

1215611 [2013] RRTA 677 (1 October 2013)

DECISION RECORD

RRT CASE NUMBER: 1215611

DIAC REFERENCE(S): CLF2011/201409 CLF2012/201409

COUNTRY OF REFERENCE: Pakistan

TRIBUNAL MEMBER: Amanda Goodier

DATE: 1 October 2013

PLACE OF DECISION: Perth

DECISION: The Tribunal remits the matter for reconsideration with the following directions: (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act; (ii) that the second named applicant satisfies s.36(2)(b)(i) of the Migration Act, on the basis of membership of the same family unit as the first named applicant; and (iii) that the Tribunal has no jurisdiction in respect of the third named applicant.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

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 applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants who claim to be citizens of Pakistan applied to the Department of Immigration for the visas on 25 November 2011 and the delegate refused to grant the visas on 13 September 2012.
3. The applicants appeared before the Tribunal on 17 September 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Pashto and English languages. The applicants were represented in relation to the review by their registered migration agent who attended the hearing.
4. The relevant law is set out in Attachment "A". All independent country information referred to in the decision is set out in Attachment "B".

CONSIDERATION OF CLAIMS AND EVIDENCE

Country of reference

5. The applicants claim to be citizens of Pakistan. From the evidence provided, the Tribunal accepts that the applicants are nationals of Pakistan and will assess their claims against Pakistan as their country of nationality (for the purposes of s.36(2)(a)) and receiving country (for the purposes of s.36(2)(aa)).
6. The Tribunal is satisfied from the evidence provided, that the applicants do not have any enforceable right to enter or reside in any other country.
7. The first named applicant claims to have been born in Swabi District, Khyber Pakhtunkhwa (KPK) Province and later moved to Peshawar, Khyber Pakhtunkhwa Province with her family. The second named applicant was born in Buner District, Khyber Pakhtunkhwa Province where his family still reside. At hearing, the first named applicant indicated that if they returned to Pakistan she would live where her husband's family lived which was in Buner District. After consideration of the evidence provided, the Tribunal finds Khyber Pakhtunkhwa Province as the applicants' home area.

Consideration of claims

8. In assessing the applicant's claims, the Tribunal has taken into account the information in the Department's files relating to the applicants, application for the Protection visa, records of the interview with the delegate and the delegate's decision, which was attached to the application for review. The Tribunal has also taken into account the statements, submissions, country information and all other evidence provided by the applicants, as well as the independent country information in Attachment B and the information referred to in the delegate's decision regarding current conditions in Pakistan as relevant to the application. The Tribunal has considered the submissions

provided to the Tribunal by the representative on behalf of the applicants who also provided a number of reports on the generalised violence in Pakistan.

9. The Tribunal accepts that the process of seeking protection and the giving of evidence can be stressful and consequently the applicant may have difficulty providing their evidence in a concise and contextual manner. The Tribunal accepts that sometimes timelines can be inconsistent as a result. The Tribunal has noted that a person should not be required to provide an unrealistic degree of precision and detail in statements and accepts that an experience of trauma may affect a person's ability to recall specific events and details.
10. In determining whether an applicant is entitled to protection in Australia, the Tribunal must first make findings of fact on the applicant's claims. This may involve an assessment of the applicant's credibility and, in doing so, the Tribunal is aware of the need and importance of being sensitive to the difficulties asylum seekers often face. Accordingly, the Tribunal notes that the benefit of the doubt should be given to asylum seekers who are generally credible, but unable to substantiate all of their claims. The Tribunal has considered the psychologist's report in relation to the first named applicant. The Tribunal found the applicants credible witnesses. The Tribunal found that the first named applicant answered question spontaneously and with passion, especially when discussing her desire to teach and convey knowledge to others.

Claims of first named applicant

11. The first named applicant seeks to invoke Australia's protection obligations so that she does not have to return to Pakistan, where she claims to fear harm for reasons of her imputed political and political opinion and her membership of the particular social groups, 'women teachers in Pakistan' and "marriage to a western educated man".
12. The Tribunal has therefore considered her claims as a member of a particular social group. The Tribunal has considered whether "educated woman in Pakistan and 'women teachers in Pakistan' form particular social groups. The Tribunal is prepared to accept that these entities can be said to exist in Pakistan as particular social groups, in the sense that they are sufficiently identifiable by characteristics or attributes common to all their members, other than a shared fear of persecution, which distinguish them from society at large. The Tribunal also accepts that the applicant could be said to be a member of these entities.
13. The first named applicant told the Tribunal about the difficulties she experienced while studying to become a teacher and how she had to complete her studies at home. She explained that she worked for about 6 months prior to departing for Australia. She explained her passion for teaching, why she chose to embark on a teaching career and why she will return to teaching as a career. She explained that teaching is her passion, she must work, she must do her job and that she loved teaching. The first named applicant explained how she undertook further studies on Islam so that she could teach students the truth about Islam in contrast to the view taken by extremist Islamic groups. She wanted to empower women in the next generation and to change views and society. The Tribunal found that the first named applicant spoke passionately about the importance of education and her desire to teach.

14. The first named applicant told the Tribunal of the difficulties she had completing her education and the threats the family received. Her sisters were also receiving an education and her brother attended [a western] school so they were often threatened. She finished her studies at home demonstrating her desire to complete her education and to teach others.
15. The Tribunal referred to the psychologist's report that indicated she was suffering depression and anxiety and had difficulties leaving the home and if that were so, how would she be able to return to teaching in Pakistan. The response was that she was improving and now working in Australia.
16. The first named applicant told the Tribunal that she was followed home one day by a woman who threatened her for teaching and for not dressing properly. She also received telephone threats to stop teaching and to cover herself properly. The first named applicant explained how the woman following her terrified her and she was extremely frightened for her safety. She fled home to safety. She told the Tribunal it is her desire to teach and impart knowledge to others, particularly women in order to empower them, that make her a target.
17. The first name applicant was asked why she could not relocate elsewhere like Islamabad and replied that once a person is targeted there is no place that is safe. She continued that the groups already know everything and will find you.
18. The first named applicant explained to the Tribunal that she would return to teaching despite being married and having a child as raised by the delegate. She would teach wherever she was located. She was educated and had a career. She had found employment in Australia and was working with young children. A letter confirming her employment in Australia was provided to the Tribunal.
19. The applicant fears harm from the various Islamic militia, like LeJ, SSP and the Taliban, in Pakistan. She fears they will kill her. The Tribunal has considered the independent country information referred to in Attachment B in relation to the targeting of teachers in the Khyber Pakhtunkhwa Province by the various Islamic militias. The independent country information also refers to attacks on schools, particularly girls' schools, women working outside the home and threats to women not wearing a burka. The independent country information also discusses the targeting and killing of moderate, educated persons in Khyber Pakhtunkhwa Province by the various Islamic militias.
20. The Tribunal is satisfied based on the independent country information that the various Islamic militia target educated women and women teachers in the Khyber Pakhtunkhwa Province as a means of denying other women an education and to effectively stop women, particularly those who are educated, from participating in the workforce and providing an education to other women.
21. The Tribunal finds, based on both the first named applicant's evidence and the independent country information, that the essential and significant reason for the feared persecution is the first named applicant's membership of the particular social groups of "educated woman in Pakistan" and "women teachers in Pakistan". Therefore, her fear of persecution is for a Convention reason: s91R(a) of the Act.

