

**1220489 [2013] RRTA 292 (5 April 2013)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1220489

**DIAC REFERENCE(S):** CLF2012/187176

**COUNTRY OF REFERENCE:** Afghanistan

**TRIBUNAL MEMBER:** Stuart Webb

**DATE:** 5 April 2013

**PLACE OF DECISION:** Melbourne

**DECISION:** The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

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

### RELEVANT LAW

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

#### Refugee criterion

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

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

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

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

### **Complementary protection criterion**

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

### **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources. The applicant provided the Tribunal with a copy of the delegate's decision.
20. The applicant provided a statutory declaration with his application. An edited version of this declaration states:

My name is [name] and I am approximately [age] years old male born in Afghanistan. My ethnicity is Hazara and my religion is Muslim Shia. I am married with [number] children. They continue to reside in Pakistan. My mother and father are deceased. I have [number] sisters and [number] brother. My brother is in Darwin detention center. My sister [name] is in New Zealand and is married to an Afghan New Zealand Citizen and my other sister is in Indonesia with her family. I have resided in Pakistan since a young boy and have no family within Afghanistan.

I was very young when my family fled Afghanistan. We moved to Pakistan. The standard age for men to go to government service was 21 years old but at this time boys as young as 13 or 14 years old were being taken to do government service and participate in war. My mother feared her sons would be taken and if she refused or we refused we would be killed anyway. So she took us to Pakistan.

The violence was worse in Pakistan for Hazara and Shia. Everyday more and more target attacks against Hazara people. We were unable to go to work anywhere and limited to our houses. We could not survive.

I have no family at all in Afghanistan. My wife and children are still Pakistan. Being Hazara, I am more at risk of being killed. I would need to travel for work and that puts me at real risk of being recognised as a Hazara because I look like all Hazara. Hazara people have the same face. My nose and my eyes look same to other Hazara. I have a mix language from living in Pakistan that would identify me as a Hazara also. I would not be able to survive with no family or money or job. I really think I would be killed because I cannot hide anywhere.

It is very clear that to me that Hazaras are being discriminated as compared to other ethnic groups in Afghanistan. I believe that I have no family and I have to work. For work I must travel and the Taliban have road blocks and they stop people to check if they are Hazara. I cannot hide my looks. I have the same face as all other Hazaras and I will be targeted because of this. I believe that I will be found and recognised and killed for this reason

The Taliban will harm me. I also fear other ethnic groups such as the Pashtun. I fear all armed groups in Afghanistan. No section of Afghanistan has been spared the terror attacks and the target killings.

I am Hazara and Shia. The Taliban has made territorial gains and has taken over many of the Hazara dominant areas. To take over the areas they kill the Hazara people. I do not rely too much on the TV but I hear from the actual people of the families of the dead people that have been killed in Afghanistan. So I hear it from the people who have actually experienced the hatred to Hazara people. They describe how they are targeted and killed. They bring back the bodies of loved ones for burial.

Afghanistan - I do not trust the security as they are all corrupt. The Taliban would brand me a spy and deem this to be "anti-Islamic behaviour". I am vulnerable as I am a member of the Hazara Ethnic group and Shia religious group and these are anti-Taliban. For this reason also I would be deemed to be anti-Islamic to the Taliban and captured, tortured and more than likely killed.

Pakistan - Extremist groups such as the Taliban and the Lashar-e-Jangvi and Bachloch in Pakistan have been given free hands to kill every Hazara they like. I am recognized along with other Hazaras because of our distinctive features and physical attributes. I fear that one of these groups would be tipped off of my return as a spy from the western country and I would be captured and tortured and killed. I also fear I will be stopped and recognised as a Hazara Shia when travelling for work or food or medical services and after being caught I would be killed.

I believe I will be killed because I am Hazara and Shia. I would have to travel for work and I believe the same thing will happen to me, that is happening to all other Hazara that are being killed. I will be killed. The Taliban hide amongst the civilian population. You cannot trust anyone.

My children who are Afghans and who were born in Pakistan have never visited Afghanistan; they do not know the Afghan dialect, they do not have Pakistani citizenship, and there Hazara births are not recorded in Afghanistan. I may not be accepted by the Afghan Hazara community in Afghanistan because I have lived in Pakistan for all of my life. The reality is that I have a family. My wife is Afghan born,

but my children are Pakistani born with no citizenship, therefore they also may not be accepted in Afghanistan as true Afghani people.

21. A generic submission was provided by the applicant's advisors regarding Afghanistan. The applicant provided a copy of his Afghani Taskera and marriage certificate.
22. The applicant was interviewed in relation to his claims. The DIAC officer determined that the applicant was a Hazara Shia from Kabul, Afghanistan. The delegate accepted that the applicant had departed Afghanistan in 1981 at the age of [age deleted: s.431(2)] and resided in Quetta, Pakistan for the past 30 years. The delegate found the applicant to be a citizen of Afghanistan. The delegate found the applicant to be a generally credible witness, that the answers to questions were consistent and were not embellished. The delegate considered that violence against Hazaras in Kabul was declining. The delegate considered that the applicant could return to Kabul, without fear of persecution, though acknowledging a number of difficulties the applicant would have in establishing himself in Kabul. These difficulties did not provide grounds for protection under Convention or complementary protection grounds.
23. A submission was provided by the applicant's advisors to the Tribunal. This stated that:

The Applicant maintains that the situation in Afghanistan for Hazara Shia is no better than in Pakistan. He explains that Hazara Shia are the target of discrimination and attacks that would result in significant harm to himself and his family. He notes that the Taliban set up road blocks and those easily identifiable as Hazara Shia are singled out and killed.

The Applicant instructs that he has no family in Afghanistan. He maintains that the lack of a support network would mean that it would be impossible for him to find employment and avoid persecution by the authorities and Pashtun Sunni extremist groups like the Taliban. For this reason nowhere in Afghanistan would be safe for the Applicant if returned.
24. The convention claims were stated that the applicant fear of persecution is based on his race (Hazara), religion (Shia), membership of a particular social group (physically identifiable Hazara, and failed asylum seeker and returnee from a western country), and imputed political opinion (as an asylum seeker returning from a western country, he will be imputed with adverse political opinions). The Applicant fears he will be harmed by the Taliban and other Pashtun Sunni groups if returned to Afghanistan. Further he fears he will be targeted as a returnee from a Western country, the situation is make worse by the fact that he has lived in Pakistan for most of his life and will be an outsider even amongst the Hazara people.
25. The submission stated that the applicant fears what will occur when the foreign forces leave Afghanistan in 2014. It states that the Karzai Government cannot provide adequate protection to Hazaras in Afghanistan. It states that Kabul remains an unsafe area of Afghanistan, with Taliban attacks continuing. The submission contained material relating to complementary protection, in that the applicant would suffer significant harm from the Taliban and other Sunni Pashtun groups as a Hazara Shia and a returnee from a western country.
26. The applicant appeared before the Tribunal [in] February 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Hazaragi and English languages. The applicant was represented in relation to the review by his registered migration agent. The following is a summary of the evidence provided at the hearing.

27. The applicant confirmed that the copy of the Taskera on the DIAC file was provided by him to the Department. The Taskera was issued 35 years ago in Afghanistan. The applicant stated that although he had been living in Pakistan for the past 30 years, and that his wife and [children] currently live in Quetta Pakistan, he had no rights of re-entry into Pakistan. The applicant stated that when he was young he attended the UNHCR offices for food supplies but never was provided with any formal documentation that would allow him to remain legally in Pakistan.
28. The applicant stated he was born in [year deleted: s.431(2)] [in] Kabul, Afghanistan. His father died when he was young and his mother earned an income cleaning and washing in other people's properties. They lived in a rented property. The applicant stated that he had a married sister in Kabul and an uncle. In the early 1980s the applicant's mother was concerned about the impact of the invading Soviet forces on the general population in Kabul. The applicant's mother was particularly concerned about the Soviet forces forcibly recruiting the applicant for the purpose of fighting against anti-Soviet elements in Afghanistan. Accordingly the applicant's mother took the applicant from Kabul to Quetta to live with an older sister who had already moved to Quetta. The applicant was [age deleted: s.431(2)] at the time. The applicant's mother returned to Kabul and lived there with the applicant's brother for a further five years. After five years the applicant's mother and brother came to Pakistan.
29. The applicant had limited education. In Quetta he survived by buying textile items from a shop and selling them on the street. The applicant did this for about seven years. The applicant then got a job [packing] for a company. The applicant stated he did this for five years before being recognised for his hard work and diligence. The applicant was invited to become a partner in the company and remained in this partnership for five or six years. The applicant was responsible for making the [goods] in the day to day management of the company. Other people were responsible for selling the [goods]. The applicant then bought out his partner from this company. The applicant stated that the company was small but worth, including plant and equipment, around 5 million Pakistani rupiah. However conditions in Quetta deteriorated significantly, target killings started to occur and threats were being made, the applicant sold his company 17 months ago for a significantly lower price of 800,000 Pakistani rupiah. The applicant stated that his company was in a Pashtun area so he had no option but to leave.
30. The applicant then went on to detail the significant difficulties in living in Quetta and Pakistan in particular, stating that Hazara Shias were being targeted and could not travel outside of their immediate location and surroundings in Hazara town, Quetta. The applicant stated that if he tried to go from Quetta to Afghanistan he would be killed on the trip between these locations.
31. The Tribunal stated that while the applicants experience and difficulties lay primarily in Pakistan, it had to consider that the applicants claims for protection against the country where the applicant had a legal right of re-entry, that being Afghanistan.
32. The Tribunal put to the applicant his stated claims in relation to his fear of persecution. The Tribunal asked why the applicant feared being harmed as a Hazara in Afghanistan. The applicant stated that the Taliban were seeking to kill Hazara people across Afghanistan. The applicant stated that the LeJ were seeking to cause harm outside of Quetta and in Afghanistan against Hazara Shia. The applicant stated that he had heard that the LeJ were paying 10

million for Hazara people to be killed in Afghanistan. The Tribunal asked if the applicant had evidence to support this claim. The applicant stated he had heard about it on the news.

33. The Tribunal asked the applicant about his statement that he will be harmed by other ethnic groups, like the Pashtuns. The applicant stated that the Pashtuns and Taliban are the same, every Pashtun was a Taliban. The Tribunal pointed out that the country information did not support this view. The applicant stated he believed that the Pashtun were all Taliban.
34. The Tribunal asked the applicant about his Shia religion. The applicant confirmed that he went to the mosque once a week on Friday. He attended religious events including Muharram and other Shia religious festivals. He did not have any scarring on his back. The applicant stated that he would be known as a Shia Muslim because of his appearance as a Hazara.
35. The Tribunal put UNHCR information to the applicant that merely being Hazara and Shia was not a reason for being persecuted in Afghanistan, that this information cited stated that other factors were involved. The Tribunal put information that the violence in Afghanistan in 2012 had decreased, and a figure of around 2000 people was the total of non-combatants killed by violence in Afghanistan in 2012. The applicant disputed these figures and stated that many Hazara had been killed in Afghanistan.
36. The Tribunal asked the applicant about his fears of return to Afghanistan as a failed asylum seeker, someone who may be imputed with a pro-western political opinion having lived in a western country, or as someone who may be considered to be a spy of a foreign nation due to his experience outside of Afghanistan. The applicant stated that he will have many problems if he returned to Afghanistan. The applicant stated that the same problems that are happening in Pakistan will happen to him in Afghanistan. The applicant stated that he can't say much, but that he could be killed anywhere any time. The applicant stated while he was in detention in Perth that one friend went back from Quetta to Afghanistan and was killed. The applicant stated those people who supported the government or came from western countries were considered to be infidels by the Taliban, that they are not Muslim. The Taliban were not human.
37. The applicant stated that if he was unsuccessful in his claims and sent back to Afghanistan, he would have to return to Quetta and his family, though he cannot live there. The Tribunal noted that it was looking at whether the applicant could return to Kabul, not Quetta. The applicant said he would have to live in Quetta with his family, that it would not be safe for him to bring his family from Pakistan to Kabul, he came to Australia looking for a safer place to live. The Tribunal asked why the applicant had not returned to Afghanistan if he felt Pakistan was not safe. The applicant said it was not safe to travel in Pakistan, and reiterated how dangerous it was to travel in that country. The applicant stated he will have difficulty in bringing his family to live with him in Afghanistan.
38. The Tribunal asked about the claims that he would find it difficult to live with other Hazara due to his lengthy departure from Afghanistan. The applicant stated he had no family remaining in Kabul. The applicant's wife is originally from Kabul as well and has [details of siblings deleted: s.431(2)]. The applicant's wife came to Quetta with the applicant's mother many years ago.
39. The Tribunal noted to the applicant a question for the applicant is about his return to Kabul, not relocation, whether there will be a real chance he will be persecuted if he goes back to Kabul, and considering the reasons as given by the applicant. The applicant stated that if he



goes back he will be stopped and killed, there is no place where he will be safe. The Tribunal noted that he has no personal experience of this and this makes it difficult for him to consider what might happen based on his limited knowledge of the area. The applicant stated that if he had been back to Afghanistan he would have been killed and unable to come to Australia.

