that should be considered namely:
- d. The willingness and effective ability of the Afghan National Police (ANP) to enforce the law and provide protection to civilians in Kabul
  - e. The current security situation in Kabul, including level of insurgent attacks on civilians and perceived opponents of insurgent groups
15. For a non-exhaustive selection of current COI addressing these issues, see the COI section below and the attached full documents.

**Current COI on Sufficiency of Protection in Kabul (Please note: Full documents are attached separately)**

**Willingness and ability of the Afghan National Police (ANP) to enforce the law and provide protection to civilians in Kabul**

16. The International Crisis Group reports that the ANP is perceived to be a 'coercive instrument of state control rather than an institution committed to the protection of citizens' and that the failure of the ANP to provide security compels Afghans to rely on 'strongmen' and even anti-government forces for protection.<sup>3</sup>
17. IPS, The Press Association and RFE/RL report that the ANP are infiltrated by the Taliban at all levels of the force<sup>4</sup>, while The Times notes that poor pay and dangerous conditions are currently motivating large numbers of police to leave the force, some of whom transfer to the Taliban.<sup>5</sup>
18. Moreover, The Times and IPS both report that the poor quality of the ANP recruits is a significant problem, noting that they are often uneducated and unskilled<sup>6</sup>, whilst several other sources note that the police are poorly trained and poorly equipped.<sup>7</sup>

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<sup>3</sup> International Crisis Group, Afghanistan: What Now for Refugees? 31/08/09 IV. CHALLENGES TO STATE CONSOLIDATION, B. State Legitimacy

<http://www.crisisgroup.org/home/index.cfm?id=6290>

<sup>4</sup> Inter Press Service News Agency (IPS), Afghanistan: Insurgents Infiltrate Security Forces, 21/11/2009

<http://ipsnews.net/news.asp?idnews=49363>

Press Association National Newswire, POLICE INFILTRATED BY TALIBAN 'AT EVERY LEVEL', 04/11/2009

<http://www.factiva.com>

Radio Free Europe, Radio Liberty, Some 50 Afghan Policemen Arrested For Helping Taliban, 30/12/2008

[http://www.rferl.org/content/Some\\_50\\_Afghan\\_Policemen\\_Arrested\\_For\\_Helping\\_Taliban/1365009.html](http://www.rferl.org/content/Some_50_Afghan_Policemen_Arrested_For_Helping_Taliban/1365009.html)

<sup>5</sup> The Times, Confronted by danger and poor pay, police go over to the Taleban, 23/10/2009

<http://www.factiva.com>

19. The Times also describes the allegiance of typical ANP troops as belonging primarily to the local area and tribe, rather than to the Afghan government<sup>8</sup>, while a report from the OHCHR states:  
 “All too often, the police do not truly represent the interests or diversity of the community. They are drawn dominantly from the members of one tribe or the followers of one commander. For ordinary Afghans, this means that police function not as enforcers of law and order, but as promoters of the interests of a specific tribe or commander.”<sup>9</sup>
20. According to a BBC News report the US Department of Defence categorised 78% of ANP troops as ‘incapable’.<sup>10</sup> Furthermore the UN Secretary General’s report outlines concerns of the limited ability of the ANP, particularly in more remote/ rural areas, to provide adequate protection to its citizens.<sup>11</sup>
21. In addition, available information strongly suggests that corruption is all-pervasive within the Afghan National Police Force. A report on corruption in Afghanistan released by the United Nations Office on Drugs and Crime stated that Afghans interviewed for the report specifically mentioned that “those entrusted with upholding the law are seen as most guilty of violating it”.<sup>12</sup> In overall terms the evidence from a variety of sources shows that far from being a source of security for civilians in Afghanistan, the ANP are actually regarded as a cause of insecurity.<sup>13</sup>

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<sup>6</sup> The Times, Confronted by danger and poor pay, police go over to the Taliban, 23/10/2009

<http://www.factiva.com>

Inter Press Service News Agency (IPS), Afghanistan: Insurgents Infiltrate Security Forces, 21/11/2009

<http://ipsnews.net/news.asp?idnews=49363>

<sup>7</sup> US Congressional Research Service, Afghanistan: Post-Taliban Governance, Security, and U.S. Policy, 14/08/2009

[www.fas.org/sgp/crs/row/RL30588.pdf](http://www.fas.org/sgp/crs/row/RL30588.pdf)