22. The Tribunal finds, having regard to the independent country information, that the harm feared by the first named applicant from the various Islamic militias involves serious harm, and that such harm involves systematic conduct in the sense of being deliberate and premeditated and discriminatory in the sense that it would be directed at the applicant for the Convention reason of her membership of a particular social group: s91R(1)(b) and (c) of the Act.
23. The Tribunal is satisfied from the first named applicant's evidence that she will continue teaching if she returns to Pakistan. The Tribunal finds that she is passionate about teaching others, especially about the meaning of Islam in order to counter the views of extremists. The Tribunal finds that the first named applicant is an educated woman and based on the evidence provided, comes from a family supportive of education, especially women, and this has helped form her opinion that education is an important tool to combat the restrictive views of the extremist groups. The Tribunal finds that it is these views that will bring her to the attention of the various Islamic militias.
24. Having regard to the independent country information, the Tribunal finds that there is a real chance that the applicant will experience serious harm for reasons of her membership of the particular social groups "educated women" and women teachers" if she returns to anywhere in Khyber Pakhtunkhwa Province now or in the reasonably foreseeable future.

State Protection

25. In this case, the harm that the first named applicant fears is from extremist Islamic militias, in other words, non-state agents.
26. The first named applicant claims that the authorities in Pakistan are unable to protect them from the harm they fear, as these groups are powerful and have infiltrated the government agencies.
27. The Tribunal is satisfied that the first named applicant, as a citizen of Pakistan, has the right to relocate within Pakistan. The range of factors, which may be relevant in any particular case to the question of whether relocation is reasonably available, will be largely determined by the case sought to be made out by an applicant.
28. The Tribunal has considered the independent country information referred to in Attachment B as well as that provided by the applicants. Independent country information is consistent in its discussion of the ineffectiveness of the police in providing protection to Pakistani citizens. The same reports also refer to the high levels of corruption through the police and military forces. Information suggests that the Taliban group most active in KPK province, the Tehrik-e-Taliban Pakistan (TTP), has been active across the whole of Pakistan and is capable of reaching targets in Islamabad, Rawalpindi, Faisalabad, Lahore, Multan and Karachi. The reach of the TTP is further extended by the close links formed between militant groups in FATA and KPK and government officials, law enforcement forces and judicial officers working outside these provinces. The independent country information also refers to these same extremist organisations expanding their operations in to areas previously considered as non-military such as Karachi, Lahore and Islamabad. The independent country information indicates that the extremist militias are engaging in a sustained campaign

against educated Muslims in Pakistan who speak out against the militias and there is a targeting of moderate educated Pakistani citizens. The reports also refer to intimidation of, and threats to, women and girls by religious extremists increasing in major cities.

29. The overwhelming independent country information indicates that there is no effective state protection and indicates that law enforcement authorities in Pakistan are unable or unwilling to act to protect those in need and that the various Islamic militant groups operate with impunity, including in areas where State authority is well established.
30. Based on this information, the Tribunal finds that the first named applicant would not be able to access a level of state protection that accords with the principles in *MIMA v Respondents S152/2003*. In the Tribunal's view, the first named applicant cannot rely on the Pakistani authorities to provide effective protection from the feared harm in the reasonably foreseeable future.
31. After considering all the evidence as well as the independent country information, the Tribunal is not satisfied that the first named applicant is able to access effective state protection anywhere in Pakistan.
32. As discussed above, the Tribunal is satisfied that the first named applicant will continue teaching if she returns to Pakistan and that she is passionate about teaching others, especially about the meaning of Islam in order to counter the views of extremists. The Tribunal has found that the first named applicant is an educated woman and comes from a family supportive of education, especially of women, and this has formed her opinion that education is an important tool to combat the restrictive views of the extremist groups. The Tribunal finds that it is these views and her actions in continuing to teach that will bring her to the attention of the various Islamic militias.
33. Therefore, the Tribunal finds that that there is nowhere in Pakistan where, in the reasonably foreseeable future, there is no appreciable risk of the persecution feared.

Relocation

34. As the Tribunal has considered that she is unable to access effective state protection anywhere in Pakistan, it has not considered the question of relocation.
35. It follows that the Tribunal finds that the first named applicant faces a real chance of persecution for reasons of her membership of the particular social groups "educated women" and women teachers" if she returns to Pakistan now or in the reasonably foreseeable future.
36. Therefore, the Tribunal finds that the first named applicant has a well-founded fear of persecution throughout the country if she returns to Pakistan now or in the reasonably foreseeable future, for a Convention.

Claims of second named applicant

37. The second named applicant seeks to invoke Australia's protection obligations so that he does not have to return to Pakistan, where he claims to fear harm for reasons of his imputed political and political opinion and his membership of the particular social group, "western educated man" The second named applicant claimed that his father

was actively involved and was a senior figure with the Awami National Party in Bruner and that he and his family were active in supporting the party in their area.

38. Independent country information is that the Awami National Party (ANP) is a Pashtun party, primarily based in the Khyber Patkhwa Province and surrounding Provinces, that actively opposes the Taliban, who in return has waged action against senior ANP figures and activists. Some reports indicate that the TTP has targeted homes of ANP activists and high profile members, particularly in lead up to elections and that common members may be hurt in generalised violence or in violent acts aimed at specific targets.
39. The second named applicant's evidence was that he has not been active with ANP since 2002 when he went away to study. He stated he attended a private university that did not allow politics on campus and then he travelled to Australia in 2007. The second named applicant stated that his father was a senior official in the ANP in Bruner and provided a letter supporting his father's involvement. He claimed his father was well known in the area as a ANP member and supporter. He also stated that his father was hurt and has been confined indoors since about 2006. The second named applicant claims that his family were active during the recent elections and provided details of those successful in the election.
40. The second named applicant claimed that on his return to Pakistan in 2009 he became involved in helping IDP's. He also witnessed a bomb blast and spoke about his opposition to the extremist views of the Taliban. The second named applicant claims that as a result the Taliban threatened him. He also claims that his family owned a house in a strategically important place, which they allowed the military to use. As a result, the Taliban threatened the family for assisting the government forces. The second named applicant told the Tribunal that his family still live in the area. He stated his father relocated the family for a short period before returning to their home. He again relocated the family but returned after a short period to the family home in Bruner. His father believes that the Taliban will find him anywhere he goes so it is better to be with his people. The second named applicant claims that his father received threatening phone calls in relation to him, calling him a *Kafir* and that he works for another country.
41. The second named applicant told the Tribunal that in 2011 his cousin was driving the family car when it was attacked and his father believed that they were targeting the second named applicant. He also told the Tribunal that he was on his way to mosque with his brother when they were fired upon. The Tribunal is not satisfied, despite the claimed threats and based on the evidence provided, that the second named applicant was the intended target. As put to the second named applicant at hearing, the Tribunal is not satisfied based on the evidence, including the independent country information and that provided by the applicant, that these were nothing more than random attacks in the generalised violence in Pakistan rather than specifically targeted attacks on the second named applicant because of his families' involvement with the ANP, assisting IDPs or due to their opposition to the Taliban and their extremist policies.
42. The Tribunal accepts based on the evidence that the second named applicant's father was a senior official with the ANP. However, the second named applicant's evidence is that his father had not been actively involved since about 2006 when he was injured. The second named applicant's evidence is that he has not been involved with the ANP

