



EUROPEAN COUNCIL
ON REFUGEES AND EXILES

CONSEIL EUROPEEN
SUR LES REFUGIES
ET LES EXILES

**GUIDELINES FOR THE TREATMENT OF AFGHAN
ASYLUM SEEKERS & REFUGEES IN EUROPE -
February 2002**

Introduction

1. In this paper, the European Council on Refugees and Exiles (ECRE) has compiled the views of its member agencies, consisting of more than 70 organisations throughout 28 European countries, with regard to the treatment of Afghan asylum claimants and refugees in European countries of asylum and repatriation to Afghanistan in the aftermath of the establishment of the Interim Administration for Afghanistan.
2. Throughout Europe, the treatment of Afghan persons seeking international protection varies considerably. Some countries have suspended the examination of asylum applications awaiting developments in Afghanistan. In most countries where asylum processing continues, Afghans are granted protection from refoulement in the form of complementary or other protection statuses rather than Convention status. At present, no returns are taking place due to the uncertainty of the situation in Afghanistan as well as for practical reasons. Notwithstanding, a number of countries are currently reviewing their position with the pace and number of returns likely to increase in the following months.
3. Reports from NGOs and international organisations have underlined that the situation in the region is unsafe. ECRE believes that the Interim Administration chosen to run Afghanistan following the demise of the Taliban, is not in a position to provide protection from persecution by remnants of former regimes or local power holders affiliated to the Interim Administration.
4. ECRE wants to remind European States where Afghan refugees are present, that notwithstanding the demise of the Taliban regime, they are bound by a duty to protect individuals with continuing protection needs which are not addressed by recent political developments.
5. This paper should be read in conjunction with ECRE's Positions on the Interpretation of Article 1 of the Refugee Convention and on Complementary Protection and in the light of other ECRE policy statements¹.

¹ In particular, *Position on Refugee Children* (1996) and *Position on Asylum Seeking and Refugee Women* (1997)

I – THE DUTY OF PROTECTION FROM PERSECUTION

6. Despite the establishment of an Interim Administration on the basis of the Bonn talks and the beginning of major reconstruction efforts by the international community, Afghanistan remains politically unstable and subject to major disruptions in law and order. Reports² on the situation in the country show that the country with the possible exception of Kabul has been reverting to the power holding partners that existed prior to the emergence of the Taliban, with former commanders and tribal leaders slipping back into their old leadership positions. Despite the establishment of a UN-mandated International Security Assistance Force to assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas, arbitrary action and high levels of insecurity in most parts of the country represent major problems with individuals being at risk from local inter-ethnic conflicts and tribal disputes, bandits or from power holders seeking to extract revenge/money. A number of areas are classified by the UN as no-go zones. The Taliban, although deposed from power, are still present in many localities.
7. European States should give all Afghan asylum claimants the opportunity to lodge an application and have it processed with minimum delay.
8. ECRE urges European governments to provide clear indications with regard to the steps they are taking to obtain the accurate and up to date information on the situation in Afghanistan that is necessary for fair asylum decision making. These might include fact-finding government missions or commissioning reports by independent sources such as UNHCR, non-governmental organisations and academic institutions. Governments should also commit themselves to a reasonable timeframe within which such information is to be obtained.
9. ECRE considers that certain categories of individuals amongst the Afghan population have ongoing protection needs that might not be substantially affected by political developments currently taking place in Afghanistan. The list below is not exhaustive. It includes:
 - intellectuals at risk of being targeted by remnants of Taliban forces or other elements;
 - minority Pushtuns from the North perceived to have supported the Taliban;
 - former cardholding members of the former Socialist Parties{this category should include persons who held senior positions in the Khalqi or Parchami Parties and the People's Democratic Party of Afghanistan and in Khad (the Afghan Intelligence Service)};
 - other persons for whom compelling reasons apply (i.e. they are survivors of torture/trauma, unaccompanied minors, persons who are seriously ill and cannot be treated in Afghanistan, single women or female-headed households without effective male support).
10. ECRE urges European states to give immediate consideration to the asylum applications of persons falling within the aforementioned categories in order to identify and grant them an appropriate status at the earliest possible. This should include either refugee status in accordance with the 1951 Convention Relating to the Status of Refugees or complementary protection

² UNHCR, Afghanistan Humanitarian Update, No. 50, 18 January 2002, British Agencies Afghanistan Group, Monthly Review, December 2001 and January 2002.

status for those who fear persecution but fall outside a full and inclusive interpretation of the terms of the 1951 Convention.