International Crisis Group, Afghanistan’s Election Challenges, 24/06/2009

<http://www.crisisgroup.org/home/index.cfm?id=6176>

Press Association National Newswire, POLICE INFILTRATED BY TALIBAN 'AT EVERY LEVEL', 04/11/2009

<http://www.factiva.com>

<sup>8</sup> The Times, Confronted by danger and poor pay, police go over to the Taliban, 23/10/2009

<http://www.factiva.com>

<sup>9</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, on his missions to Afghanistan, 06/05/2009

<http://www.unhcr.org/refworld/docid/4a1cfb632.html>

<sup>10</sup> BBC News, Troubled State of Afghan Police, 04/11/2009

<http://news.bbc.co.uk/1/hi/uk/8343133.stm>

<sup>11</sup> United Nations, Report of the Secretary-General on the situation in Afghanistan and its implications for international peace and security, 28/12/2009

<http://unama.unmissions.org/LinkClick.aspx?link=SG+Reports%2fsgreportjan2010.pdf&tabid=1741&mid=1888>

<sup>12</sup> United Nations Office on Drugs and Crime (UNODC), "Drain the Swamp of Corruption in Afghanistan," Says UNODC, 19/01/2010

<http://www.unodc.org/unodc/en/press/releases/2010/January/drain-the-swamp-of-corruption-in-afghanistan-says-unodc.html>

<sup>13</sup> Human Rights Watch, World Report 2010: Afghanistan, 20/01/2010

<http://www.unhcr.org/refworld/docid/4b586cfec.html>

US Congressional Research Service, War in Afghanistan: Strategy, Military Operations, and Issues for Congress, 03/12/2009

<http://www.fas.org/sgp/crs/natsec/R40156.pdf>

US Congressional Research Service, Afghanistan: Post-Taliban Governance, Security, and U.S. Policy, 14/08/2009

[www.fas.org/sgp/crs/row/RL30588.pdf](http://www.fas.org/sgp/crs/row/RL30588.pdf)

International Crisis Group, Afghanistan’s Election Challenges, 24/06/2009

<http://www.crisisgroup.org/home/index.cfm?id=6176>

International Crisis Group, Policing in Afghanistan: Still Searching for a Strategy, 18/12/2008

<http://www.crisisgroup.org/home/index.cfm?id=5824>

## **The current security situation in Kabul, including level of insurgent attacks on civilians and perceived opponents of insurgent groups**

22. The evidence demonstrates that Kabul has become increasingly insecure as it has been targeted in recent months, particularly around the actual and planned national elections in August and November 2009. The UN reports on the return of suicide attacks in Kabul, and that the 5,000 policemen in the centre of Kabul were only able to provide limited relief.<sup>14</sup>
23. The January 2010 attack in which seven Taliban militants managed to detonate suicide bombs that destroyed a shopping centre and wage a lengthy gun battle with Afghan forces killing 5 persons and injuring 70 others raised serious questions about the state of Afghan security.<sup>15</sup> On 26/02/2010, militants killed at least sixteen people, and wounded thirty-six others during co-ordinated attacks in central Kabul, demonstrating that even the most heavily fortified areas are still subject to attack.<sup>16</sup>
24. The increased insecurity in Kabul is indicative of the general security situation throughout Afghanistan. In 2009, at least 5,978 civilians were killed and injured, which is the highest number of civilian casualties recorded since the fall of the Taliban regime in 2001.<sup>17</sup> This figure also represents an increase of 14% on the civilian deaths recorded in 2008.<sup>18</sup>
25. A wide (but not exhaustive) range of sources indicates that the Taliban target both perceived opponents and civilians in Kabul.<sup>19</sup> Radio Free Europe/Radio Liberty note that the Taliban have targeted Kabul in order to show that the government is not capable of guaranteeing security<sup>20</sup> and Reuters noted the insufficiency of Afghan security measures for the August and November elections.<sup>21</sup> Wadeer Safi, a law professor and political analyst observed that Kabul

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<sup>14</sup> United Nations, Report of the Secretary-General on the situation in Afghanistan and its implications for international peace and security, 28/12/2009

<http://unama.unmissions.org/LinkClick.aspx?link=SG+Reports%2fsgreportjan2010.pdf&tabid=1741&mid=1888>

<sup>15</sup> Radio Free Europe/Radio Liberty, Kabul Attack Highlights Competing U.S., Taliban Urban Strategies, 19/01/2010