40. The Tribunal put to the applicant that he was a capable person who works hard and has succeeded in business in difficult circumstances. The applicant stated that wherever he was he tried his best. The Tribunal asked why he could not do this in Kabul. The applicant stated that in Kabul he could not live, he or his children could be killed at any time, how could he live there with such tension. The Tribunal agreed that there was tension, but that there was no significant and ongoing violence in Kabul. The applicant stated he did not want to live in an unsafe place. The Tribunal asked if the applicant would find it difficult to set himself up in business in Kabul. The applicant stated that everyone should try their best to work and get money for his family, but that it needs to be a safe place. The applicant stated that it is not safe for a Hazara Shia to return to Afghanistan. The applicant stated that 30 years away is a long time, he does not know anyone there. Children were born in Pakistan, with different education and facilities. The applicant and his children all speak Hazaragi.
41. The Tribunal noted the submissions about concerns for the applicant's safety at roadblocks and would consider the information contained in the submissions.
42. The applicant's advisor made a submission on behalf of the applicant. She stated that the applicant had a real and genuine chance of persecution in the future, that there was sufficient evidence to show that Hazara Shia were being targeted, refuting the country information about the reduction of violence in Afghanistan. The advisor stated that return to Afghanistan for someone who had been out of the country for 30 years, where the applicant's wife and [children] were in Pakistan, the children having been born in Pakistan, and that it will be unreasonable and dangerous to relocate them from Quetta to Pakistan. The advisor stated that there was also a real risk of significant harm and the Australia owed an obligation of complementary protection.

## **Country Information**

### *Hazaras in Afghanistan*

43. The UNHCR, in a detailed report dated 17 December 2010, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, discusses in part: the current security conditions in Afghanistan; the potential risk profiles; and relocation. The UNHCR outlines in part the political and security landscape in Afghanistan thus:

UNHCR considers that individuals with the profiles outlined below require a particularly careful examination of possible risks. These risk profiles, while not necessarily exhaustive, include (i) individuals associated with, or perceived as supportive of, the Afghan Government and the international community, including the International Security Assistance Force (ISAF); (ii) humanitarian workers and human rights activists; (iii) journalists and other media professionals; (iv) civilians suspected of supporting armed anti-Government groups; (v) members of minority religious groups and persons perceived as contravening Sharia law; (vi) women with specific profiles; (vii) children with specific profiles; (viii) victims of trafficking; (ix) lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals; (x) members of (minority) ethnic groups; and (xi) persons at risk of becoming victims of blood feuds.

44. In respect of the potential risk profile, ‘Individuals associated with or perceived as supportive of the Government and the international community, including the ISAF’, the UNHCR discusses in part:

There is a systematic and sustained campaign by armed anti-Government groups to target civilians associated with, or perceived as supporting, the Afghan Government or the international community, particularly in areas where such groups are active...

Attacks by armed anti-Government groups, which have ranged from intimidation, assassinations, abductions and stand-off attacks, to the use of improvised explosive devices (IEDs) and suicide attacks, increasingly target civilians associated with or perceived as supportive of the Government and the international community/ISAF. Targeted civilians include Government officials and civil servants, Government-aligned tribal leaders, Ulema Council (a national clerics’ body) members, religious scholars, judges, doctors, teachers, and workers on reconstruction/development projects. The majority of targeted attacks on civilians by armed anti-Government groups have occurred in those groups’ strongholds...

45. The US Naval Postgraduate School’s Program for Culture and Conflict Studies<sup>1</sup> provides an historical background summary in relation to the Hazara, describing them as a distinct ethnic and religious group of noticeably different physical appearance from the Pashtun majority, who have often been the target of discriminatory and violent repression. The great majority of Hazara are Shi’a Muslim. Due to these differences and “...[a]s the traditional underclass of Afghan society, Hazara were exploited and made to work as servants and labourers. As a result there tends to be an anti-government and anti-Pashtun bias among the Hazara.” The Hazara today mostly live either in the Hazarajat in mountainous central Afghanistan, centred on Bamiyan province and including areas of Ghowr, Uruzgan, Wardak, and Ghazni province, or in and around Kabul, Herat, Mazar-e-Sharif and Samangan.
46. The NPS article notes further that due to atrocities committed against them by the Taliban, including the 1998 massacres of Hazara in Mazar-e Sharif and Bamiyan, the Hazara are mostly opposed to the Taliban. Politically, many Hazara support Hezb-e Wahdat (Islamic Unity Party of Afghanistan).
47. In addition to the atrocities mentioned above, in the late 1990s the Taliban blockaded the Hazarajat, bringing great hardship to the region. More recently, there have been differing views put forward about the current circumstances of Hazaras in Afghanistan. There has been some very positive reporting about their present general situation, in contrast to the hardship and persecution of the past, including the *New York Times*’ “Hazaras hustle to head of class in Afghanistan”<sup>2</sup> and the *Christian Science Monitor*’s “Afghanistan’s success story: The liberated Hazara minority”<sup>3</sup>.
48. A 2012 *Hazara Community Update* from the Australian Department of Foreign Affairs and Trade (DFAT) indicates that Hazara participation in politics has increased significantly and Hazaras enjoyed considerable electoral success in the 2010 Afghan parliamentary elections

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<sup>1</sup> US Naval Postgraduate School, Program for Culture and Conflict Studies, <<http://www.nps.edu/programs/ccs/Ghazni.html>>

<sup>2</sup> *New York Times* 2010, “Hazaras hustle to head of class in Afghanistan” 3 January <<http://www.nytimes.com/2010/01/04/world/asia/04hazaras.html?scp=1&sq=hazaras&st=nyt>> Accessed 17 June 2011

<sup>3</sup> *Christian Science Monitor* 2007 “Afghanistan’s success story: The liberated Hazara minority” 6 August, <<http://www.csmonitor.com/2007/0806/p06s02-wosc.html>>

and now comprise 20 percent of the Lower House<sup>4</sup>. Writing for the *Los Angeles Times*, Borzou Daraghi quotes University of Kabul political science lecturer Wadir Safi as saying “Every year they are expanding their presence. They are the ones in power now. They are a minority but they are very united.”<sup>5</sup>

49. The *Hazara Community Update* indicates also that while Hazaras continue to face societal discrimination in Afghanistan, they were not being persecuted on any consistent basis and did not face “systemic violence or any existential threat”. The *Update* is based on information from the UNHCR, the Afghanistan International Human Rights Commission (AIHRC), the Provincial Reconstruction Team (PRT) in Ghazni province, the diplomatic community in Kabul, international immigration consultants operating in Afghanistan and a Hazara MP.
50. The *Update* indicates that with major positive changes in the situation for minorities in Afghanistan have come increases in the political participation of Hazaras and ongoing educational gains, but that mindsets outside the classroom have not changed to the same extent. Discrimination against Hazaras in the form of extortion, illegal taxation, forced labour, physical abuse and detention continued, particularly at the hands of Pashtuns, Tajiks and Uzbeks, but Hazaras also discriminated against other ethnic groups in areas in which they were dominant. Nepotism within ethnic and tribal communities tended to make educational advancement or government employment difficult for Hazaras.
51. The *Update* states in summary that “..the challenges facing the Hazara community were economic rather than security-based...” and notes that “UNHCR did not regard minority ethnicity as a major cause of flight for displaced persons.” Further, the contacts consulted for the *Update* did not consider there were significant protection issues for returnees.
52. Current overviews of Afghanistan from Amnesty International and Human Rights Watch make no mention of persecution of Hazaras or other Shi’as, by either government or non-state actors; neither does the U.S. Department of State’s *International Religious Freedom Report 2010: Afghanistan*. The US Department of State *2010 Country Report on Human Rights Practices - Afghanistan*<sup>6</sup>, does not find targeted persecution of Hazaras or Shi’as although it outlines ongoing ethnic tensions between Hazaras and Pashtuns and Kuchis.
53. A contrary view is put by Professor William Maley in his December 2011 paper *On the Position of the Hazara Minority in Afghanistan*. Professor Maley urges extreme caution in accepting many of the views put forward in DFAT cable CX240092 of February 2010 *Afghanistan: Situation of the Hazara Minority* and observes that like many of the international organisations upon which they rely as informants, DFAT officials are severely constrained in their capacity to gather information. He also notes that in determining whether a well-founded fear of persecution exists, it is necessary to look beyond “...temporary, insignificant or cosmetic changes” and states that “...there is no reason to believe that the underlying factors (both ethnic and sectarian) fuelling hostility towards Hazaras have dissipated.”
54. Professor Maley goes on to note that the formation of the Interim Administration under Hamid Karzai put an end to official discrimination against Hazaras but did nothing to secure

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<sup>4</sup> DFAT 2012, CX283654: AFGHANISTAN: Hazara Community Update, 12 March

<sup>5</sup> *LA Times*, 2010 “A formerly persecuted minority gains clout in Afghanistan”, 16 December, <<http://articles.latimes.com/2010/dec/16/world/la-fg-afghanistan-sects-20101216>>.

<sup>6</sup> US Department of State 2010 *Country Reports on Human Rights Practices – Afghanistan*, 8 April 2011, <<http://www.state.gov/j/drl/rls/hrrpt/2010/sca/154477.htm>>

them against Taliban attack in the vast areas of Afghanistan not under the control of Kabul. He refers to the massacre of Hazara travellers near the Uruzgan-Helmand border in 2004 and the beheading of eleven Hazaras in Uruzgan in 2010 and quotes a “highly-respected Kabul-based observer” who has told him that “[d]ozens of Hazaras have been killed or abducted and never heard of while travelling between Ghazni and Jaghori and also through Wardak Province to Behsud and Bamiyan.”

55. Writing about Afghanistan in 2010, Associate Professor Alessandro Monsutti described a country riven by ethnic, religious and political differences, in which Hazaras continue to occupy the bottom rung of the social hierarchy and suffer a range of privations and discrimination for reasons historical, ethnic, religious and political. He indicates also that they are differentially at risk of harm from the Taliban, Pashtuns generally and from Kuchis<sup>7</sup>.
56. In January 2012 Associate Professor Monsutti provided comment to the IPAO in response to specific questions about security in different districts in Afghanistan and the situation for Hazaras. In relation to political representation, he noted that

Hazaras have better political representation now than they have ever had in past. However, the situation is very fragile. Other ethnic communities are jealous of their success. The Hazaras have become bolder, however I am not very optimistic for their future. Many Hazara leaders are not cautious enough. I heard once a Pashtun saying, “in the future we will take back what Hazaras have gained”.

#### *Hazaras in Kabul*

57. Country information contained in the Tribunal’s issues paper, *Afghanistan: Hazaras* dated October 2012, at paragraph 3.2, which states:

##### 3.2 Security for Hazaras in Kabul

No information was located that suggested Hazaras in Kabul are being specifically targeted by AOGs because of their ethnicity.

Analysis of attacks in Kabul by AOGs between January 2011 and June 2012<sup>8</sup> found that AOGs targeted Afghan military personnel, police officers and political figures, as well as government buildings, hotels and embassies.<sup>9</sup> A number of media reports were located that referred to an attack on Shia worshipers celebrating *Ashura*<sup>10</sup> at a Shia shrine on 6 December 2011. The shrine is located in Murad Khane, a mainly Shia neighborhood along the Kabul river, in the center of Kabul.<sup>11</sup> The attack was

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<sup>7</sup> Monsutti, A 2010, *The Situation for Hazaras in Afghanistan*, 19 August

<sup>8</sup> For a timeline of attacks in Kabul between January 2011 and June 2012 see European Country of Origin Information Network 2012, *General Security Situation in Afghanistan and Events in Kabul*, 18 July <<http://www.ecoi.net/news/188769::afghanistan/101.general-security-situation-in-afghanistan-and-events-in-kabul.htm>>

<sup>9</sup> European Country of Origin Information Network 2012, *General Security Situation in Afghanistan and Events in Kabul*, 18 July <<http://www.ecoi.net/news/188769::afghanistan/101.general-security-situation-in-afghanistan-and-events-in-kabul.htm>>

<sup>10</sup> Ashura is a Shia religious holiday.