since 2002. The second named applicant claims that when he returned to his home in 2009 for a six-week period to marry the first named applicant, he assisted IDPs and spoke out in opposition to the Taliban. Apart from the above claims of harm, there are no other claims of harm suffered by his father or other family members who continue to reside in the area. The second named applicant has been absent from Pakistan for a considerable period and he has not been involved in the ANP since 2002. The Tribunal does not accept that the second named applicant has any profile such that would draw him to the adverse attention of the various militias in Khyber Pakhtunkhwa Province and is therefore not satisfied that there is a real chance he faces harm because of his family's involvement with the ANP, assisting IDPs or due to his opposition to the Taliban/Islamic militias.

43. The second named applicant claims that he is also targeted because he has been educated in the west and holds western views. The Tribunal indicated that there was no independent country information to support this claim. The Tribunal referred to the thousands of students from Pakistan who studied overseas in Australia, the United Kingdom or the United States of America and who returned to Pakistan after they had finished their studies and were not targeted for studying overseas. Based on the evidence before it, the Tribunal is not satisfied that there is a real chance the second named applicant faces harm because he has been educated in the west and will be perceived as holding western views or working for another country or be a non-Muslim.
44. The Tribunal has considered the applicant's claims individually and cumulatively and does not accept that there is a real chance that the applicant will suffer serious harm, within the meaning of the Act for any Convention reason.
45. As the Tribunal does not accept that the second named applicant is a refugee as defined in the Refugees Convention, the Tribunal has considered the alternative criteria in s.36(2)(aa), whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Pakistan, there is a real risk that he will suffer significant harm as defined in subsection 36(2A) of the Act.
46. '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.
47. For the reasons set out above, the Tribunal has not accepted that there is a real chance that the second named applicant will suffer harm for reasons of his imputed political or political opinion or membership of a particular social group of western educated man, from the extremist Islamic groups if he returns to Pakistan now or in the reasonably foreseeable future. In *MIAC v SZORB*, the Full Federal Court held that the 'real risk' test imposes the same standard as the 'real chance' test applicable to the assessment of 'well-founded fear' in the Refugee Convention definition.¹ It follows that the Tribunal

¹ *MIAC v SZORB* [2013] FCAFC 33 (Lander, Besanko, Gordon, Flick and Jagot JJ, 20 March 2013) per Lander and Gordon JJ at [246], Besanko and Jagot JJ at [297], Flick J at [342].

does not accept that there is a real risk the applicant will suffer significant harm from from the extremist Islamic militias for reasons of his imputed political or political opinion membership of a particular social group of western educated man, as a necessary and foreseeable consequence of the applicant being removed from Australia to Pakistan.

48. Having considered the second named applicant's circumstances individually and cumulatively, for the reasons set out above, the Tribunal finds there are no substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Pakistan, that there is a real risk he will suffer significant harm. The Tribunal is therefore not satisfied that the second named applicant meets the alternative provisions in s.36(2)(aa).
49. In making its decision, the Tribunal has had regard to the relevant PAM3 guidelines where relevant.

CONCLUSION

50. For the reasons given above the Tribunal is satisfied that the first named applicant is a person in respect of whom Australia has protection obligations. Therefore the first named applicant satisfies the criterion set out in s.36(2)(a).
51. The Tribunal is not satisfied that the second named applicant is a person in respect of whom Australia has protection obligations. Therefore he does not satisfy the criterion set out in s.36(2)(a) or (aa). However, the Tribunal is satisfied that he is the spouse of the first named applicant and is a member of the same family unit as the first named applicant for the purposes of s.36(2)(b)(i). As such, the fate of his application depends on the outcome of the first named applicant's application. As the first named applicant satisfies the criterion set out in s.36(2)(a) it follows that the second named applicant will be entitled to a protection visa provided he meets the criterion in s.36(2)(b)(ii) and the remaining criteria for the visa.
52. In respect of the third named applicant born on [date] (after the delegate's decision dated 13 September 2012) the Tribunal notes that there was no decision made by the delegate refusing to grant him a protection visa. In the absence of a reviewable decision in respect of the third applicant, the Tribunal does not have jurisdiction in respect of his application for review.

DECISION

53. The Tribunal remits the matter for reconsideration with the following directions:
 - (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act;
 - (ii) that the second named applicant satisfies s.36(2)(b)(i) of the Migration Act, on the basis of membership of the same family unit as the first applicant; and
 - (iii) that the Tribunal has no jurisdiction in respect of the third named applicant.

Amanda Goodier
Member

ATTACHMENT “A”

RELEVANT LAW

54. 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

55. 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.
56. 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.
57. 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.
58. 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.
59. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
60. 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.

61. 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.
62. 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.
63. 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.
64. 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.
65. 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.
66. It is generally accepted that a person can acquire refugee status *sur place* where he or she has a well-founded fear of persecution as a consequence of events that have happened since he or she left his or her country. However this is subject to s.91R(3) of the Act which provides that any conduct engaged in by the applicant in Australia must be disregarded in determining whether he or she has a well-founded fear of being persecuted for one or more of the Convention reasons unless the applicant satisfies the

decision maker that he or she engaged in the conduct otherwise than for the purpose of strengthening his or her claim to be a refugee within the meaning of the Convention.

s.499 Ministerial Direction

67. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration –PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.
68. The Tribunal notes the explanation of the ‘risk threshold’ in the Complementary Protection Guidelines. However, in considering s.36(2)(aa) the Tribunal has proceeded on the basis that the ‘real risk’ test imposes the same standard as the ‘real chance’ test applicable in the context of assessment of the Refugee Convention definition following the Full Federal Court decision in *MIAC v SZQRB* [2013] FCAFC 33.

Complementary protection criterion

69. 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’).
70. ‘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
71. 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.

Credibility

72. The Tribunal is aware of the importance of adopting a reasonable approach in the finding of credibility. In *Minister for Immigration and Ethnic Affairs and McIlhatton v*

Guo Wei Rong and Pam Run Juan (1996) 40 ALD 445 the Full Federal Court made comments on determining credibility. The Tribunal notes in particular the cautionary note sounded by Foster J at 482:

...care must be taken that an over-stringent approach does not result in an unjust exclusion from consideration of the totality of some evidence where a portion of it could reasonably have been accepted.

73. The Tribunal has also had regard to the decision of *Minister for Immigration and Ethnic Affairs v Wu Shan Liang & Ors* (1996) 185 CLR 259, and the comments of the High Court on the correct approach to determining findings on credibility. Kirby J said at 39:

First, it is not erroneous for a decision-maker, presented with a large amount of material, to reach conclusions as to which of the facts (if any) had been established and which had not. An over-nice approach to the standard of proof to be applied here is not desirable. It betrays a misunderstanding of the way administrative decisions are usually made. It is more apt to a court conducting a trial than to the proper performance of the functions of an administrator, even if the delegate of the Minister and even if conducting a secondary determination. It is not an error of law for a decision-maker to test the material provided by the criterion of what is considered to be objectively shown, as long as, in the end, he or she performs the function of speculation about the “real chance” of persecution required by Chan.