[http://www.rferl.org/content/Kabul\\_Attack\\_Highlights\\_Competing\\_US\\_Taliban\\_Urban\\_Strategies\\_/1934008.html](http://www.rferl.org/content/Kabul_Attack_Highlights_Competing_US_Taliban_Urban_Strategies_/1934008.html)

<sup>16</sup> Radio Free Europe/Radio Liberty, Militants Kill At Least 16 In Attack On Central Kabul, 26/02/2010

[http://www.rferl.org/content/Suicide\\_Bomber\\_Strikes\\_Kabul/1968737.html](http://www.rferl.org/content/Suicide_Bomber_Strikes_Kabul/1968737.html)

<sup>17</sup> United Nations Assistance Mission in Afghanistan (UNAMA), Afghanistan: Annual Report on Protection of Civilians in Armed Conflict, 2009, 13/01/2010

<http://unama.unmissions.org/Portals/UNAMA/human%20rights/Protection%20of%20Civilian%202009%20report%20English.pdf>

<sup>18</sup> IRIN, AFGHANISTAN: Over 2,400 civilian deaths in 2009 – UNAMA, 13/01/2010

<http://www.irinnews.org/Report.aspx?ReportId=87716>

<sup>19</sup> Radio Free Europe/Radio Liberty, Kabul Attack Highlights Competing U.S., Taliban Urban Strategies, 19/01/2010

[http://www.rferl.org/content/Kabul\\_Attack\\_Highlights\\_Competing\\_US\\_Taliban\\_Urban\\_Strategies\\_/1934008.html](http://www.rferl.org/content/Kabul_Attack_Highlights_Competing_US_Taliban_Urban_Strategies_/1934008.html)

Radio Free Europe, At Least Eight Killed, 40 Injured In Kabul In Suicide Car Blast, 15/12/2009

[http://www.rferl.org/content/Four\\_Civilians\\_Killed\\_In\\_Kabul\\_Blast\\_/1904070.html](http://www.rferl.org/content/Four_Civilians_Killed_In_Kabul_Blast_/1904070.html)

BBC News, UN Staff Killed in UN attack, 28/10/2009

[http://news.bbc.co.uk/1/hi/world/south\\_asia/8329140.stm](http://news.bbc.co.uk/1/hi/world/south_asia/8329140.stm)

Radio Free Europe/Radio Liberty, Militants Fire Rockets At Kabul Ahead Of Presidential Election, 04/08/2009

<http://www.factiva.com>

APN, Taliban rockets hit Kabul, warn more coming, 04/08/2009

<http://www.factiva.com>

Financial Times, Taliban suicide car bomb kills 17 at Indian embassy in Kabul, 09/10/2009

<http://www.factiva.com>

<sup>20</sup> Radio Free Europe/Radio Liberty, Militants Fire Rockets At Kabul Ahead Of Presidential Election, 04/08/2009

[http://www.rferl.org/content/Taliban\\_Rockets\\_Land\\_Near\\_Embassies\\_In\\_Afghan\\_Capital/1792064.html](http://www.rferl.org/content/Taliban_Rockets_Land_Near_Embassies_In_Afghan_Capital/1792064.html)

<sup>21</sup> Reuters News, INTERVIEW-Security fears over hasty Afghan run-off - poll boss, 22/10/2009

<http://www.factiva.com>

was becoming 'a city with constant fear of death in [the form of] a blind rocket or explosion'.<sup>22</sup> Criminal elements are cited as fuelling the insurgency in Kabul by IRIN<sup>23</sup>, whilst another source notes that latent ethnic tensions between Pashtuns and Tajiks are a correlate of the election-centred violence and conflict.<sup>24</sup>

## Internal Relocation

26. Internal Relocation is considered in each of the following sections of the OGN:

### 3. Main categories of claim

3.6.8 – 3.6.9 Pashtuns

3.7.7 – 3.7.10 Current or former Hizb-e-Islami (Hakmatyar) members or sympathisers

3.8.8 – 3.8.11 Current or former Taliban members or sympathisers

3.9.10 – 3.9.12 Former People's Democratic Party of Afghanistan (PDPA) supporters

3.10.7 – 3.10.9 Former KhAD agents

3.11.7 – 3.11.8 3.12.8 Hindus and Sikhs

3.12.8 – 3.12.9 Fear of warlords

3.13.8 – 3.13.11 Converts to Christianity

3.14.8 – 3.14.9 Women

3.15.4 – 3.15.6 Claims based on the security situation in Afghanistan

27. The information given in these sections of the OGN follows a fairly standard format:

[...] Internal relocation. The law provides for freedom of movement within Afghanistan, but certain laws limit citizens' movement and the Government limits citizens' movement due to security interests. Local customs and traditions may also make it very difficult for women to travel without a male escort. [1] This makes it practical for men and women with a male support network who have a well-founded but localised fear of persecution in one area of Afghanistan to relocate to other areas of the country where they would not be at risk...