<sup>11</sup> Boone, J 2011, ‘Kabul shrine worshippers killed in Afghan sectarian attack’, *The Guardian*, 6 December <<http://www.guardian.co.uk/world/2011/dec/06/kabul-shrine-blast-kills-worshippers>>; Londono, E 2011, ‘U.S. ambassador: Kabul attack won’t spawn sectarian violence in Afghanistan’, *The Washington Post*, 11 December <[http://www.washingtonpost.com/world/asia\\_pacific/us-kabul-attack-wont-spawn-sectarian-violence/2011/12/10/gIQAkilukO\\_story.html](http://www.washingtonpost.com/world/asia_pacific/us-kabul-attack-wont-spawn-sectarian-violence/2011/12/10/gIQAkilukO_story.html)>; Lister, T 2011, ‘Attack on shrine signals new nexus of Afghan strife’, *CNN*, 8 December <[http://articles.cnn.com/2011-12-06/asia/world\\_asia\\_afghanistan-violence-analysis\\_1\\_pakistan-taliban-islamabad-al-almi?s=PM:ASIA](http://articles.cnn.com/2011-12-06/asia/world_asia_afghanistan-violence-analysis_1_pakistan-taliban-islamabad-al-almi?s=PM:ASIA)>

also referred to by Professor William Maley in a report he prepared in December 2011 on the Hazara minority in Afghanistan. Professor Maley suggested that the attack was evidence Hazaras were not safe in Kabul and that Hazaras had been specifically targeted. However, analysis of the above cited media reports that describe the attack suggest that the focus was Shia worshippers generally rather than a particular ethnic group. According to *The Guardian* newspaper the top Shia cleric in Kabul referred to the incident as an attack on Shias and the first of its kind:

Mohammad Bakir Shaikzada, the top Shia cleric in Kabul, said that it was the first time that Shias had been attacked in decades. He said he could not remember a similar attack having taken place.<sup>12</sup>

There is conflicting information on the broader security situation in Kabul. In June 2012 ANSO reported that attacks by AOGs in Kabul province declined by 51 percent over the first half of 2012 in comparison with the same period in 2011.<sup>13</sup> Reflecting the decline in violence, the above mentioned 2012 report by DIS cites advice from NGOs based in Kabul that describe security in the capital as stable and under control.<sup>14</sup>

58. Other sources suggest that the general security situation in Kabul has deteriorated as a result of increased militant activity in and around the capital.<sup>15</sup> Although the reports note an increase in attacks in and around Kabul, they do not suggest Hazaras and Shia are being disproportionately targeted by these attacks. It remains unclear whether the increase in militant activity around Kabul is part of a long term trend or simply marks the start of the spring fighting season in Afghanistan.<sup>16</sup>
59. A Danish Immigration Service fact finding mission to Kabul in March 2012 interviewed a number of agencies in Kabul about their opinion on a number of issues. In relation to Kabul, the report stated:

11. The security situation in Kabul

Regarding the security situation in Kabul, MoRR said that it is relatively safe compared to the provinces.

IPCB found that there are places in Afghanistan where Afghan National Police (ANP) is functioning well in terms of providing security, especially in Kabul and other big cities like Herat, Mazar-i-Sharif and Faizabad. In this connection, IPCB pointed out that the recent security situation in Kabul (the unrest due to Koran burnings at Bagram at the end of February 2012) had shown that the ANP had been able to secure the central city (within the ring of steel) from demonstrators entering

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<sup>12</sup> Boone, J 2011, 'Kabul shrine worshippers killed in Afghan sectarian attack', *The Guardian*, 6 December <<http://www.guardian.co.uk/world/2011/dec/06/kabul-shrine-blast-kills-worshippers>>

<sup>13</sup> Afghanistan NGO Safety Office 2012, 'Quarterly Data Report Q.2 2012', 1 January- 30 June, p.7 <<http://www.ngosafety.org/store/files/ANSO%20Q2%202012.pdf>>

<sup>14</sup> Danish Immigration Service 2012, *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process*, 25 February to 4 March, p. 6 <<https://www.nyidanmark.dk/NR/ronlyres/3FD55632-770B-48B6-935C-827E83C18AD8/0/FFMrapportenAFGHANISTAN2012Final.pdf>>

<sup>15</sup> Department of Foreign Affairs and Trade 2012, *Safety and Security for Afghanistan*, 16 July <<http://www.smartraveller.gov.au/zw-cgi/view/Advice/Afghanistan>>; Foreign and Commonwealth Office 2012, *Travel Advice for Afghanistan*, 25 July <<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/asia-oceania/afghanistan/>> Accessed 2 August 2012; US Department of State 2012, *Travel Warning for Afghanistan*, 27 June <[http://travel.state.gov/travel/cis\\_pa\\_tw/tw/tw\\_5742.html](http://travel.state.gov/travel/cis_pa_tw/tw/tw_5742.html)>

<sup>16</sup> Brookings Institute 2012, *The Afghanistan Index*, 29 February, p.10 <<http://www.brookings.edu/foreign-policy/afghanistan-index.aspx>>

the city. The challenge for the ANP now is to be more preventive in their work according to IPCB.

Regarding the security in Kabul, UNHCR commented that in general Kabul could be an option for safety, but to what extent the city could be a safe place for a person fleeing a conflict depends on the profile of the person and the nature of the conflict the person has fled from. Therefore, an assessment of internal flight alternative (IFA) should be made carefully and on a case by case basis.

Regarding security in Kabul, an international NGO informed the delegation that Kabul is one of few places in Afghanistan where the security situation is relatively good and stable even though incidents are occurring also in Kabul.

Regarding the security situation in Kabul, IOM said that there have been a number of suicide attacks which influences the lives of ordinary people. However, apart from suicide attacks, Kabul is safer than other places in Afghanistan, and the area is more under control. This is, according to IOM, due to the fact that Afghan National Army (ANA) and ANP in general are more trained in security operations in Kabul and other big cities like Herat and Mazar-i-Sharif and the situation is more under control in these cities compared to other parts of the country. In Jalalabad, however, the authorities are not yet that efficient, and the Taliban has a strong influence.

Safety is an issue in Kabul because of suicide bombings, according to AIHRC. In December 2011, 80 people were killed and 200 injured in a religious shrine in Kabul. Hospitals, hotels and shopping malls have also been targeted and AIHRC lost one of their commissioners in the bombing of the Finest Supermarket in February 2011. Contributing to the insecurity is also the increasing crime rate, but Kabul is considered safer than other places, according to AIHRC. In addition, there are social problems such as child labour and prostitutions.

An international organization stated that if someone is fleeing a conflict in his or her area of origin, it depends on the seriousness of the conflict whether he or she will be traced down in Kabul. Afghanistan is a tribal society with close family networks, which means that if you really want to find someone, you will be able to trace him/her down.

Concerning the possibility of tracking down someone in Kabul, an independent policy research organization in Kabul stated that Kabul is a big city and people do not even know their neighbors anymore. There are newcomers every day and people move around and stay in rented accommodations if they have the financial resources. On this basis, the source believed that if someone flees a conflict and moves to Kabul, it will be quite difficult to find him. The independent policy research organization in Kabul pointed out, however, that it is not difficult for the government to find people in Kabul if they are in search of a particular person. This means that if someone is fleeing someone senior in or well-connected to the government, police or army, they could be in greater peril.

When asked whether it is possible to trace down a person in Kabul who has fled from a conflict in his or her place of origin, an Afghan law practitioner replied that this possibility exists if one has the exact address of that person. However, the Afghan law practitioner added that due to the fact that there is no registration of address in Afghanistan, tracing down a person in a big city like Kabul without an address would be difficult. The same source added that people normally do not go to the police to ask about other people's place of residence because there is still not a good organized police system to help people to do so.



An independent research institute in Kabul explained that Kabul has grown tremendously over recent years. In Afghanistan, most people do not have a proper address in the way citizens of other countries have (street names are problematic, as are house numbers). The standard Afghan method to record and identify a person's name is to cite their father's name, e.g. Sarwar Ali, s/o (son of) Mohammad Naveed. In this way, it is very difficult to trace individual people, particularly in the big cities.<sup>17</sup>

### *Shias*

60. One report was located that referred to an attack that appeared to specifically target the Shia community. The report by *The Guardian* on 6 December 2011 refers to an attack by a suicide bomber on Shia worshippers gathered outside the Abul Fazl shrine in commemoration of Ashura, a Shia holiday marking the death of the grandson of the prophet Muhammad. The report states that 48 people died and more than 100 were wounded in the attack. The report notes that no organisation claimed responsibility for the attack and refers to comments from the top Shia cleric in Kabul that the attack in Kabul was the first of its kind:

Mohammad Bakir Shaikzada, the top Shia cleric in Kabul, said that it was the first time that Shias had been attacked in decades. He said he could not remember a similar attack having taken place.<sup>18</sup>

61. Reporting on the same attack, *The Washington Post* cites Pakistan news outlets that claim Lashkar-i-Jhangvi, a militant group with ties to al-Qaeda and the Taliban, ordered the attack. The article also quotes comments by the US Ambassador in Afghanistan that sectarian attacks in Kabul were rare and unlikely to lead to sectarian violence, and notes that Shia anger in Kabul over the attack is directed towards Pakistan and its intelligence organisations. The article states that:

Mohammad Mohaqiq, a member of parliament who is among the country's most influential Hazaras, said Afghans would not be reeled into a cycle of sectarian violence, even if attacks against Shiite civilians were to become commonplace.<sup>19</sup>

62. An assessment of reports cited in the ECOIN timeline of attacks in Kabul found that the vast majority of attacks targeted Afghan military personnel, police officers and political figures, as well as government buildings, hotels and embassies.<sup>20</sup> In its 2011 report on religious freedom in Afghanistan, the US Department of State found that although the Shia community continues to experience discrimination by Sunnis, an increase in Shia representation in government has reduced the more overt forms of discrimination. The report noted that Shia were generally free to participate fully in public life and that the highest ranking officials of

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<sup>17</sup> Country of Origin Information for Use in the Asylum Determination Process, Report from Danish Immigration Service's fact finding mission to Kabul, Afghanistan, 25 February to 4 March 2012

<sup>18</sup> Boone, J 2011, 'Kabul shrine worshippers killed in Afghan sectarian attack', *The Guardian*, 6 December <<http://www.guardian.co.uk/world/2011/dec/06/kabul-shrine-blast-kills-worshippers>

<sup>19</sup> Londono, E 2011, 'U.S. ambassador: Kabul attack won't spawn sectarian violence in Afghanistan', *The Washington Post*, 11 December <[http://www.washingtonpost.com/world/asia\\_pacific/us-kabul-attack-wont-spawn-sectarian-violence/2011/12/10/gIQAkilukO\\_story.html](http://www.washingtonpost.com/world/asia_pacific/us-kabul-attack-wont-spawn-sectarian-violence/2011/12/10/gIQAkilukO_story.html)

<sup>20</sup> European Country of Origin Information Network 2012, *General Security Situation in Afghanistan and Events in Kabul*, 18 July <<http://www.ecoi.net/news/188769::afghanistan/101.general-security-situation-in-afghanistan-and-events-in-kabul.htm>

the government including the president and speaker of the lower house attended Shiite religious ceremonies.<sup>21</sup>

63. The improving situation for Shia in Afghanistan was also noted by the USCIRF which stated in its 2012 report that:

During the reporting period, Shi'a Muslims generally were able to perform their traditional *Ashura* public processions and rituals in Kabul without incident or hindrance. USCIRF staff saw large, temporary commemorative gates set up throughout Kabul in December 2010, and Shi'a Muslims with flags flying from their cars or motorcycles were a common sight.<sup>22</sup>

*The security situation - Generalized insecurity*

64. For the year ending 2012, attacks by Armed Opposition Groups (AOG) in Afghanistan declined by 25% compared to the previous year. The reduction is reported to have been driven by diminishing rates of AOG and International Military Force (IMF) activity (25% and 75% respectively) over the last 12 months. The decrease in AOG and IMF activity has resulted in a 14% reduction in civilian fatalities. A total of 2,038 civilians are reported to have died as a result of the conflict in 2012. Roadside Improvised Explosive Devices (IED) were the leading cause of these deaths, with 806 civilian fatalities caused by IEDs in 2012. The largest proportion of civilian fatalities (46%) occurred in the south (Kandahar, Helmand and Uruzgan) where IED activity was the most intensive. The second largest proportion of civilian fatalities (19%) occurred in the eastern provinces, particularly in Kunar, Nangarhar, Khost and Laghman. AOGs are reported to be shifting their operational focus to the eastern provinces in order to reinforce their position in this region in preparation for the post-transition period.<sup>23</sup>
65. In 2011, the United Nations Assistance Mission in Afghanistan (UNAMA) documented 3,021 civilian conflict related deaths in the country – an eight percent increase from 2010, and a 25 percent increase from 2009. Some 77 percent of these deaths were attributed to anti-government elements, and the increase can be viewed in the context of the increasing use of 29 improvised explosive devices (IED), deadlier suicide attacks, and the targeted killing of civilians (UNAMA 2012).
66. The total number of internally displaced persons (IDPs) in Afghanistan now stands at almost 500,000, a 45 percent increase in people internally displaced by conflict compared to 2010 (UN General Assembly 2012). The Afghan NGO Security Office (ANSO) noted that opposition attacks increased to 40 a day in the first six months of the year, up 42 percent since 2010 (Human Rights Watch 2012). UKBA's (2012c) Operational Guidance Note for Afghanistan also cites Dr Antonio Giustozzi, an Afghan country expert, who notes that violence has both expanded geographically and intensified, with just one province out of 34 unaffected by violence (Panjshir).
67. Forcible removals from the UK are to Kabul, which UKBA maintains has "remained largely insulated from the worst violence... While insurgent violence has expanded steadily

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<sup>21</sup> US Department of State 2011, *International Religious Freedom Report – Afghanistan*, 13 September, Section 3 <[http://www.state.gov/j/drl/rls/irf/2010\\_5/168240.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168240.htm).