74. 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 *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348).

Member of the same family unit

75. Subsections 36(2)(b) and (c) provide as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen mentioned in s.36(2)(a) or (aa) who holds a protection visa. Section 5(1) of the Act provides that one person is a ‘member of the same family unit’ as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that ‘member of the family unit’ of a person has the meaning given by the Regulations for the purposes of the definition. The expression is defined in r.1.12 of the Regulations to include a spouse and a dependent child of the family head.

ATTACHMENT “B”

INDEPENDENT COUNTRY INFORMATION

Awami National Party

The Awami National Party (ANP) was formed in July 1986 following the merger of several leftist Pashtun parties.² Its primary powerbase is in KPK, while its influence in Karachi is growing owing to the large and growing Pashtun population in that city.³

High-ranking members of the ANP have been targeted and sometimes killed in KPK due to the party’s support for anti-Taliban military operations.⁴ Incidents include the killing of ANP MPA (Member Provincial Assembly), Dr Shamsher Ali Khan, in a suicide attack in Swat in 2009; a suicide attack on ANP President, Asfandyar Wali Khan, in 2008; several attacks on Senior Minister Bashir Bilour; and the killing of KPK Information Minister Iftikhar Hussain’s son.⁵ The TTP claimed responsibility for an attack on Asfandyar Wali Khan’s sister.⁶

The *Pakistan Security Report* for 2011, published by PIPS, also lists the following attacks on ANP leaders in 2011: an attack on the house of the ANP leader Malik Muzaffar Khan in Swat;⁷ a suicide attack on ANP Senator Zahid Khan (who was unhurt) in Lower Dir, KPK;⁸ an attack by unidentified militants on the residence of former senior Vice President the ANP, Zulfiqar Khan (who was also unhurt), in Charsadda district, KPK;⁹ and the killing of Sindh ANP’s Information Secretary Bashir Jan in Karachi.¹⁰ The ANP continued to be the major target of TTP attacks in KPK and FATA in 2012. The TTP claimed responsibility after KPK’s Senior Minister Bashir Ahmed Bilour was killed in a suicide bomb attack in Peshwar in December 2012.¹¹ Also during 2012, the ANP president for Tank District was shot and killed near Gara Badha village, Tank District, and the ANP Vice-President for Charsadda District was shot and killed in Battagram District.¹²

² Blood, P (ed) 1994, ‘Awami National Party’, in *Pakistan: A Country Study*, Washington, Country Studies, <<http://countrystudies.us/pakistan/71.htm>> Accessed 27 August 2010

³ Muller, T C et al. 2011, ‘Pakistan’, *Political Handbook of the World Online Edition 2011*, CQ Press Electronic Library, p. 1089 ; Khan, T 2011, ‘Letter From Karachi: The Violent Fallout of Pakistan’s Urban Bridge’, *Foreign Affairs*, 6 January <<http://www.foreignaffairs.com/node/67173>> Accessed 11 January 2011

⁴ Pak Institute For Peace Studies 2011, *Pakistan Security Report 2010*, January, p.5 <www.san-pips.com/download.php?f=74.pdf> Accessed 12 July 2011; Tavernise, S & Shah, P Z 2010, ‘Killings Rattle Pakistan’s Swat Valley’, *The New York Times*, 22 April <http://www.nytimes.com/2010/04/23/world/asia/23pstan.html?ref=swat_valley> Accessed 27 August 2010

⁵ ‘Asfandyar’s sister injured in Peshawar attack’ 2010, *Daily Times*, 10 August <http://www.dailytimes.com.pk/default.asp?page=2010%5C08%5C10%5Cstory_10-8-2010_pg1_5> Accessed 26 August 2010; ‘The Taliban hit-list’ 2009, *Daily Times*, 26 January <http://www.dailytimes.com.pk/default.asp?page=2009\01\26\story_26-1-2009_pg1_2> Accessed 26 August 2010

⁶ Yousafzai, A 2010, ‘Taliban claim responsibility for assassination bid on ANP chief Asfandyar’s sister’, *All Voices*, 12 August <<http://www.allvoices.com/contributed-news/6501135-taliban-claim-responsibility-for-assassination-bid-on-anp-chief-asfandyars-sister>> Accessed 26 August 2010

⁷ Pak Institute For Peace Studies 2012, *Pakistan Security Report 2011*, January, p. 10

⁸ Pak Institute For Peace Studies 2012, *Pakistan Security Report 2011*, January, p. 10

⁹ Pak Institute For Peace Studies 2012, *Pakistan Security Report 2011*, January, p. 10

¹⁰ Pak Institute For Peace Studies 2012, *Pakistan Security Report 2011*, January, p. 13

¹¹ Pak Institute for Peace Studies 2013, *Pakistan Security Report 2012*, January, p. 18

¹² Pak Institute for Peace Studies 2013, *Pakistan Security Report 2012*, January, pp. 18-19

The student organisation of the ANP is the Pushtun Students Federation (PkSF), which was formed in 1968.¹³

The ANP won 13 National Assembly seats in February 2008, as well as control of the KPK provincial assembly.¹⁴ In the 2013 election the ANP received only 0.9 per cent of the national vote, resulting in one seat in the National Assembly. In KPK, its primary powerbase, it received only 10.3 per cent of the vote, resulting in only four seats in the 124 seat Provincial Assembly.¹⁵ These results may be explained by the Taliban's targeting of ANP candidates and supporters. In the lead up to the elections, the TTP announced their intentions to target anybody associated with the ANP, and warned people not to attend ANP rallies.¹⁶ The ANP was thus severely limited in its ability to campaign in most areas of the country, but especially in FATA, KPK, and Karachi.¹⁷ According to FAFEN the ANP was targeted on 29 occasions, the highest of any political party, with one candidate killed in an attack.¹⁸ The ANP is growing in influence in Karachi where it is involved in clashes with the MQM.

Reports indicate that ANP members are targeted for violence in Karachi, primarily as a result of the political and ethnic/sectarian conflict between the ANP and the *Muttahida Qaumi Movement* (MQM), and Pakistan's People Party (PPP).¹⁹ These attacks do not appear to be limited to high profile members.