[...]Unescorted internal travel for single women and female heads of household who do not have a male support network can be extremely difficult – discrimination and harassment are common – as would be establishing themselves in an area where they did not have such a support network.[1] Sufficient protection is not available to them, even in Kabul, and it would therefore be unduly harsh to expect single women and female heads of household who have a well-founded fear of persecution in one part of Afghanistan, and who do not have a male support network, to relocate internally.

28. The conclusions for each of the main categories of claim give similar guidance but vary slightly in their wording, as below:[Emphasis added in all cases]

**Pashtun 3.6.12 [...]Men, and women with a male support network, do however have the option to relocate internally, either to the south of the country, where Pashtuns are not a minority, or to Kabul, where sufficient protection is generally available (see RQ, PM and Others, and ZN above).**

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<sup>22</sup> Integrated Regional Information Networks News (IRIN), Afghanistan: Growing insecurity in Kabul, 09/09/2009

<http://www.irinnews.org/Report.aspx?ReportId=86069>

<sup>23</sup> Ibid

<sup>24</sup> Financial Times, Afghan run-off set to inflame ethnic tensions, 22/10/2009

<http://www.factiva.com>

Hizb-e Islami 3.7.13, Taliban 3.8.14 & PDPA 3.9.15 [...] Within Kabul, sufficient protection against such treatment will be available in most cases, but each claim must be decided on its merits in accordance with the above findings in PM and Others, RQ, and ZN. *Applicants from outside Kabul can reasonably relocate to Kabul unless there is evidence that their would be persecutors would be likely to pursue them there and there is evidence that they would fall into the small category of applicants who would not be able to rely on sufficient protection in Kabul.*

Former KhAD 3.10.11 [...] *it would not be unduly harsh to expect them to relocate, either to Kabul, where there is sufficient protection, or elsewhere in the country where they would not be known.*

Hindis and Sikhs 3.11.11 [...] *internal relocation to Kabul, where sufficient protection would be available, is a reasonable option for men and married women.*

Fear of warlords 3.12.10 [...] Where the threshold of Articles 2 or 3 of the ECHR is met and a real risk of future mistreatment is established, but it is a localised risk, *it would not be unduly harsh to expect men, and women with a male support network, to relocate within Afghanistan, either to Kabul where sufficient protection would be generally available, or to parts of the country away from the respective warlord.*

All categories [...] *The position for single women and female heads of household without a male support network is complicated by the fact that in most cases it would be unduly harsh to expect them to relocate internally, and sufficient protection cannot be relied upon, even in Kabul.*

[1] Citations, where given, are to COIS Afghanistan Country Report February 2009 Human Rights; Freedom of Movement; Women; UNHCR Guidelines on those Afghans Who May Be At Risk

29. In summary the standard paragraphs on internal relocation which are included for all categories of claim state that while there is a legal basis for freedom of movement in the country, such government imposed limitations on freedom of movement a do exist, are due to security interests. In addition it is acknowledged that single women and female heads of household who do not have a male support network are unable to relocate internally.
30. However, the problematic assertion is also made that  
**'Local customs and traditions may also make it very difficult for women to travel without a male escort. This makes it practical for men and women with a male support network who have a well-founded but localised fear of persecution in one area of Afghanistan to relocate to other areas of the country where they would not be at risk...'** [Emphasis added]
31. This assertion relies on a false inference, that because it is difficult for women to travel without a male escort, *it is practical* for men and women with a male support network to relocate away from a localised fear of persecution.
32. Besides being based on flawed reasoning, while the COIS report is cited as evidence for the first point, there is no citation of COI evidence to substantiate the second point. Evidence which might have been cited, for example, is the 2009 UNHCR guidelines (a 2006 version of which is cited in section 5 of the OGN (para 5.2)) which stresses the importance of traditional and community family structures in providing support mechanisms to all Afghans and the main means of securing safety and economic survival. Indeed UNHCR concludes