<sup>22</sup> United States Commission on International Religious Freedom 2012, *Annual Report 2012*, p.287

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

<sup>23</sup> <http://www.ngosafety.org/store/files/ANSO%20Q4%202012.pdf>



throughout the country, Kabul has remained relatively quiet, although there are isolated incidents, some of them serious” (UKBA 2012c).

68. Deaths in Kabul itself have increased from 23 in the last half of 2010 to 71 in the last half of 2011, largely as a result of suicide attacks (UNAMA 2012). It has been suggested that the increasing number of civilian deaths in these central and eastern provinces is in part due to corruption within Afghan security agencies, which has facilitated insurgent access to urban areas (Rondeaux 2011).
69. Although capacity of the Afghan police force in Kabul has increased from 5,000 officers to 18,000, and the army has developed a 7,000 strong unit with a particular focus on protecting the capital, UKBA notes that their ability to limited, as “the Taliban have continued to successfully target both perceived opponents and civilians in Kabul in recent months” (2012c:3).
70. Recent suicide attacks in Kabul include, but are not limited to, an attack near the parliament in January 2012 (AlertNet 2012); an attack on a shrine packed with worshippers in December 2011 (BBC 2011a); an attack on the British Embassy in August 2011 (Sharifi 2011); an attack on a police station in June 2011 (Reuters 2011); an attack on the Inter-Continental Hotel, also in June 2011 (RadioFree Europe 2011); and an attack on Kabul Military Hospital in May 2011 (New York Times 2011).<sup>24</sup>
71. Views about the security situation in Afghanistan currently and into the foreseeable future must be informed by consideration of the forthcoming 2014 “draw-down” of international forces and ongoing debate regarding the negotiations with the Taliban initiated in 2011. None are entirely positive. Respected commentator Dr Antonio Giustozzi suggests that the prospects for a successful political settlement in Afghanistan before 2014 appear limited because the opposition has little respect for the Karzai government, and that what happens after 2012 depends on the ability of the Taliban to adapt. He notes that there are already signs the Taliban are “..retraining their forces for more conventional operations such as taking towns and cities” and outlines the possibility of the Afghan state being reduced to Kabul and areas dominated by ethnic minorities in the event of a successful Taliban push in 2014/15.<sup>25</sup>
72. The International Crisis Group presents the view that recent talks with the Taliban are unlikely to result in a sustainable peace and may even destabilise the region further due to the many differing priorities and interests involved. The same report notes that

[t]he rhetorical clamour over talks about talks has led to desperate and dangerous moves on the part of the government to bring purported leaders from the three main insurgent groups – the Taliban, Hizb-e Islami and the Haqqani Network – to the negotiating table. This state of confusion has stoked fears among ethnic minorities, civil society and women that the aim of Karzai’s reconciliation policy is primarily to

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<sup>24</sup> Broken futures: young Afghan asylum seekers in the UK and on return to their country of origin. UNHCR, October 2012

<sup>25</sup> Giustozzi, A, in Behr, T and C Salonijs-Pasternak, eds, *The Beginning of the End?* “Afghanistan towards and after 2014”, April 2012, Finnish Institute of International Affairs

shore up his constituency among conservative Pashtun elites at the expense of hard-fought protections for Afghan citizens.<sup>26</sup>

73. A night-time attack by the Taliban at the Hotel Spuzhmai at the Kargha Lake resort area just outside Kabul in June has been interpreted as a sign that the Taliban may be returning to attacks against civilians reflecting their earlier puritanical values. In a 23 June article, Thomas Rutting wrote that the attack was the first for a long time to target predominantly civilians, although he noted that the attack on the Intercontinental Hotel in June 2011 killed a number of civilians: “The Kargha attack was definitely a step back.”<sup>27</sup>
74. Insurgent attacks in Kabul on 15 April 2012 targeting foreign embassies, NATO headquarters and the Afghan parliament attracted much attention and debate as to their significance. Insurgents also attacked targets in several provincial centres. While some praised the response of the Afghan security forces as indicative of their wider capacity to provide enhanced security after the international troops leave, others suggested they had failed to provide adequate protection and that the attacks were a success for the Taliban.
75. Defence analyst Atiqullah Amarkhel is quoted as saying the attacks were designed to demonstrate that the insurgents were not facing imminent defeat, and were “...a success for the Taliban and a failure for the security forces.”<sup>28</sup> Writing for the Institute for War and Peace Reporting, Noorrahman Rahmani said insurgents should not have been able to penetrate Kabul’s defences in the first place, and notes that the insurgents’ preparedness was clearly such they had been planning the attacks for a long time. “It’s a failure of intelligence and it shows the weakness of the Afghan security forces compared with the strength of the insurgents, who aimed to sow terror and disrupt security, and succeeded in doing so.”<sup>29</sup>
76. Insurgent attacks during 2011 also served to heighten concerns about the security situation, the impending withdrawal of coalition forces, handover of control to Afghan forces and the US-led negotiations with the Taliban. On 13 September 2011 co-ordinated attacks attributed to the Taliban and the Haqqani Network occurred in central and western Kabul. Locations targeted included the US embassy, NATO headquarters, police buildings, and the Darulaman Road area of western Kabul.<sup>30</sup> While the US Ambassador played down the significance of the attack, it is seen by others as more significant, with Bill Roggio, editor of the online *Long War Journal* suggesting that the US and coalition focus on blaming this and other attacks on the Haqqani Network was a tactic to “salvage nascent peace negotiations with the Taliban’s more mainstream leaders.”<sup>31</sup>

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<sup>26</sup> International Crisis Group 2012, *Talking about Talks: Towards a political settlement in Afghanistan*, 26 March, <<http://www.crisisgroup.org/en/regions/asia/south-asia/afghanistan/221-talking-about-talks-toward-a-political-settlement-in-afghanistan.aspx>> Accessed 25 April 2012

<sup>27</sup> Thomas Rutting, 2012, *Afghanistan Analysts’ Network*, “The attack in Kargha: Return of the Taliban Puritans?”, 23 June, <<http://aan-afghanistan.com/index.asp?id=2823>> Accessed 3 July 2012

<sup>28</sup> Mina Habib, 2012, *Institute for War and Peace Reporting*, “Afghan forces criticised after Kabul battles”, 17 April, <<http://iwpr.net/report-news/afghan-forces-criticised-after-kabul-battles>> Accessed 24 April 2012

<sup>29</sup> Noorrahman Rahmani, 2012, *Institute for War and Peace Reporting*, “Kabul Attacks Raise Big Security Questions”, 16 April, <<http://iwpr.net/report-news/kabul-attacks-raise-big-security-questions>> Accessed 24 April 2012

<sup>30</sup> *BBC News*, 2011, “Afghan gun battle: Ryan Crocker says ‘not a big deal’”, 14 September, <<http://www.bbc.co.uk/news/world-south-asia-14909004>> Accessed 28 September 2011

<sup>31</sup> *The Christian Science Monitor*, 2011, “Who’s really behind the Kabul attacks?” 14 September, <<http://www.csmonitor.com/World/Asia-South-Central/2011/0914/Who-s-really-behind-the-Kabul-attacks>> Accessed 29 September 2011

77. The *New York Times* reported on 18 August 2011 that:

[a] series of attacks by insurgents in recent days killed numerous civilians, but for the most part failed against military targets. ... an attack Friday morning rattled a residential neighborhood of Kabul, where militants set off twin blasts, killing at least four people, Afghan officials said. A gunfight broke out and shooting continued into the morning. .... The attacks reflect a growing trend over the last two years in which the great majority of civilian casualties have been caused by the Taliban and their allied insurgent groups. The United Nations in Afghanistan said in its [June report](#) to the secretary general that 80 percent of civilian casualties were caused by “antigovernment elements.”<sup>32</sup>

78. Other incidents during 2011 including the murders of General Mohammad Daud Daud, the Police Commander for Northern Afghanistan, in May and President Karzai’s half-brother Ahmed Wali Karzai and prominent presidential ally Jan Mohammad Khan in July suggest a significant resurgence of capacity by the Taliban and their ability to infiltrate centres of power and security. Both General Daud and Ahmed Wali Karzai were reportedly murdered by trusted and long-serving security staff, a development which is seen to indicate active recruitment activity by the Taliban among existing security personnel.<sup>33</sup>

*The Outlook for the security situation in Afghanistan*

79. The following sources provide some commentary on how the conflict in Afghanistan might play out in the future. Given the innumerable variables and unknowns associated with Afghanistan’s future, most notably what future role the United States will play following the transition of security functions to the Afghan government, it remains difficult to predict the eventual political or security outcome in the country. All of the sources discussed below contend, however, that on the current course Afghanistan is unlikely to achieve any kind of stability in the foreseeable future.

80. In a collection of essays published on the *Foreign Affairs* website, titled ‘The Future of Afghanistan and U.S. Foreign Policy’, a range of Afghanistan experts give their view on the future of Afghanistan with a particular emphasis on the US’ policy options post 2014. There is a general consensus among the views presented that a continued US security presence is absolutely necessary to ensure the future stability and development of the country.<sup>34</sup>

81. In ‘Afghanistan 2011-2014 and beyond: from support operations to sustainable peace’ 2011, European Union Institute for Security Studies and Carnegie Endowment for International Peace – Joint Report, June,<sup>35</sup> the main theme of the report is that major structural reforms to the constitution, judiciary and military apparatus are necessary if some semblance of stability is to be maintained in Afghanistan beyond the scheduled 2014 handover from coalition forces. According to contributor Professor Ali Ahmed Jalali of the United States’ National Defense University, former Minister of Interior of Afghanistan, ‘[a]n effective and sustainable security transition in Afghanistan requires the creation of credible security,

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<sup>32</sup> *New York Times*, 2011, “Insurgent Attacks Taking Toll on Afghan Civilians”, 18 August, <<http://www.nytimes.com/2011/08/19/world/asia/19afghanistan.html>> Accessed 29 September 2011

<sup>33</sup> *BBC News* 2011 “Deadly week overshadows Afghan handover”, 18 July, <<http://www.bbc.co.uk/news/world-south-asia-4190552>> Accessed 19 July 2011 and *BBC News* 2011 “Shift in Taliban tactics alarms Afghanistan government”, 29 May, <<http://www.bbc.co.uk/news/world-south-asia-13589764>> Accessed 19 July 2011

<sup>34</sup> Available at <<http://www.foreignaffairs.com/features/collections/the-future-of-afghanistan-and-us-foreign-policy>>

<sup>35</sup> Available at <[http://www.iss.europa.eu/uploads/media/Afghanistan\\_2011-2014\\_Joint\\_Reportpdf](http://www.iss.europa.eu/uploads/media/Afghanistan_2011-2014_Joint_Reportpdf)>

governance and developmental capacities and the shaping of the local and regional environment in order to reduce the threat level, win the trust of the population and facilitate and promote regional cooperation. The main obstacles to achieving this are a growing insurgency, weak state institutions, ineffective and corrupt governance, difficulties in expanding the quantity and quality of the Afghan security forces and the divergent strategic interests of Afghanistan's neighbours'.<sup>36</sup>

82. In an article in the *Washington Post* dated 23 September 2011,<sup>37</sup> Anthony Cordesman from the Center for Strategic and International Studies argues that the Afghanistan government is not in a position to survive without a continued US presence and significant foreign aid contribution well beyond the planned 2014 transition. He writes:

We are scoring significant victories against the Taliban in the south and in attacks on key Taliban and al-Qaeda leaders and cadres. It is not clear, however, whether we are making sufficient gains that these threats cannot wait us out until after 2014 or whether the Afghan government can hold such areas and build up civil governance, the rule of law and a functioning economy.