¹³ Paracha, N 2010, 'Evolving Campus Politics in Pakistan', *Global Politics News*, 16 April <<http://globalpoliticsnews.com/?p=872>> Accessed 31 May 2012

¹⁴ Muller, T C et al. 2011, 'Pakistan', *Political Handbook of the World Online Edition 2011*, CQ Press Electronic Library, p. 1089

¹⁵ The percentage of the vote was calculated by dividing the number of votes attained by the party by the total number of votes counted in the election: Election Commission of Pakistan 2013, *Party Wise Vote Bank*, 27 May <<http://ecp.gov.pk/Misc2013/voteBank.pdf>> Accessed 28 June 2013; For number of seats see: Election Commission of Pakistan 2013, *Party Position National Assembly*

<<http://www.ecp.gov.pk/overallpartyposition26072013.pdf>> Accessed 21 August 2013; Election Commission of Pakistan 2013, *Party Position: Provincial Assemblies*

<<http://www.ecp.gov.pk/overallpartypositionPA26072013.pdf>> Accessed 21 August 2013

¹⁶ Khan, M I 2013, 'Pakistan Election: Taliban threats hamper secular campaign', *BBC*, 2 April <<http://www.bbc.co.uk/news/world-asia-22022951>> Accessed 9 July 2013

¹⁷ Khan, M I 2013, 'Pakistan Election: Taliban threats hamper secular campaign', *BBC*, 2 April <<http://www.bbc.co.uk/news/world-asia-22022951>> Accessed 9 July 2013; Jan, R 2013, 'Taliban Violence Mars Pakistan's Elections', *Critical Threats*, American Enterprise Institute, 17 May

<<http://www.criticalthreats.org/pakistan/jan-taliban-violence-mars-pakistans-election-may-17-2013>> Accessed 9 July 2013

¹⁸ Free and Fair Election Network 2013, *Observation of General Election 2013: Key Findings and Recommendations*, FAFEN, 22 May, p.94 <[http://www.electionpakistan.org/assets/publication/bb90e-FAFEN-Election-Observation-Report---Key-Findings-and-Recommendations-\(22-May-2013\).pdf](http://www.electionpakistan.org/assets/publication/bb90e-FAFEN-Election-Observation-Report---Key-Findings-and-Recommendations-(22-May-2013).pdf)> Accessed 8 July 2013

¹⁹ Sayah, R. 2011, 'In Pakistan's bloodiest city, violence has little to do with militants', *CNN*, 23 July <http://articles.cnn.com/2011-07-23/world/pakistan.karachi.violence_1_muttahida-qaumi-movement-awami-national-party-mqm?_s=PM:WORLD> Accessed 20 July 2012 Hashim, Asad 2012, 'Karachi: Pakistan's bleeding heart' 2012, *Al Jazeera*, 19 June

<<http://www.aljazeera.com/indepth/features/2012/06/2012677393243533.html>> Accessed 6 August 2012; Vira, V. & Cordesman, A.H. 2011, *Pakistan: Violence Vs. Stability*, Center for Strategic & International Studies, 5 May, p.116 <http://csis.org/files/publication/110504_stabilizing_pakistan.pdf> – Accessed 21 July 2011; Khan, T. 2011, 'Letter From Karachi: The Violent Fallout of Pakistan's Urban Bridge', *Foreign Affairs*, 6 January <<http://www.foreignaffairs.com/node/67173>> – Accessed 11 January 2011; Rashid, A. 2010, 'The Anarchic Republic of Pakistan', *The National Interest*, 24 August <<http://nationalinterest.org/article/anarchic-republic-pakistan-3917?page=show>> – Accessed 7 January 2011

The rivalry between the political parties has resulted in widespread violence and killings in Karachi with around two thousand people killed in 2011 alone.²⁰ According to the Human Rights Watch (HRW) world report on events in 2011:

[K]illings were perpetrated by armed groups patronized by all political parties with a presence in the city. The Muttaheda Qaumi Movement (MQM), Karachi's largest political party, with heavily armed cadres and a well-documented history of human rights abuse and political violence, was widely viewed as the major perpetrator of targeted killings.²¹

The violence in Karachi has not abated in 2012. In early June 2012, the Human Rights Commission of Pakistan (HRCP) reported that at least 740 people in Karachi had been killed in the year to date. These "figures include the assassination of 107 political activists, while the rest of the victims were people with no political affiliations". Much of the violence is blamed on tensions between supporters of the MQM and the ANP.²² On 19 July 2012, *Gulf News* reported that one thousand people had been killed in Karachi in the first six months of 2012, including 52 policemen. 110 people had been killed in July alone.²³

Relocation

Information suggests that the Taliban group most active in KPK province, the Tehrik-e-Taliban Pakistan (TTP), has been active across the whole of Pakistan and is capable of reaching targets in Islamabad, Rawalpindi, Faisalabad, Lahore, Multan and Karachi. The reach of the TTP is further extended by the close links formed between militant groups in FATA and KPK and government officials, law enforcement forces and judicial officers working outside these provinces.

The TTP is reported to have 'hit lists' containing the names of police officers and prominent personalities. The TTP claims that it has the ability to reach people on the list where ever they are found.

The extensive influence of the Taliban has also been noted by the United Nations High Commissioner for Refugees (UNHCR). In its eligibility guidelines for assessing the protection needs of religious minorities from Pakistan the United Nations found that the wide geographical reach of some militant groups meant that internal flight or relocation was "generally not available to individuals at risk of being targeted by such groups" The UNHCR concluded that the reach of some groups extended far beyond FATA and KPK and was evident by high profile bombings and other attacks in urban areas outside of these provinces. The UNHCR claims that the reach of militant groups based in FATA and KPK was further extended by the close links formed between militant groups and government officials, law enforcement forces and judicial officers working outside these provinces.²⁴

²⁰ Amnesty International 2012, *Amnesty International Annual Report 2012 - Pakistan*, 24 May

²¹ Human Rights Watch 2012, *World Report 2012: Pakistan*, 23 January

²² '740 killed in Karachi in five months: rights body' 2012, *Agence France Presse*, 5 June (FACTIVA); 'Karachi: Pakistan's bleeding heart' 2012, *Al Jazeera*, 19 June

<<http://www.aljazeera.com/indepth/features/2012/06/2012677393243533.html>> Accessed 6 August 2012

²³ Ashraf, M. 2012, 'Karachi toll reaches 110 in July', *Gulf News*, 19 July

<<http://gulfnews.com/news/world/pakistan/karachi-toll-reaches-110-in-july-1.1050849>> Accessed 20 July 2012

²⁴ United Nations High Commissioner for Refugees 2012, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of religious Minorities from Pakistan*, 14 May, p.42

<http://www.ecoi.net/file_upload/90_1337326697_unhcr-pakistan-20120514-religious-minorities.pdf> Accessed 11 July 2012

The law in Pakistan provides for freedom of movement within the country, emigration, foreign travel and repatriation, although the government is reported to limit these rights in practice.²⁵

The main targets of Pakistan's Taliban within Pakistan are reported to be "tribal leaders who oppose them, rival local militant leaders, individuals that have, in its view, violated Sharia law, and the Pakistani police and army."²⁶ Government officials, academics, religious scholars, columnists and members of the development sector are also reported to be among those targeted by the Taliban.²⁷ A recent article in *The New York Times* refers to what appears to be a sustained campaign by the Taliban against educated Muslims in Pakistan who speak out against the militants. At least six Muslim intellectuals and university professors are reported to have been killed or kidnapped in Pakistan in the past year. Dr. Farooq Khan, a psychiatrist and vice-chancellor of a liberal university in Swat, was killed in early October 2010 and Maulana Sarfaraz Naeemi, a moderate preacher who had spoken out against jihadist ideology, was killed in 2009. Maulana Hassan Jan, a moderate preacher who had denounced suicide bombings, was killed in Peshawar in 2007. Public figures linked with the main political group in Khyber-Pakhtunkhwa province, the secular Awami National Party, are reported to have been kidnapped and killed.²⁸ Professor Ajmal Khan, a close ally of the ruling Awami National Party in Khyber Pakhtunkhwa and a locally-renowned academic, was kidnapped by the Taliban on 7 September 2010.²⁹ Another report refers to moderate, educated elements, especially in Khyber Pakhtunkhwa, being killed.³⁰