[...] 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”.<sup>25</sup>

33. There is a need to include information about the viability of individuals of specific profiles of successfully establishing a sustainable life outside their home area, away from the relevant support networks and about the humanitarian and security situation faced by IDPS in Kabul. A non-exhaustive selection of such COI is cited below.
34. While the standard sections on internal relocation do not give specific information or guidance about relocation to Kabul, all the concluding paragraphs of the main categories of claim state, with a variety of wording, that in general it is reasonable and not unduly harsh for men and women with a male support network to relocate to Kabul. No COI evidence is cited; instead reference is made to case law.<sup>26</sup> The cases referred to are RQ, PM and Others, and ZN, dated 2008, 2007 and 2005 respectively.<sup>27</sup>
35. The relevant guidance from the most recent of these cases, RQ (Afghan National Army – Hizb-i-Islami – risk) Afghanistan CG [2008] UKAIT 00013 (AIT Reported - CG Case), is as follows:

[...](5) Where the risk to a particular appellant is confined to his home area, *internal relocation to Kabul is in general available. It would not be unduly harsh to expect an appellant with no individual risk factors outside his home area to live in Kabul* and assist in the rebuilding of his country.

(6) If an appellant establishes a wider risk, extending beyond the home area, internal relocation is not necessarily available and sufficiency of protection will depend on his individual circumstances and characteristics. In particular

internal relocation outside Kabul is unlikely to provide sufficiency of protection as the areas outside Kabul remain under the control of local warlords, and the population is suspicious of strangers; and  
*the safety of internal relocation to Kabul is a question of fact based on the particular history of an individual appellant and of the warlord or faction known to be seeking to harm him....*

36. The guidance cited in the other two cases is as follows:

PM and Others (Kabul – Hizb-i-Islami) Afghanistan CG [2007] UKAIT 00089 (AIT Reported CG)

[...]Those returned from the United Kingdom will not, without more, be at real risk at the airport or after arrival in Kabul....

...Subject to an individual's personal circumstances, it is *unlikely to be unduly harsh* (or unreasonable) to expect them *to relocate to Kabul* if they have established a real risk of serious harm in (and restricted to) areas outside Kabul[...]

ZN (Warlords – CIPU list not comprehensive) Afghanistan [2005]UKIAT00096 (IAT Reported)

[...]...Even within Kabul it does not appear that the authorities are able to entirely prevent warlord activities in connection with individual cases[...]

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<sup>25</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 20/07/2009  
<http://www.unhcr.org/refworld/docid/4a6477ef2.html>

<sup>26</sup> With regard to the statements on sufficiency of protection in these paragraphs, see the comments made in the section above, Sufficiency of Protection.

<sup>27</sup> RQ (Afghan National Army – Hizb-i-Islami – risk) Afghanistan CG [2008] UKAIT 00013; PM and Others (Kabul – Hizb-i-Islami) Afghanistan CG [2007] UKAIT 00089; [2005] UKIAT 00096 ZN

## Current COI on Internal relocation

### Importance of family ties

37. The most recent UNHCR Eligibility Guidelines (2009) emphasises the importance of family ties and states that UNHCR believes that internal relocation is only a viable alternative when protection and support is available through an individual's extended family members, community or tribe.<sup>28</sup>
38. The International Crisis Group also reports on the importance of family and other 'solidarity' networks in informing survival strategies for Afghans in their home areas and in situations of forced migration.<sup>29</sup>

### Risk to returnees

39. The International Crisis Group (ICG) reports that the Afghanistan government is unable to provide for and protect its returning citizens by ensuring nationwide basic services and the rule of law. These shortcomings compel many Afghans to rely on informal networks and other parallel structures.<sup>30</sup>
40. In the same report ICG further reports that young, displaced and unemployed men are particularly vulnerable to recruitment to the insurgency and notes that with regards to returning Afghans "the longer and farther away their exile, the more they are regarded with distrust by fellow Afghans".<sup>31</sup>
41. Forced Migration Review reports that the majority of returnees "struggle for survival, are un- or under-employed, and live at or below the poverty level".<sup>32</sup>
42. IRIN has also reported that the number of Afghan refugees who returned home from Pakistan and Iran in 2009 has dropped to the lowest level since 2002, citing insecurity and obstacles relating to the lack of livelihood opportunities in Afghanistan, landlessness and low levels of basic services, especially education.<sup>33</sup>

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<sup>28</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 20/07/2009