As events this week underscore, insurgents are conducting bombings, assassinations and other operations that intimidate the Afghan people and help drive down U.S. and allied public support for the war. Furthermore, the Karzai government is far from effective and is politically unstable, and Afghanistan faces an election the year we leave. We may be winning tactically, but insurgents may be winning a battle of political attrition that will ultimately be strategically decisive.

83. Former CIA station chief Robert Grenier writes that amid continuing violence in Afghanistan and Pakistan, some level of decentralisation of Government authority from Kabul to the provinces as well as greater engagement with the Taliban will be necessary if 'Afghanistan is to develop any measure of peace and stability'.<sup>38</sup>
84. Professor Saikal of ANU suggests that the Taliban have good reason to be optimistic about the prospects of taking power from the Karzai regime, which could lead to broader ethnic conflict and civil war. He presents three main reasons for this: the Karzai Government is perceived by Afghan people as corrupt and dysfunctional; the US and its allies have failed to build a coherent national security force capable of achieving strategic objectives; and there is no regional consensus on the future of Afghanistan due in part to fractured relations between the US and Iran and the US and Pakistan.<sup>39</sup> He concludes:

As long as these factors remain in place, the Taliban and their Pakistani backers have good reason to remain hopeful about their chances of succeeding in the end, but a Taliban takeover of power also carries the serious risk of non-Pashtun Afghan population clusters taking up arms once again to defend themselves, with Iran, India

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<sup>36</sup> 'Afghanistan 2011-2014 and beyond: from support operations to sustainable peace' 2011, European Union Institute for Security Studies and Carnegie Endowment for International Peace – Joint Report, June, p.13 <[http://www.iss.europa.eu/uploads/media/Afghanistan\\_2011-2014\\_Joint\\_Reportpdf](http://www.iss.europa.eu/uploads/media/Afghanistan_2011-2014_Joint_Reportpdf)>

<sup>37</sup> Cordesman, Anthony 2011, 'Time to get real about the future in Afghanistan', *The Washington Post*, 23 September <[http://www.washingtonpost.com/opinions/time-to-get-real-about-the-future-in-afghanistan/2011/09/21/gIQA0XwtoK\\_story.html](http://www.washingtonpost.com/opinions/time-to-get-real-about-the-future-in-afghanistan/2011/09/21/gIQA0XwtoK_story.html)>

<sup>38</sup> Grenier, Robert 2012, 'Afghanistan: Intimations of a future peace', 4 July <<http://www.aljazeera.com/indepth/opinion/2012/07/20127391153863856.html>>

<sup>39</sup> Saikal, Amin 2012, 'A grim future for Afghanistan', 15 February <<http://www.abc.net.au/unleashed/3828972.html>>

and Russia providing support. This would be a development that could plunge Afghanistan into a wider bloody conflict.

85. Although the Afghanistan war began in December 2001, it wasn't until 2010 that the first significant military efforts were made to reclaim territory controlled by Armed Opposition Groups (AOG),<sup>40</sup> with major military offensives by US and International Military Forces (IMF)<sup>41</sup> forces in the southern provinces.<sup>42</sup> According to assessments carried out by the National Counterterrorism Centre (NCTS), US Department of Defence (DoD) and International Security Assistance Force (ISAF)<sup>43</sup> levels of violence in Afghanistan have declined since 2011, particularly in the Southwest where territory has been captured from insurgent groups.<sup>44</sup>
86. The trend of declining levels of violence over 2011 is reported to have continued into 2012. In June 2012, Afghanistan National Safety Office (ANSO) compared attacks initiated by Armed Opposition Groups (AOG)<sup>45</sup> over the first six months of 2012, with attacks over the same period in 2011 and found that attacks had declined by 38 percent.<sup>46</sup> Other key indicators that are reported to have regressed over the same period are NGO related security incidents by 17 percent and criminality by 22 percent.<sup>47</sup> The current de-escalation in AOG initiated attacks is assessed to be a tactical response to the disengagement and withdrawal in 2014 of IMF and does not demonstrate any loss of operational ability by AOGs. The ANSO report concludes that AOGs are simply strengthening their position in anticipation of the IMF withdrawal in 2014.<sup>48</sup> As part of its disengagement, IMF is increasing its reliance on tactical air strikes and reducing its efforts to assist the Afghan government's outreach to rural areas.<sup>49</sup>
87. According to ANSO the regional shift in the security environment also continued in 2012 with AOG attacks declining significantly in the southern provinces of Helmand, Ghazni, Kandahar and Khost where the IMF surge was strongest.<sup>50</sup> In contrast, AOG activity was

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<sup>40</sup> For the purposes of this paper, AOGs refers specifically to the Islamic Emirate of Afghanistan (Taliban); Haqqani Network and Hezb-i-Islami Gulbiddin (HG).

<sup>41</sup> IMF refers specifically to ISAF, Provisional Reconstruction Teams and Special Operational Forces.

<sup>42</sup> Cordesman, A & Burke, A 2012, *Afghanistan: The Failed Metrics of Ten Years of War*, 9 February, Center for Strategic and International Studies, p. 13  
<[http://csis.org/files/publication/120209\\_Afghanistan\\_Failed\\_Metrics.pdf](http://csis.org/files/publication/120209_Afghanistan_Failed_Metrics.pdf)>

<sup>43</sup> The security assessments by the NCTS, DoD and ISAF are challenged by the United Nations Development Programme and the United Nations Assistance Mission to Afghanistan which claim that levels of violence have continued to rise over 2011. For discussion on the difficulties of accurately measuring the levels of violence in the Afghanistan war see Cordesman, A & Burke, A 2012, *Afghanistan: The Failed Metrics of Ten Years of War*, 9 February, Center for Strategic and International Studies, p. 13

<[http://csis.org/files/publication/120209\\_Afghanistan\\_Failed\\_Metrics.pdf](http://csis.org/files/publication/120209_Afghanistan_Failed_Metrics.pdf)>

<sup>44</sup> Cordesman, A & Burke, A 2012, *Afghanistan: The Failed Metrics of Ten Years of War*, 9 February, Center for Strategic and International Studies, p. 13

<[http://csis.org/files/publication/120209\\_Afghanistan\\_Failed\\_Metrics.pdf](http://csis.org/files/publication/120209_Afghanistan_Failed_Metrics.pdf)>

<sup>45</sup> AOG attacks refer to combat operations only (IEDs, ambushes, indirect fire, etc) and not to non-kinetic activities such as threats, abductions or criminal activity.

<sup>46</sup> Afghanistan NGO Safety Office 2012, 'Quarterly Data Report Q.2 2012', 1 January- 30 June, p.1

<<http://www.ngosafety.org/store/files/ANSO%20Q2%202012.pdf>>

<sup>47</sup> Afghanistan NGO Safety Office 2012, 'Quarterly Data Report Q.2 2012', 1 January- 30 June, p.1 & p.3

<<http://www.ngosafety.org/store/files/ANSO%20Q2%202012.pdf>>>

<sup>48</sup> Afghanistan NGO Safety Office 2012, 'Quarterly Data Report Q.2 2012', 1 January- 30 June, p.6

<<http://www.ngosafety.org/store/files/ANSO%20Q2%202012.pdf>> >

<sup>49</sup> Afghanistan NGO Safety Office 2012, 'Quarterly Data Report Q.2 2012', 1 January- 30 June, p.8

<<http://www.ngosafety.org/store/files/ANSO%20Q2%202012.pdf>> >

<sup>50</sup> Afghanistan NGO Safety Office 2012, 'Quarterly Data Report Q.2 2012', 1 January- 30 June, p.8

<<http://www.ngosafety.org/store/files/ANSO%20Q2%202012.pdf>>

reported to have increased in the eastern provinces of Nangarhar, Nuristan and Laghman.<sup>51</sup> It remains unclear whether IMF tactical victories and transfers of responsibility for security to Afghan forces can be converted into lasting Afghan government control.<sup>52</sup>

88. Steps are being taken to bring all the parties to peace discussions prior to the withdrawal of international forces. Recently the UN reduced travel bans on Taliban leaders so they can travel to peace talks.

The resolution "invites the government of Afghanistan, in close coordination with the High Peace Council, to submit for the committee's consideration the names of listed individuals for whom it confirms travel to such specified location or locations is necessary to participate in meetings in support of peace and reconciliation."

The Security Council's sanctions committee will require the passport or travel document number of the person traveling, the specific location to which they are expected to travel and the period of time - which cannot exceed nine months - during which they are expected to travel.

Britain's U.N. Ambassador Mark Lyall Grant said the travel ban exemption is "more effective and more flexible so it can serve the purposes of the peace and reconciliation process that is going to be so important over the next two years in Afghanistan."

"It does that while sustaining proper oversight for the committee and it also sets the framework for closer cooperation between the Afghan Government and sanctions committee," Lyall Grant said in a statement.

France said on Sunday that officials from the Afghan government, the Taliban movement and other factions would meet this week near Paris to discuss the country's future. Foreign troops have started handing over security control to Afghan soldiers and police, a process due to be completed by the end of 2014.<sup>53</sup>

89. The prospects of the Afghan National Army taking over are difficult to fully assess. The following article from Aljazeera indicates that there are several challenges ahead for the provision of security in Afghanistan, but also a level of confidence.

#### **AFGHANISTAN: An army prepares**

When US troops leave Afghanistan in 2014, will the country's own forces be able to hold the line against the Taliban?

The US military has an expression - no man gets left behind. But with the withdrawal of coalition combat troops from Afghanistan in 2014 drawing closer, the men of the Afghan National Army (ANA) could be forgiven for feeling that they are indeed being abandoned.

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<sup>51</sup> Afghanistan NGO Safety Office 2012, 'Quarterly Data Report Q.2 2012', 1 January- 30 June, p.8  
<<http://www.ngosafety.org/store/files/ANSO%20Q2%202012.pdf>>

<sup>52</sup> Cordesman A. H. & Burke, A. A. 2012, *Afghanistan: The Failed Metrics of Ten Years of War*, 9 February, Center for Strategic and International Studies, p. 15  
<[http://csis.org/files/publication/120209\\_Afghanistan\\_Failed\\_Metrics.pdf](http://csis.org/files/publication/120209_Afghanistan_Failed_Metrics.pdf)>

<sup>53</sup> U.N. makes it easier for blacklisted Taliban to travel for peace talks, <http://www.reuters.com/article/2012/12/18/us-afghanistan-sanctions-un-idUSBRE8BH00020121218>



In order to be able to leave and not have Afghanistan collapse immediately on their departure, the Americans announced at the end of 2009 that the size of the ANA would be increased to almost 200,000 soldiers.

A huge recruitment and training drive began, with new military training centres being set up around the country to facilitate the explosion in numbers.

In June 2012, slightly ahead of schedule, the ANA reached its quota. With great fanfare this was announced to the world as a sign that the army was ready to fulfil its obligations in protecting Afghanistan.

But the hard reality is that the ANA still depends on the US-led coalition for logistics, maintenance, intelligence-gathering and analysis, artillery and air support, medical evacuation (Medevac) and much, much more.

In fact, talk to any coalition troops on the ground and they will tell you the Afghans can fight, but only after they have been fed, clothed, armed and delivered to the battlefield by NATO.

Chief Warrant Officer Klaus Augustinus is a Danish mentor/advisor to the ANA and is on his third tour in Afghanistan. He openly admits that he was unimpressed with the ANA in the past, but now he feels they are making real progress. However, he says, it is the insistence on viewing the ANA through the prism of a Western army that leads to many problems.

"Always keep in mind that the Afghan way is the right way," Klaus says. "We're not going to do it any faster than they can cope with it. Otherwise we're going to lose."

### **Desertion**

There is no doubt that this huge new army is plagued with problems, but by far the biggest is the sheer turnover of men - currently running at about 30 per cent a year. In other words, the ANA has to find replacements for around 60,000 men every year.

There are many reasons for this attrition. The casualty rate is high, with more than 850 soldiers confirmed killed in 2012 alone, and a great many more wounded. As the ANA takes over the lead role in providing security throughout Afghanistan in 2013, both figures are expected to increase dramatically.

Part of this will doubtless be due to more fighting, but only barely adequate medical support and the likely withdrawal of full airborne Medevac services will not help either.

Currently the ANA relies on the coalition helicopters to take its wounded to hospital quickly. If not available, the ANA will have to use ground transportation to move badly injured men, increasing the time it takes to get them to a place of proper care and significantly reducing survival rates.