By 2009, the influence of the Pakistan Taliban had spread across FATA and was beginning to expand beyond. This, along with other factors, led to Pakistan's security forces carrying out major military operations in Swat and South Waziristan. The effect of these military operations is unclear. The offensives appeared to disrupt militant networks and close down bases, but the militants were reportedly not decisively defeated. Some withdrew into Afghanistan, some into border areas not covered by the offensives, or into more settled and urban areas in Baluchistan, Sindh and Punjab. Pakistan's government has said that significant numbers of militants have moved into towns and cities, where it is less easy to isolate and target them. A June 2010 House of Commons Library research paper indicates that this argument is "apparently supported by a renewed wave of attacks in settled areas since March, including in Lahore."³¹

The Taliban has reportedly been expanding its activities into previously non-militant areas. Central and southern Punjab, Karachi and Baluchistan are referred to as newer areas of Taliban operations.³² Militants from FATA reportedly have been moving to Karachi "and

²⁵ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Pakistan*, March, Section 2(d)

²⁶ Lunn, J. & Smith, B. 2010, 'The "AfPak policy" and the Pashtuns', UK House of Commons Library Research Paper 10/45, 22 June, p. 45

²⁷ 'Historical distortions' 2010, *Daily Times*, 8 October

²⁸ Perlez, J. 2010, 'Killing of Pakistan Doctor Part of Taliban War on Educated', *The New York Times*, 9 October –

²⁹ 'Taliban releases video of kidnapped Pakistan professor' 2010, *Agence France-Presse*, 14 October –

³⁰ 'Historical distortions' 2010, *Daily Times*, 8 October

³¹ Lunn, J. & Smith, B. 2010, 'The "AfPak policy" and the Pashtuns', UK House of Commons Library Research Paper 10/45, 22 June, pp. 44-45 & 61

³² Shah, TA., 'The Deobandi Debate Terrorist Tactics in Afghanistan and Pakistan' in The Jamestown Foundation 2010, *Terrorism Monitor*, Volume VIII, Issue 21, 28 May, pp. 4-5

<http://www.unhcr.org/refworld/country,,,PAK,,4c7228003,0.html> – Accessed 11 October 2010

perhaps forming a new Taliban safe haven in Pakistan's largest city."³³ An article from July 2010 indicates that there is growing "Talibanisation," in Karachi, particularly in Pashtun neighbourhoods like Sohrab Goth. The influence of the Pashtun community has grown, with approximately 200,000 displaced people from the conflict zones in northwest Pakistan having moved to Karachi during the previous two to three years because of ongoing military operations.

TEACHERS

Although there are frequent reports of attacks on women teachers in Balochistan, the Khyber-Pakhtunkhwa Province (KPK, formerly known as North-West Frontier Province) and the Federally Administered Tribal Areas (FATA),³⁴ only two reports were found of attacks elsewhere. Both attacks were at girls' schools, one in Rawalpindi in 2011³⁵ and one in Karachi in 2005.³⁶ The 2011 attack on a girls' school in Rawalpindi was perpetrated by '[a] gang of thugs' of '60 to 70' men who 'thrashed the girl students and their female teachers' warning them to 'dress modestly and wear hijab'.³⁷ The 2005 attack in Karachi, in which female teachers were subjected to violence, was attributed by Islami Jamiat Talaba (IJT) to 'rogue elements' of the All Pakistan Mohajir Students Organization (APMSO), the student wing of the Muttahida Qaumi Movement.³⁸ No other reports were found of attacks in Punjab or Sindh provinces in the sources consulted.

Attacks on women teachers in Balochistan, KPK and FATA have been blamed on the Taliban and other Islamist groups, as well as 'unidentified assailants' and 'tribesmen', and have targeted girls' schools and co-educational schools as well as women teachers.³⁹ A 2011 article states that in KPK and surrounding areas 'most girls' schools have been blown up by the Taliban' and refers to attacks by 'thugs' on co-educational institutions in Lahore a few years earlier which at that time led other 'pious people' to also 'start[ed] writing their own threat letters to the institutions'.⁴⁰ Reporting on attacks in the FATA concerned death threats to female teachers unless they donned the burqa, and threats to schools unless they segregated classrooms.⁴¹

A number of reports were located that refer to the harassment of women working outside of their home by militants in KPK:

³³ Kronstadt, K.A. 2010, 'Pakistan: Key Current Issues and Developments', Congressional Research Service Report for Congress, 1 June, p. 16

³⁴ For example, 'Teachers, PSO activists protest acid attack' 2011, *Daily Times*, 17 September; 'Teachers murder heightens fear in NWFP' 2007, *Pakistan Press International Information Services*, 16 October; and 'Pakistan: Schools shut as fear drives teachers away' 2011, *Integrated Regional Information Networks (IRIN)*, 26 April; 'Taliban blow up another state-run girls' school in Pakistan's Peshawar' 2010, *Daily Times*, 9 December, CISNET Pakistan [CX254836](#); 'Devastation: Bombing of schools in KP and Fata' 2012, *Dawn News Group*, 26 February, CISNET Pakistan [CX282235](#)

³⁵ 'Shape of things to come?' 2011, *The Express Tribune*, 12 October.

³⁶ 'Arrest of Farhan Asif's killers will halt ongoing terrorism against us to some extent:', 2005, *Pakistan Press International Information*, 26 April.

³⁷ 'Shape of things to come?' 2011, *The Express Tribune*, 12 October.

³⁸ 'Arrest of Farhan Asif's killers will halt ongoing terrorism against us to some extent:', 2005, *Pakistan Press International Information*, 26 April.

³⁹ 'Teachers murder heightens fear in NWFP' 2007, *Pakistan Press International Information Services*, 16 October; 'Shape of things to come?' 2011, *The Express Tribune*, 12 October.

⁴⁰ 'Shape of things to come?' 2011, *The Express Tribune*, 12 October.

⁴¹ 'Teachers murder heightens fear in NWFP' 2007, *Pakistan Press International Information Services*, 16 October.