<http://www.unhcr.org/refworld/docid/4a6477ef2.html>

<sup>29</sup> International Crisis Group, Afghanistan: What Now for Refugees?, 31/08/2009 III. THE RETURN OF A MOBILE POPULATION, A. Solidarity Networks

<http://www.crisisgroup.org/home/index.cfm?id=6290>

<sup>30</sup> Ibid

<sup>31</sup> Ibid

<sup>32</sup> Forced Migration Review (Refugee Studies Centre of the Oxford Department of International Development, University of Oxford), Repatriation to Afghanistan: durable solution or responsibility shifting?, 08/09/2009

<http://www.fmreview.org/FMRpdfs/FMR33/FMR33.pdf>

<sup>33</sup> Integrated Regional Information Networks News (IRIN), Afghanistan: Refugee returns in 2009 lowest since 2002, 29/12/2009

<http://www.irinnews.org/Report.aspx?ReportId=87587>

## Humanitarian Situation

43. Evidence shows that the humanitarian situation in Kabul – particularly for returnees and internally displaced persons – is dire. Only Niger ranks lower on the UN Development Index.<sup>34</sup> Humanitarian access throughout the country (including Kabul District) suffers from the prevailing insecurity, and health and other social services are correspondingly inadequate.<sup>35</sup> The UN describes the impact of insecurity on the ability of the Government to deliver basic services and on the delivery of humanitarian aid.<sup>36</sup> IRIN expressed concern in January 2010 that the surge in foreign troops would exacerbate insecurity and would further limit humanitarian access.<sup>37</sup> UN officials have also called for the military to ensure that access was maintained for humanitarian organisations to deliver assistance.<sup>38</sup>
44. According to the ICG, the scale of refugee return, internal displacement and secondary migration have caused rapid urbanisation which is contributing to rising poverty, unemployment and criminality in towns and cities.

### [...]2. Urban areas

The past seven years of refugee return, internal displacement and secondary migration have caused rapid urbanisation. Although cities have always attracted labour migrants from the countryside, ongoing conflict has replaced a largely seasonal and male presence with longer term settlement of entire families searching for security in towns and cities. [56]

Returnees' skills and investments, essential to urban centres' vibrancy, have generally contributed to economic, social and political development. However, with the urban infrastructure weakened by decades of conflict, Afghanistan lacks the resources to sustain such rapid urban expansion and the resulting increase in poverty, unemployment and criminality threaten to undermine reconstruction efforts.

Refugees returning from Pakistan and Iran have tended to settle in the cities, and Kabul in particular. In 2001, Kabul's population was approximately 1.5 million; by 2005, it had reached an estimated 3.5 million; increasing further to 4.5 million in 2008. [57] Termed "one of the fastest growing cities in the region", [58] Afghanistan's capital – as other urban centres – is likely to continue expanding for the foreseeable future with security and living conditions deteriorating in the rural areas. The perceived impact of refugee return on reconstruction and development nevertheless remains controversial. Typically, the longer and farther away their exile, the more they are regarded with distrust by fellow Afghans.

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<sup>34</sup> Integrated Regional Information Networks News (IRIN), In Brief: Afghanistan slipping down UN human development index, 05/10/2009

<http://www.irinnews.org/Report.aspx?ReportId=86435>

<sup>35</sup> Integrated Regional Information Networks News (IRIN), AFGHANISTAN: "The most dangerous place to be born", 26/11/2009

<http://www.irinnews.org/Report.aspx?ReportId=87198>

<sup>36</sup> United Nations, Report of the Secretary-General on the situation in Afghanistan and its implications for international peace and security, 28/12/2009

<http://unama.unmissions.org/LinkClick.aspx?link=SG+Reports%2fsgreportjan2010.pdf&tabid=1741&mid=1888>

<sup>37</sup> IRIN, AFGHANISTAN: Could foreign troop surge exacerbate vulnerability?