Failure to re-enlist is also a big problem. Right now about one-quarter of all recruits decline to sign up for a further tour of duty contract after their initial three-year commitment is completed.

Then there is desertion - a concern to all army commanders of a volunteer army during a war, but something to which the ANA currently seems especially vulnerable.

The Afghan defence ministry admits to losing between 7-10 per cent of its troops every year in this way.

When we spoke to General Karimi, the ANA chief of staff, he told us that desertion is much reduced and that measures are in place to reduce it further. That may be true, but no one knows exactly what will happen when the ANA begins bearing the brunt of the fight against the Taliban in a little over a year's time.

### **Taliban intimidation and threats**

So why are desertion rates so high? We managed to find some deserters (it is not hard to track them down) and they cited three main reasons: corruption and abuse of power by officers, lack of care for troops and probably most significantly, Taliban intimidation and threats.

Taliban threats against individual ANA soldiers - and more insidiously against their families - are probably a much bigger cause for desertion than their own side's institutional indifference. We spoke to one deserter, identified in our film as 'Amir', who had gone absent from his unit only a few weeks earlier. He told us that the Taliban had visited his family home several times and told them that if he did not leave the army, they would cut off his head. When that did not work, they extended the threat to the whole family and he had no choice but to do as they ordered. He is still furious about it, but said he had to put his relatives first.

### **After 2014**

In Chicago in early 2012, Barack Obama, the US president, described the plans to withdraw from Afghanistan as "irreversible".

But the fortunes of the ANA are very much reversible, and if the army collapses, or fractures along ethnic lines, Afghanistan's last line of defence will crumble and chaos will engulf the country once again.

From what we witnessed in the making of this film, it is hard to see how the Afghan army, however dedicated, can achieve what the far greater resourced "Coalition of the Willing" has failed to do over the past 11 years.

And yet, despite this, morale among ANA troops - or at least among many of those we spoke to - is higher than it might be expected to be.

Although they have been playing a support role in the coalition's fight against the Taliban up until now, Afghan units have had their successes and on occasion ANA troops have displayed notable courage and determination in the field. This kind of commitment may not be enough to prevail against the Taliban in any long drawn-out fight, but once US troops leave and the dynamics of the war change (as they must), it may just be sufficient to hold the line for a time, and allow Afghanistan to find a way to peace through other means.<sup>54</sup>

90. The following reports indicate the Australian Government's position in relation to the withdrawal of forces from Afghanistan:

### **Withdrawal from Afghanistan 'by 2014'**

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<sup>54</sup> AFGHANISTAN: An army prepares, <http://www.aljazeera.com/programmes/peopleandpower/2012/12/201212126227280456.html>



Date May 14, 2012

Australian troops will be out of Afghanistan by the end of 2014 at the latest, according to an announcement by Afghan President Hamid Karzai.

Uruzgan Province - where Australia's troops are based – is part of the third tranche of provinces and districts that Mr Karzai said would begin the transition to Afghan-led security by the middle of this year.

Australia will continue to support Afghanistan after transition, through training and advice and a possible special forces contribution.

Prime Minister Julia Gillard has welcomed the announcement ahead of the NATO and International Security Assistance Force Summit in Chicago next week.

"We've been expecting this announcement," Ms Gillard told ABC news. "It's exactly what I said to the Australian people when I last spoke on Afghanistan [in April]," she said.

Ms Gillard said the transition process could take 12 to 18 months, meaning that Australian troops should have left Uruzgan by the end of 2014, or possibly earlier.

Some 1550 Australian troops are currently in Afghanistan. According to the Department of Defence, 32 ADF members have been killed and 223 have been wounded in action in Afghanistan since 2002.

The Defence Minister, Stephen Smith, said the transition news was an "important milestone" that was "welcomed very much".

"For some time, the Prime Minister and I have been saying we believe we are on track [to transition out of Afghanistan]," he told reporters in Perth.

Opposition Leader Tony Abbott said the Coalition wanted Australian forces to leave Afghanistan when the "job is done".

"We think it's very important that the forces in Afghanistan know that they have the support of the entire Australian people," he said.

Ms Gillard said that after the third tranche of transition, more than 75 per cent of Afghanistan's population will live in areas that are overseen by Afghan security forces.

She said Australia will continue to support Afghanistan after transition, through training and advice and a "possible special forces contribution".<sup>55</sup>

91. And from CNN:

**Australia to train Afghan forces after withdrawal of combat forces**

June 14, 2012|By the CNN Wire Staff

Australia has pledged to provide troops to Afghanistan beyond a 2014 deadline for withdrawal. Australia pledged Thursday to provide troops and resources in

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<sup>55</sup> <http://www.canberratimes.com.au/opinion/political-news/withdrawal-from-afghanistan-by-2014-20120514-1ym6v.html#ixzz2FTE8H8pW>

Afghanistan beyond a 2014 deadline to withdraw combat forces, a commitment that came as NATO's chief vowed the alliance would not leave a security vacuum in the country.

The announcement followed news of a joint political declaration between Australia and NATO during a news conference in the Australian capital of Canberra.

The agreement unites Australia and NATO in battling terrorism, piracy and cybercrimes, though the primary focus in the near term will be on Afghan security forces.<sup>56</sup>

92. An article from the UK indicates the investment levels likely in the post 2014 environment in Afghanistan.

The US will also expect Britain to pay its share of aid to the Afghan government after the withdrawal in two years' time, estimated to be around \$10bn (£6.2bn) a year. Elements of Western military presence, including air power and special forces, are also due to remain in the country after the ground combat mission had ended.<sup>57</sup>

### *Returnees*

93. Returnees to Afghanistan from Western countries make up only a tiny proportion (less than 0.25%) of the 6 million returnees to Afghanistan since 2002.<sup>58</sup>
94. In March 2012, the Department of Foreign Affairs and Trade stated in relation to Hazara returnees to Afghanistan that '[l]imited employment and advancement opportunities also inhibited returning refugees' but added that 'there were no significant protection issues for returnees'.<sup>59</sup>
95. In January 2012, a Foreign and Commonwealth Office official at the British Embassy, Kabul who dealt with returnees from the UK on "an almost daily basis" advised that, in relation to any reports of failed Afghan asylum seekers being targeted on their return to Afghanistan from the United Kingdom (or other western countries) for being supporters of the West, or for adopting Western life styles or behaviours:

I have not received any reports from those who have returned from the UK in my time here that they have been targeted on their return for the reasons set out above. Similarly, I have not received any reports of targeting on return with regards to those who have been identified in the UK media. Returnees usually contact me regarding reintegration support and concerns voiced to me are almost exclusively around accessing the labour market.<sup>60</sup>

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<sup>56</sup> [http://articles.cnn.com/2012-06-14/asia/world\\_asia\\_australia-nato-afghanistan\\_1\\_afghan-security-forces-number-of-international-forces-afghan-government?\\_s=PM:ASIA](http://articles.cnn.com/2012-06-14/asia/world_asia_australia-nato-afghanistan_1_afghan-security-forces-number-of-international-forces-afghan-government?_s=PM:ASIA)

<sup>57</sup> <http://www.independent.co.uk/news/uk/home-news/british-to-reduce-forces-in-afghanistan-to-half-their-current-size-by-end-of-2013-8424522.html>

<sup>58</sup> Kronenfeld, Daniel 2011, *Can Afghanistan Cope with Returnees? Can returnees Cope in Afghanistan? A Look at Some New Data*, Middle East Institute & Foundation pour la Recherche Strategique, 25 January, p.4, Refugee Cooperation website  
<[http://www.refugeecooperation.org/publications/afghanistan/pdf/02\\_kronenfeld.pdf](http://www.refugeecooperation.org/publications/afghanistan/pdf/02_kronenfeld.pdf)>

<sup>59</sup> DIAC Country Information Service 2012, *Hazara Community Update*, (sourced from DFAT advice of 12 March 2012), 19 March.

<sup>60</sup> DIAC Country Information Service 2012, *Targeting of failed asylum seekers upon return to Afghanistan*, (sourced from United Kingdom Border Agency advice of 16 January 2012), 19 January

96. In relation to Hazara returnees to Afghanistan from Australia, DFAT consulted the UNHCR in Kabul, the Afghanistan International Human Rights Commission (AIHRC), the Provincial Reconstruction Team (PRT) in Ghazni province, the diplomatic community in Kabul, international immigration consultants operating in Afghanistan and a Hazara MP, and advised that “none of our contacts considered there were significant protection issues for returnees”.<sup>61</sup> Other DFAT advice from 2010 stated that “interlocutors did not believe Hazaras would be targeted because they had sought asylum in the west.”<sup>62</sup>
97. An article from *The Australian*, published on 30 March 2011, made reference to research undertaken by the Edmund Rice Centre, in which it had followed the fate of 270 failed asylum seekers who had been returned to Afghanistan from Australia. The research indicated that nine of these Afghans had been killed following their return. One of these Afghans, who had reportedly been “an anti-Taliban fighter” in the past, had been in Kabul but was then kidnapped by the Taliban and taken back to his home village in Ghazni province, where he was killed.<sup>63</sup> In February 2011, *ABC News* reported that the Afghan government had “conceded it cannot guarantee the safety of any failed asylum seekers deported from Australia to Afghanistan”.<sup>64</sup>
98. A September 2010 DFAT response on the situation for Hazara returnees to Afghanistan and conditions for the Hazara community in Ghazni province notes that “[c]onditions facing Hazara returnees vary according to circumstance” and that “[r]eturning to their areas of origin is more difficult if they have been out of Afghanistan for years and have no networks there”.
99. A 2009 Finnish Immigration Service situation report on the Jaghori district states that “only about 10% of the population are estimated to be returnees” and “one fourth of the population lives abroad and travels regularly, mainly to Iran for work”.<sup>65</sup>
100. It should also be noted that significant numbers of Afghan refugees have returned to Afghanistan. The UNHCR has reported that 50,000 Afghan refugees had voluntarily returned to Afghanistan in the first eight months of 2012 and that 4.6m have returned home since 2002.<sup>66</sup>
101. An *Outlook Afghanistan* report, published on 1 November 2011, referred to a UNHCR report of 29 October 2011 which stated that about 60,000 refugees had returned to Afghanistan voluntarily during the year up to that point. Of these, 43,000 were from Pakistan, with 17,000 from Iran,<sup>67</sup> and less than 100 from other countries.<sup>68</sup> *Outlook Afghanistan* provided a

<sup>61</sup> Department of Foreign Affairs and Trade 2012, *Hazara Community Update*, 12 March

<sup>62</sup> Department of Foreign Affairs and Trade (DFAT) 2010, *Country Information Report No. 10/60 – CIS Request No. AFG10736: The Hazara*, (sourced from DFAT advice of 28 September), 29 September

<sup>63</sup> ‘Stop deporting Afghans to be killed’ 2011, *The Australian*, 30 March <<http://www.theaustralian.com.au/national-affairs/stop-deporting-afghans/story-fn59niix-1226030327677>>

<sup>64</sup> ‘No safety guarantee for returned Afghans’ 2011, *ABC News*, 8 February <<http://www.abc.net.au/news/2011-02-07/no-safety-guarantee-for-returned-afghans/1932096>> Accessed 6 August 2012.

<sup>65</sup> Finnish Immigration Service 2009, ‘*Situation Report: The Current Situation in the Jaghori District of Ghazni*’, 10 December, p. 1 CISNET Afghanistan CIS18216.

<sup>66</sup> CX294078: PAKISTAN/AFGHANISTAN/IRAN:50,000 Afghan refugees voluntarily return to Afghanistan this year, United Nations High Commission for Refugees (UNHCR), 28 August, 2012, , <http://reliefweb.int/report/afghanistan/50000-afghan-refugees-voluntarily-return-afghanistan-year>

<sup>67</sup> Sharzai, D. 2011, ‘Dubious future of Afghan refugees’, *Outlook Afghanistan*, 1 November <[http://outlookafghanistan.net/topics?post\\_id=2397](http://outlookafghanistan.net/topics?post_id=2397)> Accessed 6 August 2012.