- On 5 July 2012, the *Express Tribune* reported that Farida Afridi, head of a NGO committed to promoting social change and the economic emancipation of rural women, had been shot dead in Peshawar. The report claimed that Ms Afridi was founder of the NGO and had a Masters degree.⁴²
- On 26 February 2012, *Dawn*, reported that in the provinces of KPK and FATA teachers were reluctant to perform their duties for fear of either being kidnapped or killed by militants, and that in parts of Peshawar 50 primary schools for girls had become dysfunctional due to the unavailability of teachers.⁴³ A more recent article in May 2012 by the same news source includes a claim by the KPK Minister for Education that the short fall in the recruitment of teachers was due to limited financial resources.⁴⁴
- On 15 November 2011, an article by *Dawn.com* claimed that female teachers in many settled areas of KPK had been subjected to harassment and threats by extremists. The article claimed that extremists had attacked or threatened female teachers for leaving their homes and going to work.⁴⁵
- Freedom House found in its 2011 annual report on Pakistan that “female teachers, particularly in the FATA and Khyber Pakhtunkhwa, face threats and attacks by Islamist militants, with dozens of schools blown up during the year”.⁴⁶

The United Kingdom’s *Foreign and Commonwealth Office* reported in March 2011 that while non-government organisations (NGOs) held ‘serious concerns about the extent of violence against women’ and the 2010 UN Development Programme Gender Equality Survey ‘showed that women represented only 21% of the workforce’, progress in supporting and protecting women remained slow as improvements were ‘challenged by the gradual growth of a culture of intolerance within Pakistani society, exploited by extremist groups for their own agendas’.⁴⁷ The same report referred to 2010 UN Development Programme statistics which indicated that ‘only 23% of women and 46% of men had a secondary education and the education received was often of poor quality’.⁴⁸

⁴² Zia, A 2012, ‘Militancy: A progressive voice for tribal women silenced in targeted attack’, *The Express Tribune*, 5 July <<http://tribune.com.pk/story/403834/militancy-a-progressive-voice-for-tribal-women-silenced-in-targeted-attack/>> Accessed 10 July 2012

⁴³ Shinwari, S & Ali, F 2012, ‘Devastation: Bombing of schools in KP and Fata’, *Dawn.com*, 26 February <<http://dawn.com/2012/02/26/devastation-bombing-of-schools-in-kp-and-fata/>> Accessed 10 July 2012

⁴⁴ ‘29,000 teachers recruited are not enough’ 2012, *Dawn.com*, 12 May <<http://dawn.com/2012/05/12/29000-teachers-recruited-are-not-enough/>> Accessed 10 July 2012

⁴⁵ ‘Schools under attack’ 2011, *Dawn.com*, 15 November <<http://dawn.com/2011/11/15/schools-under-attack/>> Accessed 10 July 2012

⁴⁶ Freedom House 2011, *Freedom in the World – Pakistan*, <<http://www.freedomhouse.org/report/freedom-world/2011/pakistan>> Accessed 10 July 2012

⁴⁷ United Kingdom: Foreign and Commonwealth Office 2011, *Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report – Pakistan*, 31 March, <<http://www.unhcr.org/refworld/docid/4d99aa805f.html>>, CISNET Pakistan CX262584.

⁴⁸ United Kingdom: Foreign and Commonwealth Office 2011, *Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report – Pakistan*, 31 March, <<http://www.unhcr.org/refworld/docid/4d99aa805f.html>> CISNET Pakistan CX262584.

Effectiveness of Police Protection

The US Department of State reports that in 2010 police effectiveness “varied greatly by district, ranging from reasonably good to ineffective”, adding that “[p]olice often failed to protect members of religious minorities, including Christians, Ahmadis, and Shia Muslims, from attacks”.⁴⁹

Pakistanis have little faith in the capacity of the police force to adequately protect them and have ranked the police as the most corrupt institution in Pakistan in four consecutive *Transparency International* surveys (2010, 2009, 2006, and 2002).⁵⁰

International organisations also have little confidence in the ability of Pakistan’s police to provide adequate state protection. In a 2008 report on the Pakistan police force, the *International Crisis Group (ICG)* bluntly stated in its opening remarks that “[a]fter decades of misuse and neglect, Pakistan’s police force is incapable of combating crime, upholding the law or protecting citizens and the state against militant violence.” Later, the author of the *ICG* report stated that “[i]t is hardly surprising that this under-staffed, ill-equipped, deeply politicised, and pervasively corrupt force has failed to counter the growing extremist menace that is undermining the stability of the Pakistani state, claiming hundreds of lives in terror attacks.”⁵¹

The *ICG* report also quotes a police officer who states that “60 per cent of the Islamabad police at present is engaged in protecting VIPs and providing security to diplomats. Hardly any real police strength is, therefore, available to fight crime and maintain order.” The available information does indicate that bribery of the police to avoid charges is common.⁵²

In January 2012 *Human Rights Watch* reported that in major cities, “intimidation of, and threats to, women and girls by religious extremists increased” in 2011.⁵³ Mistreatment of women, including rape, ‘remains a serious problem’ in Pakistan.⁵⁴ *Amnesty International* stated in their 2011 Annual Report on Pakistan that violence against women was ‘committed with impunity’ as ‘police were reluctant to register and investigate complaints’⁵⁵

In a report published in April 2011 on human rights practices in Pakistan, the US State Department referred to widespread corruption, in particular in the lower levels of the police force, which went virtually unchecked:

⁴⁹ US Department of State 2011, *2010 Human Rights Report: Pakistan*, 8 April, Section 1.d, <<http://www.state.gov/j/drl/rls/hrrpt/2010/sca/154485.htm>> Accessed 26 April 2012 .

⁵⁰ Transparency International Pakistan 2010, *National Corruption Perception Survey 2010*, 1 June, <<http://www.transparency.org.pk/report/ncps%202010/press%20release%20embargo.pdf>> Accessed 30 April 2012 ; Jamal, A. 2010, *Police Organisations in Pakistan*, Human Rights Commission Pakistan, May, p.17 <[http://www.hrcp-web.org/pdf/Police_Organisations_in_Pakistan\[1\].pdf](http://www.hrcp-web.org/pdf/Police_Organisations_in_Pakistan[1].pdf)> Accessed 27 April 2011

⁵¹ International Crisis Group 2008, *Reforming Pakistan’s police*, Asia Report N°157,14 July, p.1, p.14, <http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/157_reforming_pakistan_s_police.pdf> Accessed 30 April 2012

⁵² International Crisis Group 2008, ‘*Reforming Pakistan’s Police*’, Asia Report N° 157, 14 July, p.13, <http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/157_reforming_pakistan_s_police.pdf> Accessed 30 April 2012

⁵³ Human Rights Watch (HRW) 2012, *World Report 2012: Pakistan*, 23 January, < <http://www.hrw.org/world-report-2012/world-report-2012-pakistan> > Accessed 24 April 2012.

⁵⁴ Human Rights Watch (HRW) 2012, *World Report 2012: Pakistan*, 23 January, < <http://www.hrw.org/world-report-2012/world-report-2012-pakistan> > Accessed 24 April 2012.

⁵⁵ Amnesty International 2011, *Amnesty International Annual Report Pakistan 2011*, 13 May, CISNET Pakistan CX264932 .