<http://www.irinnews.org/Report.aspx?ReportId=87782>

<sup>38</sup> United Nations News, UN officials warn of threat to aid as fighting steps up in southern Afghanistan, 15/02/2010

[Excerpt]

<http://www.un.org/apps/news/story.asp?NewsID=33768&Cr=Afghan&Cr1=>

[...] Faced with a fast-growing, poor and marginalised population, the government is finding it difficult to provide basic services. For example, Kabul's electricity supply, water resources, sanitation and waste collection services, designed over three decades ago, were intended for a population that did not exceed a million; they cannot meet the needs of the informal settlements that today constitute more than 50 per cent of the city, [72] inhabited mostly by returnees and IDPs. [73] The municipality plans to integrate these areas into its new master plan for "greater" Kabul, [74] but this may take time. UN-Habitat, in collaboration with implementing partners and the municipality, has helped upgrade a number of informal settlements. While the MoRR's land allocation schemes were also intended to provide for the needs of landless returnees while curtailing the capital's uncontrolled expansion, [75] these LAS, located at a fair distance from the city, have yet to attract Kabul's most vulnerable households. According to a humanitarian aid worker, "With rapid urbanisation, these areas will be part of the city in the next ten to fifteen years. But these people just can't wait that long". [76]<sup>39</sup>

45. Similarly, Forced Migration Review reports that the return of large numbers of refugees since 2002 has placed huge pressure on Afghanistan's absorption capacity.<sup>40</sup> FMR notes that shelter is scarce, with 80% of the population of Kabul (including many returning refugees and IDPs) living in squatter settlements.<sup>41</sup> IRIN reported that the government had announced previous estimates of the number of IDPs in Afghanistan were inaccurate, and that there are more IDPs than previously thought. The formal IDP aid programme was ended in 2006, and aid is now distributed on a more ad hoc basis.<sup>42</sup> Government policy is to assist those living in these settlements for six months before helping them to return to their home province.<sup>43</sup>
46. Pajhwok notes that the livelihood strategy of begging has been banned in Kabul.<sup>44</sup> According to the UNHCR Eligibility Guidelines, "widespread unemployment and underemployment limit the ability of a large number of people to meet their basic needs. The economic situation has also been aggravated by hikes in prices of basic commodities and food staples".<sup>45</sup>
47. The evidence also shows the high rate of conflict-based mental health problems amongst Afghans, and the particular vulnerability of the homeless poor in Kabul.<sup>46</sup> The Times of India observes that the hardship of life in Kabul has led to a proliferation of opium-dependency and

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<sup>39</sup> International Crisis Group, Afghanistan: What Now for Refugees?, 31/08/2009 B. Challenges to Development 2. Urban Areas

<http://www.crisisgroup.org/home/index.cfm?id=6290>

<sup>40</sup> Forced Migration Review (Refugee Studies Centre of the Oxford Department of International Development, University of Oxford), Repatriation to Afghanistan: durable solution or responsibility shifting?, 08/09/2009

<http://www.fmreview.org/FMRpdfs/FMR33/FMR33.pdf>

<sup>41</sup> Ibid

<sup>42</sup> Integrated Regional Information Networks News (IRIN), More IDPs than previously thought – government, 04/01/2010

<http://www.irinnews.org/Report.aspx?ReportId=87626>

<sup>43</sup> EurasiaNet, Afghanistan: Makeshift IDP Settlement Highlights Humanitarian Aid Dilemmas, 27/01/2010 [Excerpt]

<http://www.eurasianet.org/departments/civilsociety/articles/eav012710.shtml>

<sup>44</sup> Pajhwok Afghan News, Hundreds of beggars dislodged from Kabul city, 26/09/2009

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OCHA, Afghanistan: Middle aged and mentally ill in Kabul, 18/10/2009

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<sup>45</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 20/07/2009

<http://www.unhcr.org/refworld/docid/4a6477ef2.html>

<sup>46</sup> OCHA, Afghanistan: Middle aged and mentally ill in Kabul, 18/10/2009

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Ria Novosti, Haggling over goods in Afghanistan leaves 1 dead, 4 injured, 24/10/2009

<http://www.factiva.com>

further social problems.<sup>47</sup> Reporting on the situation in an IDP camp in the western outskirts of Kabul city, IRIN notes that children “lack access to adequate food, shelter, healthcare, safe drinking water and sanitation, education, and are vulnerable to forced labour, sexual exploitation and many other problems” (IRIN 26/11/2009).<sup>48</sup>

### **Minors returning in their own right**

48. The claims of unaccompanied minors are considered in the OGN in Section 4. Discretionary Leave, in which it is stated that minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should be granted Discretionary leave. However no specific guidance is given about whether such care and support arrangements exist in Afghanistan and minimal COI is cited. This is in contrast to other OGNs, for example Iraq, Somalia and Zimbabwe, where standard paragraphs state, without the citation of any COI:

**[...]At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place for minors with no family in Iraq. [...]**<sup>49</sup>

### **Returns – importance of family and community support networks**

49. With regard to returns, the importance of the existence of family and community support networks when considering the viability of return is addressed in the OGN but with reference to dated evidence. Moreover, the information cited from the UNHCR guidelines in the OGN is slightly but significantly mis-represented, thus potentially providing a distorted picture of the UNHCR guidance and advice on returnees.