<sup>68</sup> ‘Number of UN-assisted returns to Afghanistan drops in 2011’ 2011, *United Nations News Centre*, 28 October <<http://www.un.org/apps/news/story.asp?NewsID=40238&Cr=afghan&Cr1>>.

breakdown of the locations in Afghanistan to which the refugees had been returning, which included Kabul and Paktia province. The relevant information reads:

The refugees who have been returning in the ongoing year, have mostly moved to Kabul (26%), Nangarhar (14%), Herat (8%), Kunduz (8%), while the rest have opted for Kandahar, Laghman, Balkh, Baghlan and Paktia (4% each).<sup>69</sup>

### *Returning to Kabul*

102. DFAT have recently commented:

Post has no information suggesting the security or economic situation for Hazaras in Kabul differs significantly from that experienced by the general population of the city. Afghans of all ethnicities have told us they are wary of increased instability or a return to power by the Taliban after 2014 (when ISAF troops will have completed transition) and many are sending money abroad as a precautionary measure. This sentiment is widely shared, including among Hazaras. We are not aware of any current targeting of Hazaras by the Taliban in the capital.<sup>70</sup>

103. DFAT have previously commented that “We note that Hazara contacts describe Kabul as safe, and have not raised claims of persecution with us, though they point out that discrimination continues to exist.”<sup>71</sup>

104. There is significant information regarding the prospect of applicants returning to Afghanistan and seeking to relocate to areas other than their own home regions. Afghanistan is a poor country with limited economic opportunities, widespread insecurity, weak governance and institutionalised corruption as well as a lack of infrastructure, housing and social services. Afghans returning to Afghanistan from another country or relocating within Afghanistan will face difficulties with housing and employment, and some individuals may be targeted for various reasons, depending on their individual profile and the availability of support from their family or ethnic group. Since 2002, around 6 million Afghan refugees have returned to Afghanistan, of which 99.75% came from Pakistan or Iran. The majority of returnees struggle for survival, are un- or under-employed, and live at or below the poverty level. Refugees International indicate that refugees returning to Afghanistan would be left vulnerable on account of the economic and security situation in that country:

Afghanistan’s extreme poverty, coupled with recurrent conflict and natural disasters, have left the majority of its citizens extremely vulnerable and unable to cope. ... Refugees returning from Iran and Pakistan are also vulnerable and continue to face an uncertain future.

105. Many Afghans, even those who have never lived in Kabul before, return or relocate to Kabul due to their concerns about security or economic prospects in other parts of Afghanistan. According to the Ministry of Refugees and Repatriation in Kabul, the main problem in Kabul is employment for people coming from the provinces or returning from abroad. The Afghan Independent Human Right Commission has pointed out that the employment rate is very low in Afghanistan: 36 % of the workforce is unemployed and another 36 % is earning less than one dollar a day. Kabul has a relatively better employment rate, but people coming from the

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<sup>69</sup> Sharzai, D. 2011, ‘Dubious future of Afghan refugees’, *Outlook Afghanistan*, 1 November <[http://outlookafghanistan.net/topics?post\\_id=2397](http://outlookafghanistan.net/topics?post_id=2397)>.

<sup>70</sup> Department of Foreign Affairs and Trade 2012, Security Situation for Hazaras in Afghanistan, 31 October (CISNET CX298127).

<sup>71</sup> CX273295: AFGHANISTAN: RRT Country Information Request AFG39190 - Conditions for Hazaras, Australia: Department of Foreign Affairs and Trade (DFAT), 24 September, 2011.

provinces or returning from abroad will have difficulties in finding sustainable jobs. DFAT agrees that there are limited employment opportunities for returnees as well as a perception of discrimination against Hazaras.

### *Family and community support*

106. All sources stress the importance for family and community support for returning or relocating Afghans. The UNHCR in its latest Eligibility Guidelines said the following:

Given the wide geographic reach of some armed anti-Government groups, a viable IFA/IRA may not be available to individuals at risk of being targeted by such groups. It is particularly important to note that the operational capacity of the Taliban (including the Haqqani network), the Hezb-e-Eslami (Gulbuddin) and other armed groups in the southern, south-eastern and eastern regions is not only evidenced by high-profile attacks, such as (complex) suicide bombings, but also through more permanent infiltration in some neighbourhoods and the regular distribution of threatening “night-letters”.

Furthermore, some non-State agents of persecution, such as organized crime networks, local commanders of irregular or paramilitary outfits and militias, as well as the Taliban and the Hezb-e-Eslami (Gulbuddin), have links or are closely associated with influential actors in the local and central administration. As a result, they largely operate with impunity and their reach may extend beyond the area under their immediate (*de facto*) control.

Whether an IFA/IRA is “reasonable” must be determined on a case-by-case basis, taking fully into account the security, human rights and humanitarian environment in the prospective area of relocation at the time of the decision. To this effect, the following elements need to be taken into account: (i) the availability of traditional support mechanisms, such as relatives and friends able to host the displaced individuals; (ii) the availability of basic infrastructure and access to essential services, such as sanitation, health care and education; (iii) ability to sustain themselves, including livelihood opportunities; (iv) the criminality rate and resultant insecurity, particularly in urban areas; as well as (v) the scale of displacement in the area of prospective relocation

The traditional extended family and community structures of Afghan society continue to constitute the main protection and coping mechanism, particularly in rural areas where infrastructure is not as developed. Afghans rely on these structures and links for their safety and economic survival, including access to accommodation and an adequate level of subsistence. Since the protection provided by families and tribes is limited to areas where family or community links exist, Afghans, particularly unaccompanied women and children, and women single head of households with no male protection, will not be able to lead a life without undue hardship in areas with no social support networks, including in urban centres. In certain circumstances, relocation to an area with a predominantly different ethnic/religious make-up may also not be possible due to latent or overt tensions between ethnic/religious groups.

In urban centres, the IDP population and growing economic migration are putting increased pressure on labour markets and resources such as construction materials, land and potable water. Widespread unemployment and underemployment limit the ability of a large number of people to meet their basic needs. The limited availability of humanitarian assistance has generally not improved this situation in a meaningful way. In addition to causing loss of life and serious injuries, mine contamination has prevented livelihood activities, including by restricting access to agricultural land, water, health care and education.

In light of the foregoing, UNHCR generally considers IFA/IRA as a reasonable alternative where protection is available from the individual’s own extended family, community or tribe in the area of intended relocation. Single males and nuclear family units may, in certain circumstances, subsist without family and community support in urban and semi-urban areas with established infrastructure and under effective Government control. A case-by-case analysis will, nevertheless, be necessary given the breakdown in the traditional social fabric

of the country caused by decades of war, massive refugee flows, and growing internal migration to urban areas.<sup>72</sup>

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

Insecurity, political instability and economic and social problems are likely to continue in 2012 and may increase as international forces transfer security responsibilities to national partners. Military operations, including those in response to violent incidents and armed fighters, may cause further displacement. Efforts to access and provide immediate and timely humanitarian assistance to the newly displaced may be hampered by insecurity. Currently, the UN has direct access to less than half the country. Though UNHCR has put in place innovative measures to expand its reach, including through partners, access to people of concern remains precarious. UNHCR will continue to review its operational environment to ensure staff safety and security. Appropriate mitigation measures may have significant resource implications.

108. A September 2010 report by DFAT, noted the view of a Hazara human rights contact as stating that the Hazara had a cohesive community in Kabul and it would be relatively easy for new arrivals to integrate into the city.<sup>73</sup>

109. Reintegration packages from the International Organisation for Migration (IOM) are available. This includes for returnees from Australia:

- Tailored reintegration assistance may include the provision for accommodation, skills training, small business creation and/or job placement
- Additional services provided by IOM upon arrival in Kabul may include assistance through customs, medical consultations where needed, onward travel to final destination and temporary accommodation in Kabul for up to 14 days where requested.<sup>74</sup>

110. The DIAC Returns and Removals Program Support Section provided advice on 16 April 2012 that voluntary returnees to Afghanistan can obtain an assistance package of up to US\$4000 based on need. The IOM are able to consider an assistance package up to the value of US\$2000 based on need for involuntary Afghan returnees.
111. Sustainable reintegration is facing new challenges as competition for land, water, natural resources and employment grows sharper. Access to employment is frequently constrained by the lack of social and economic networks. Moreover, the overwhelming development needs in the country make it increasingly difficult for UNHCR to secure sufficient resources to support returning refugees.
112. An April 2012 article from the Danish Refugee Council (DRC) describes returning Afghan refugees settling in slum like conditions with little to no resources or assistance. The report states:

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<sup>72</sup> UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, UNHCR, 17 December 2010, pp. 38-40.

<sup>73</sup> CX250180: AFG10736: The Hazara, Australia: Department of Foreign Affairs and Trade (DFAT), 28 September, 2010.

<sup>74</sup> Memorandum of Understanding between the Government of Australia, the Government of the Islamic Republic of Afghanistan and the United Nations High Commissioner for Refugees (UNHCR) on migration and humanitarian cooperation, DIAC, 17 July 2011 (CX256576).

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

## **FINDINGS AND REASONS**

### **Nationality**

113. The applicant has provided the Tribunal with documentary evidence of his nationality, including a copy of his Taskera. He answered the Tribunal's questions in Hazaragi, and has the typical features of a Hazara. The applicant has consistently claimed he was born in Afghanistan and moved to Pakistan at an early age. Based on the information before me and in the absence of any information to the contrary, the Tribunal accepts that the applicant is a citizen of Afghanistan and that Afghanistan would be his country of return for complementary protection considerations.

### **Third country protection**

114. There is no evidence before me to suggest that the claimant has the right to enter and reside in any safe third country for the purposes of s.36(3) of the Act.

### **Credibility**

115. The Tribunal found the applicant to be direct in his responses and did not appear to equivocate in relation to the evidence he provided. The applicant's personal experiences of risk and harm are based primarily on his experience in Quetta, and his evidence reflected this. His claims of Shia Hazaras being persecuted in Afghanistan was based on information provided to him by other sources, including people coming to Quetta and selective news from a variety of sources.
116. The applicant has made a generalised claim in the hearing that all Pashtuns are Taliban. The Tribunal stated that it did not agree with this generalisation of this group of people. While the Taliban do draw upon particular elements of Afghan society that include Pashtuns for membership and support, there are many in the present government and bureaucracy, including the President of Afghanistan, who are ethnically Pashtun and oppose the position of the Taliban and other insurgent groups. The Tribunal rejects this generalisation of the Pashtun ethnic group in Afghanistan.

### **Claims**

117. The applicant's claims are that he will be persecuted across Afghanistan because of his Shia Hazara background, because of his experience living in Pakistan and Australia, and the implications of returning from such countries to Afghanistan. The applicant fears persecution by the Taliban, the Pashtun population generally, and the LeJ, a Pakistani based insurgent group. He believes that the Afghan government is unwilling and unable to protect him and fears that the situation in Afghanistan will get worse after the drawdown of foreign troops in 2014.

118. The applicant's Hazara Shia claims are provided in the Convention grounds of race, religion, a particular social group of 'physically identifiable Hazara' and an imputed pro-government/anti-Taliban political opinion arising out of his Hazara Shia background. The Tribunal considers that the construction of the social group and political opinion claims are essentially based in the race and religion arguments, and while they could be considered to be created, they are essentially the same position and can be subsumed into the general consideration of the claims of this nature. No evidence was provided as to why the social group or imputed political opinion of Hazara Shia was different to the substantive race and religion identifiers, and the Tribunal will consider these aspects of the applicant's claims in the broader context of the Shia Hazara claims.
119. The applicant has made a specific claim that he will be targeted on the roads of Afghanistan by the Taliban and Pashtuns for being a Hazara Shia. This includes the applicant's assertion that he will have to leave Kabul for Quetta to be with his family, despite the dangers that is inherent in that part of Pakistan.
120. The Tribunal has had regard to a significant amount of information relating to Hazara Shias in Afghanistan, including, relevantly for the applicant, in Kabul and on the roads of Afghanistan. The Tribunal put to the applicant information from the UNHCR and other sources that identified that Hazara Shia were not specifically being targeted by Taliban or Pashtuns for harm, that there were other reasons that individuals were being specifically targeted for harm. Information was put that in 2012 the number of non-combatant casualties had fallen, and that the Taliban and other insurgent groups had reduced their attacks, and the situation for Shia Muslims in Afghanistan since the violence of 2011 had improved. The applicant provided material in relation to the deterioration of the situation generally for Hazara Shia.
121. The Tribunal has to consider the circumstances for Hazara Shia in Afghanistan. The overall weight of the country information referred to above and discussed with the applicant indicates that the Taliban insurgency is not targeting Hazara Shias or that Hazaras are being persecuted on a consistent basis. Amin Saikal of ANU states that the Hazaras now enjoy a substantial share in the power structure, and economic and social life of Afghanistan. Their provinces have proved to be amongst the safest in Afghanistan. DFAT reports have recently stated that Hazaras considering emigration were principally influenced by long term economic considerations rather than any immediate risk of persecution. The latest UNHCR Eligibility Guidelines do not make mention of Hazaras and Shias as being groups generally subjected to persecution by reasons of their race and religion but that an assessment of their individual circumstances is required. Nor does the country information indicate that Hazaras are being discriminated against in a manner that would amount to serious harm for the purposes of s.91R(1)(b) of the Act. The information from the *Hazara Community Update* referred to above notes that economic challenges exist in Afghanistan, but it does not indicate that they are denied employment opportunities or access to essential services or discriminated against in any other way amounting to serious harm.
122. In making an assessment of whether the applicant's fears as a Hazara Shia are objectively well-founded, the Tribunal has considered carefully the country information submitted by the applicant and his agents. In particular the Tribunal has taken into account the reports of the bomb blasts in Kabul and Mazar-e-Sharif in 2011 where it appears that Shias were deliberately targeted by the LeJ. Attacks on Shia targets were limited, and the most violent attacks in Kabul of the recent past were attributed to Lashkar – e – Jhangvi (LeJ), a Pakistani insurgent group that has a specific interest in attacking Shi'ite targets. The attacks on Shia in



2011 were condemned by the Taliban, who have sought to avoid the sectarian divisions that groups like the LeJ in Pakistan are promoting.