Corruption was widespread within the government and lower levels of the police forces, and the government made few attempts to combat the problem. Rape, domestic violence, sexual harassment, honour crimes, abuse, and discrimination against women remained serious problems.⁵⁶

The US State Department also reported that security forces “tortured and abused individuals in custody”, and there were “accusations of security forces raping women during interrogations” and that “[t]he government rarely took action against those responsible”.⁵⁷ Some police are “known to charge fees to register genuine complaints and accepted money for registering false complaints”.⁵⁸

The US Department of State (USDOS) latest human rights report states that ‘Police effectiveness varied greatly by district, ranging from reasonably good to ineffective. Some members of the police committed human rights abuses or were responsive to political interests’.⁵⁹ According to a 2011 report from the US Institute of Peace (USIP) ‘[t]here is a broad consensus in Pakistan that after decades of abuse and neglect, its police force is failing to combat crime effectively, uphold the law, provide basic security to citizens, and fight growing militancy’.⁶⁰

The USIP report also details the issues facing the police in regard to counterterrorism activities, including: insufficient numbers and scant resources, institutional disconnect, political challenges, corruption, and lack of modernisation.⁶¹

The police themselves are increasingly being targeted by militants, “as a symbol of the state.”⁶² According to a 2009 report on police in Pakistan, “on average 400 police officers have been killed every year in terrorist attacks since 2005.”⁶³

On 11 July 2012, the Human Rights Commission of Pakistan (HRCP) issued a press release, stating that the “HRCP is extremely perturbed at the growing incidence and extent of violence in all parts of Pakistan”. Further:

All these incidents have two things in common: one, that the attackers are never apprehended, which emboldens them and others to continue; and second, that the

⁵⁶ US Department of State 2011, *2010 Human Rights Report: Pakistan*, 8 April, Initial Section , <<http://www.state.gov/j/drl/rls/hrrpt/2010/sca/154485.htm> > Accessed 30 April 2012 .

⁵⁷ US Department of State 2011, *2010 Human Rights Report: Pakistan*, 8 April, Section 1c, <<http://www.state.gov/j/drl/rls/hrrpt/2010/sca/154485.htm> > Accessed 30 April 2012

⁵⁸ US Department of State 2011, *2010 Human Rights Report: Pakistan*, 8 April, Section 4, <<http://www.state.gov/j/drl/rls/hrrpt/2010/sca/154485.htm> > Accessed 24 April 2012

⁵⁹ US Department of State 2012, *Country Reports on Human Rights Practices for 2011 - Pakistan*, 24 May, Section 1.d

⁶⁰ Abbas, H. 2011, *Reforming Pakistan’s Police and Law Enforcement Infrastructure: Is It Too Flawed to Fix?*, Special Report 266, United States Institute of Peace, February, p. 2 <<http://www.usip.org/files/resources/sr266.pdf>> Accessed 20 July 2012

⁶¹ Abbas, H. 2011, *Reforming Pakistan’s Police and Law Enforcement Infrastructure: Is It Too Flawed to Fix?*, Special Report 266, United States Institute of Peace, February, p. 6 <<http://www.usip.org/files/resources/sr266.pdf>> Accessed 20 July 2012)

⁶² Abbas, H. 2011, *Reforming Pakistan’s Police and Law Enforcement Infrastructure: Is It Too Flawed to Fix?*, Special Report 266, United States Institute of Peace, February, p. 2 <<http://www.usip.org/files/resources/sr266.pdf>> Accessed 20 July 2012

⁶³ Abbas, H. 2009, *Police & Law Reform in Pakistan: Crucial for Counterinsurgency and Counterterrorism*, Institute for Social Policy and Understanding, April, p. 7

entire country is overcome by a propensity for violence to the extent that a reasoned and peaceful discourse has become all but extinct.⁶⁴

According to police sources quoted in a 19 June 2012 *Al Jazeera* article, the police in Karachi do not have the resources to effectively prevent or investigate the violence in the city and are beholden to the interests of the conflicting political parties. The article states:

The police, crippled by low numbers (there are only 32,000 police officers in Karachi) and political appointments, is in no position to fully enforce the law, said Sharfuddin Memon, an adviser to the provincial home department.

“The police treats people differently, on the same crime, depending on who the suspect is linked to,” said one former Karachi police chief, speaking on condition of anonymity. “And the militants and criminals have entered the rank and file of the political parties.

“The parties use them for muscle, and the criminals use them for protection. It’s a marriage of convenience.”

In that situation, the police is forced to re-evaluate its objectives.

“We keep the city in a state of controlled anarchy – we decide how much to allow,” said another senior police official.⁶⁵

An April 2012 *Jamestown Monitor* report on Karachi states that [t]he violence in Karachi has been growing since it started in the mid-1980s and is likely to grow in the years to come in the face of the Pakistani state’s inability or unwillingness to act to prevent it. The growing violence and subsequent chaos in Karachi has paralyzed the Pakistani security forces and created a vacuum which is being filled by Islamists’⁶⁶

According to an August 2011 article from *The Economist*, the perpetrators of violence in Karachi are able to call on political patronage to ensure that crimes are not followed up or investigated. It states that ‘[p]olitical support for warring ethnic gangs means the police largely stay out of the conflict: each gang will call on political muscle if its henchmen are rounded up’.⁶⁷

Targeting of people because they have studied abroad

No reports were found of people in Pakistan having been targeted by Islamic groups for sending their children abroad to be educated. No evidence was found to indicate that people who have returned to Pakistan after studying abroad are imputed to hold western values or

⁶⁴ Yusuf, Z. 2012, *HRCP slams expanding violence and impunity*, Human Rights Commission of Pakistan, 11 July <<http://www.hrcp-web.org/showprel.asp?id=289>> Accessed 20 July 2012

⁶⁵ Hashim, Asad 2012, ‘Karachi: Pakistan’s bleeding heart’ 2012, *Al Jazeera*, 19 June <<http://www.aljazeera.com/indepth/features/2012/06/2012677393243533.html>> Accessed 6 August 2012

⁶⁶ Jamal, A. 2012, ‘Karachi’s Deadly Political and Sectarian Warfare Threatens the Stability of Pakistan’s Commercial Capital’, *Jamestown Terrorism Monitor*, vol. 10, issue 8, 20 April, Jamestown Foundation website, p 5 http://www.jamestown.org/uploads/media/TM_010_Issue08_01.pdf - Accessed 24 May 2012

⁶⁷ ‘Violence in Karachi - Into the abyss’ 2011, *The Economist*, 27 August <<http://www.economist.com/node/21526919>> Accessed 6 August 2012

pro-western beliefs, nor was evidence found of returned students being targeted by Islamic groups for reason of such imputed values or beliefs.

Detailed information on the number of students from Pakistan studying abroad was not located, however information from the British Council indicates that more than 9,000 students from Pakistan studied in the United Kingdom higher education sector in 2007/2008, over 6,000 studied in Australia in 2008 and more than 5,000 studied in the United States in 2006/2007.⁶⁸

A recent report by Human Rights Watch has observed that militant Islamic groups have targeted “nearly every sector of Pakistani society” and that targeted killing of political activists has escalated.

Against a background of quite widespread threat of violence, however, no reports were found of specific targeting of politically inactive Sunnis because of a perception that they had western values, favourably viewed western culture or were otherwise supportive of “the west”.

⁶⁸ ‘Pakistan Market Introduction’ 2009, British Council website, July <http://www.britishcouncil.org/eumd-information-background-pakistan.htm> – Accessed 1 April 2011