**[...]5. Returns**

**[...]5.2 In May 2006, the UNHCR stressed the importance of traditional community and family structures in providing support mechanisms that the availability of support to an individual is therefore limited to the area where those links exist, and that return elsewhere may expose returnees to insurmountable difficulties. [77]**

**5.3 The UNHCR identified a number of categories of would be returnees who may therefore face particular difficulties on return. These include unaccompanied females; single parents with small children and without a breadwinner; unaccompanied elderly people; unaccompanied**

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<sup>47</sup> The Times of India, Bombed, Doped, 30/09/2009

<http://www.factiva.com>

<sup>48</sup> Integrated Regional Information Networks News (IRIN), AFGHANISTAN: "The most dangerous place to be born", 26/11/2009

<http://www.irinnews.org/Report.aspx?ReportId=87198>

<sup>49</sup> UK Border Agency, Iraq OGN v5.0 June 2009, 4.4.1

<http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/iraq.pdf?view=Binary>

UK Border Agency, Somalia OGN v19.0 March 2009, 4.3.1

<http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/somaliaogn?view=Binary>

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**children; victims of serious trauma (including rape); physically disabled persons; mentally disabled persons; and persons with medical illness (contagious, long-term or short-term). [78]**

**5.4 In each case, asylum and human rights claims made by people in the above categories must be decided on the basis of the circumstances of the particular individual and the risk to that individual, using the latest available country information and the relevant guidance contained in this OGN and the IDIs. The fact that an individual is included in a category defined by UNHCR is not in itself decisive.[...]**

50. The relevant section of the most recent UNHCR Eligibility Guidelines from July 2009 is cited below:

[...]VI. Return

[...]1. Return to Afghanistan

[...]The traditional family and community structures of the Afghan social and tribal system constitute the main protection and coping mechanism for returning Afghan refugees. The support provided by families, extended families and tribes is limited to areas where family or community links exist, in particular in the place of origin or habitual residence. Those who may face particular difficulties upon return include, but are not limited to, unaccompanied women and single heads of household; unaccompanied children; unaccompanied elderly persons; victims of serious trauma, including sexual and gender based violence; physically or mentally disabled persons; and persons requiring medical assistance (whether long or short-term), particularly women. Return to places other than places of origin or previous residence, may therefore expose Afghans to insurmountable difficulties, not only in sustaining and re-establishing livelihoods but also to security risks. Security risks may include, inter alia, arbitrary detention and arrest, targeted killings based on ethnic rivalries and family-based conflicts, besides the increasing risks being posed by the ongoing armed conflict, as detailed above.

Finally, reintegration needs continue to be immense and urban centres continue to be faced with numbers of returnees, which are difficult to absorb. Afghanistan, despite being impoverished and war-torn, has, since 2002, seen a return of approximately 20 percent of its population.

In this regard, given the differences particular to the situation in Afghanistan, UNHCR advises against the return of persons to areas other than their places of origin or previous areas of residence where they do not have effective family or tribal links and support, unless these returns are voluntary in nature. [322]<sup>50</sup>

51. The 2009 guidelines thus continue to emphasise the importance of family ties and advise against the return of persons to areas where effective family and other relevant support networks are not available. The guidance does not distinguish in this matter between different categories of potential returnees, nor identify specific categories of people to whom this advice would apply, although this is implied in the phrasing of the OGN in paragraph 5.3 cited above.

52. The guidelines do identify particular categories of people who might face particular 'difficulties on return' such as unaccompanied women and children, but don't state either that these are the only categories of people who might face difficulties (the phrasing is 'Those who may face particular difficulties upon return include, but are not limited to...'); or that these are the only categories of people that should not be returned to areas without family ties and support networks. These are subtle but important distinctions to make as the current implication of the guidance in 5.4 is that UNHCR's concerns about the viability of relocation in the absence of

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<sup>50</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 20/07/2009, VI. Return  
<http://www.unhcr.org/refworld/docid/4a6477ef2.html>

effective family and community support applies only to those categories of particularly vulnerable people identified in paragraph 5.3.

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