123. However the impact of the attacks of the LeJ in Kabul in 2011 has been very limited. The LeJ had not committed previous terrorist attacks of this nature in Afghanistan nor have they repeated such attacks, indeed the nature of these attacks in 2011 brought condemnation from the Afghan Taliban, as put to the applicant. The Tribunal does not consider that these attacks are likely to lead to a sectarian war in Afghanistan, or that the applicant has a real chance of serious harm from the LeJ in Afghanistan. The Tribunal does not consider that the treatment of Hazara Shia by the Taliban or LeJ involves systematic and discriminatory conduct amounting to persecution. The Tribunal finds that the applicant does not face a real chance of persecution from the LeJ because of his Hazara Shia background. The Tribunal finds that the applicant does not have a well-founded fear of persecution in Afghanistan for this reason.
124. The Tribunal finds that the applicant will not face a real chance of persecution, by the Taliban, Pashtuns or the LeJ, for reasons of being a Hazara, a Shia, or for any imputed political opinion arising out of being a Hazara or Shia, or for the reason of being a member of a particular social group, that being a physically identifiable Hazara Shia. The Tribunal finds that the applicant does not have a well-founded fear of persecution for these reasons now or in the reasonably foreseeable future.

*Returnee from a Western country / Pakistan / Failed Asylum seeker*

125. The Tribunal considered and discussed with the applicant the information provided by the applicant and his advisors in relation to the claims of being persecuted on return to Afghanistan. The Tribunal has also considered information in relation to the risks of returning to Afghanistan from overseas. It considers the reports as cited above, from DFAT, from the UK Border Agency, from the UNHCR, the Afghanistan International Human Rights Commission (AIHRC), the Provincial Reconstruction Team (PRT) in Ghazni province, the diplomatic community in Kabul, international immigration consultants operating in Afghanistan and a Hazara MP, and the advice from DFAT that who advised that “none of our contacts considered there were significant protection issues for returnees”.
126. The Tribunal has also considered where the applicant would be returning to. The applicant has previously been a resident of Kabul, with experience living there. Kabul has been the location for many returnees, the figures above cite 26% of returnees, and while most of these are from Pakistan, it would also include many from Western locations. The Tribunal does not accept that the applicant would be singled out for harm because he is returning from overseas. That the applicant has had experience in Pakistan and in Australia has not stopped he or his family from speaking Hazaragi, which is used in Kabul in the Hazara community. The Tribunal does not accept the assertion that the Taliban would find out that he had returned from a Western country or Pakistan and seek to harm him for this reason. There are many returnees, particularly to Kabul, and the applicant will not be identifiable as a returnee from a Western country. The applicant may be identifiable for his experience in Pakistan, but given the numbers of people who have returned to Afghanistan from Pakistan and Iran, (4.5 million in the last decade), without being targeted for harmed, the Tribunal does not consider that the applicant will be targeted because of this return from Pakistan. Accordingly, the Tribunal does not consider that the applicant has a well-founded fear of persecution for this reason.
127. The applicant has claimed he will be persecuted because he is a failed asylum seeker. The Tribunal does not accept this claim. The Tribunal does not consider that failed asylum

seekers from western countries are being targeted for harm, the information regarding returnees from the UK is that they are not being targeted for harm. Voluntary returnees, the closest Australia has to failed asylum seekers being returned to Afghanistan from Australia are also not being reported to be harmed for their time in Australia. The Tribunal does not accept that due to his experience in Australia and returning to Afghanistan as a failed asylum seeker that the applicant will be targeted for harm. Accordingly, the Tribunal does not consider that the applicant has a well-founded fear of persecution for this reason

128. The applicant has claimed that he will be harmed by the Hazara population in Kabul because he has not been in Afghanistan for such a period, including when the Hazaras were being harmed during the Taliban period. The Tribunal does not accept this proposition. The numbers of Hazara people in Kabul has significantly increased over the past decade, with people coming from regional and international locations (predominantly Pakistan). The return to Kabul that the applicant faces is not different to that experienced by many others, without detrimental experience.

*Travel on the roads*

129. The applicant fears that he will be targeted on the roads of Afghanistan for the reasons as set out above. The Tribunal notes country information that states that certain parts of Afghanistan, including the routes from Kabul to the South and the West of Afghanistan are influenced by Taliban checkpoints and the use of roadside Improvised Explosive Devices (IEDs), which were the leading cause of civilian fatalities in 2012, with 806 deaths<sup>75</sup> The practice of the Taliban on the roads commonly is to stop vehicles and assess the occupants in relation to their involvement with the government or international forces or NGOs. The UNHCR guidelines, discussed with the applicant, provide a reliable reference to the types of people who are then targeted by the Taliban for harm, with the significant majority of people being permitted to travel onto their destination without harm. The Tribunal does not accept that the applicant is at risk of being targeted by the Taliban even if he was to be stopped by the Taliban on the roadside, as he does not have a profile that would place him at risk of Taliban harm.
130. The Tribunal considers the planting of IEDs as the quintessential use of generalised violence in Afghanistan. Hiding IEDs by the roadside and these IED being triggered by a passing vehicle is designed to create fear and intimidation by the Taliban in an area. It identifies the area as being one where the Taliban have influence and are active. However the very nature of most IEDs are that they are not specifically targeted at any one vehicle, but the unfortunate vehicle that drives close enough to trigger the device. The closest there is to targeting of a vehicle is attempts to destroy the vehicles specially designed to remove or detonate IEDs, which are operated by ISAF or ANA personnel. It cannot be said that the IEDs are being used to target Hazara Shia individuals, but that Hazara Shia individuals have as much chance as any other civilian as being affected by the use of such a device.
131. The placement of the IEDs is mostly on the roads where the Taliban have a significant presence and a degree of control. They do not have a significant presence or degree of control over Kabul, the place where the applicant has previously resided and will be returning to in Afghanistan. The Tribunal considers that, given the generalised nature of the IED to citizens of Afghanistan, and that the applicant is unlikely to be in locations where the IEDs are being

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<sup>75</sup> <http://www.ngosafety.org/store/files/ANSO%20Q4%202012.pdf>

planted, the applicant does not have a real chance of being harmed by such a device in Afghanistan.

*Withdrawal of foreign forces in 2014*

132. The applicant states that he fears that Afghanistan will devolve into general lawlessness after the drawdown of foreign forces in 2014, and that the Hazara Shia population will face significant challenges as the Taliban restore their control over Afghanistan. The applicant states that because he has Hazara features he will be considered supportive of the foreign forces and an infidel by the Taliban and any other current insurgent group.
133. The Tribunal does not accept that the applicant has a real chance of being persecuted now or in the reasonably foreseeable future due to the departure of the foreign forces from Afghanistan. The Tribunal does not accept the proposition that because the majority of foreign forces have left Afghanistan the Taliban will take over the country and return it to the same circumstances as occurred from 1996 – 2001. The Tribunal does not accept that the foreign governments who have invested so much in terms of military, financial and developmental support to Afghanistan will permit the significant changes to the governance that the applicant fears. The Tribunal also considers that the circumstances in Afghanistan in 2013/2014 and beyond are very different to that which led to the Taliban rule from 1996 to 2001, with the significant investment in a system of governance and security across all ethnic groups that will allow Afghanistan to remain stable, and for ethnic groups like the Hazara people to continue to develop and prosper. The information cited above about the intention of western governments to continue to provide aid and support to the Afghan government and its people, which the Tribunal considers will be ongoing.
134. The Tribunal is conscious that there will be challenges to the system in Afghanistan. Sporadic violence that has caused difficulty in the country for some time will continue, as insurgent groups like the Taliban seek to impose conservative social ideals in the country. However the Tribunal does not accept that this will mean that ethnic groups like the Hazara will be targeted for attack due to their appearance or imputed allegiance to the present Afghan government and the foreign forces that are presently in Afghanistan. The Tribunal does not accept that Hazaras will be persecuted due to their support for the present system of governance in Afghanistan, will not be considered infidels by the Taliban, Pashtuns or other insurgent groups for this support, and will not be harmed because they are Hazara and Shia, now or in the reasonably foreseeable future after the withdrawal of the foreign forces.
135. The Tribunal finds that applicant will not face a real chance of persecution for reasons of being a Hazara, a Shia or an infidel on the departure of foreign forces at the end of 2014. The Tribunal finds that the applicant does not have a well-founded fear of persecution for this reason now or in the reasonably foreseeable future.

**Complementary protection obligations**

136. On the basis of the applicant's evidence that he is a national of Afghanistan, the Tribunal finds that Afghanistan is the applicant's receiving country for the purposes of s.36(2)(aa).
137. As the Tribunal does not accept that the 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 Afghanistan, there is a real risk that he will suffer significant harm as defined in subsection 36(2A) of the Act.

138. The applicant has claimed that he will face a real risk of significant harm arising out of physical violence and denial of social and economic rights.
139. The Tribunal does not accept the claim that the applicant faces a real risk of significant harm arising from physical violence. The Tribunal has considered the information provided by the applicant and discussed at the hearing describing the generalised violence that has occurred in locations like Kabul. Attacks by the Taliban and other insurgent groups have occurred. A common link between the attacks has been that they have targeted government and security personnel and the locations where they work. The applicant is not associated with the government or security systems within Afghanistan, and will not be targeted by insurgent groups for harm.
140. The applicant is a Shia Muslim and observes the practice, mostly at home, but occasionally at a Shia mosque. In 2011 there were targeted attacks in Kabul on Shia mosques, conducted by the LeJ. The Tribunal considers the Taliban response to these attacks to be relevant, they condemned the attack, and do not seek to develop a sectarian division in Afghanistan. Apart from the 2011 bombings the LeJ have not been active in Afghanistan and, the Shia population has been able to continue their religious practices in Afghanistan without harm, which demonstrates to the Tribunal that the applicant does not face a real risk of significant harm when observing his religious practices.
141. The Tribunal does not accept that there is a real risk that the applicant will be caught up in an indiscriminate attack on Kabul. The Tribunal finds that the applicant does not face a real risk of significant harm arising from physical violence.
142. The applicant has claimed he will face a denial of social and economic rights. He states that his family will find it difficult to settle in Afghanistan, due to their language differences, different education, length of time away, lack of acceptance from the Hazara community and other cultural factors. The Tribunal acknowledges that there will be some difficulties, though notes that there are a number of factors that will ameliorate the difficulties that the family will face, including the fact that the family has grown up in the Hazara neighbourhoods of Quetta, speak Hazaragi and have cultural practices akin to what they will find in Kabul.
143. The applicant has shown himself to be a resourceful and hardworking man. From humble beginnings he became successful in a business in Quetta. The applicant stated that wherever he was he tried his best, and the evidence of the applicant's work history in Quetta and more recently in Australia demonstrates this to be true, and is commendable. It does show that the applicant is capable of establishing himself in a different set of circumstances, and the Tribunal considers that the applicant would be able to establish himself on return to Kabul. He will be able to support himself and his family in the circumstances, so will not be denied social and economic rights in Kabul.
144. The Tribunal does not accept this claim. The Tribunal has considered the capacity of the applicant to use his skills in Kabul, and has found that he will be able to utilise his abilities to support himself in housing, food and other needs. He will be able to access health care and accommodation, and access to services as he requires them without difficulty, given the capacity to earn an income. The Tribunal finds that the applicant will be able to adequately

support himself in Kabul, and accordingly, does not face a real risk of significant harm for these reasons.

145. The Tribunal finds that, individually and cumulatively, there are no substantial grounds for believing that, as a necessary and foreseeable consequence of him being removed from Australia to Afghanistan, there is a real risk he will suffer significant harm.

## **CONCLUSIONS**

146. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
147. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
148. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

## **DECISION**

149. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.