11. The lack of corroboratory evidence due to the uncertain situation in Afghanistan should not represent sufficient ground for rejecting or granting a lesser protection status to claimants who are able to demonstrate that their fear of persecution is a reasonable one.
12. In view of the uncertainty of the political situation in Afghanistan, the risk of arbitrary action and high levels of insecurity, ECRE urges European states not to forcibly return Afghan nationals to their country of origin at the present moment. As an interim measure and until the political situation stabilises, Afghan asylum claimants who are not able to establish a well-founded fear of persecution should be granted a form of international protection that guarantees full socio-economic rights including unlimited access to the labour market.

II – THE NEED FOR CO-ORDINATED AND STAGED RETURNS

13. In the event of the political situation stabilising and the basis for fears of persecution being fundamentally removed, returns to Afghanistan must be dealt with on the basis of lessons learned from previous conflicts. ECRE warns European governments of the fact that many of the reasons why predicted returns in relation to other countries/regions could not be enforced³ also exist in the context of returns to Afghanistan.
14. The absence of law and order and basic physical infrastructure, (such as roads, schools, electricity and hospitals) the lack of functioning institutions including a military and a judiciary, limited water availability and food supply due to years of drought, high dependency on international food aid, the presence of millions of mines in homes, fields and irrigation systems, together with the problems faced by voluntary agencies due to security concerns in providing basic social services and assistance – all point to the need for an eventual careful and staged approach by European countries to returns to Afghanistan.
15. European governments need to be aware that the situation on the ground differs widely from one part of the country to another, in security and political terms as well as with regard to availability of water and food supplies. Returnees must be given the possibility and the means to return to their pre-war place of abode and reintegrate into their own communities.
16. Repatriation should be voluntary and take place in safety and dignity in conditions "which will be sustainable, non-discriminatory and respectful of the rights of the returnees". As stated by UNHCR, the concept of "return in safety" includes "the need to assure that return takes place under conditions of legal safety (such as amnesties or public assurances of personal safety, and non-discrimination), physical safety including mine-free routes and material safety (access to

³ I.e. in the case of Kosovo, Bosnia-Herzegovina, Croatia due to lack of capacity to absorb durable returns; prolonged unemployment impeding the capacity of returnees to rebuild their homes; a lack of infrastructures; continuing ethnic tensions, resentment within the local communities against returnees and numerous administrative obstacles to returns at municipal level are among the many reasons why repatriation was extremely difficult to enforce on the ground.

means of livelihood)".⁴ ECRE urges States to fully observe UNHCR's recommendations as to the number and profile of individuals to be returned.

17. The international community, and in particular the EU, must play a full and active role in the reconstruction of Afghanistan. Within this context, ECRE welcomes the commitment made by the European Commission at the Tokyo Conference to provide EURO 200 million per year over the next four years towards Afghanistan's reconstruction. Such monies should be used to assist the reintegration into Afghan society and economy of some 4 million Afghan refugees living outside Afghanistan and more than 1.3 million internally displaced persons.
18. European states must be made aware of the impact of their returns policies on the ground in Afghanistan and on countries in the region hosting the majority of Afghan refugees (Pakistan and Iran). Appropriate planning and coordination are essential for ensuring that returns from European states do not trigger forced returns to Afghanistan from countries in the region or further destabilisation within Afghanistan.
19. Returnees should be given the necessary information to make an informed choice. They should also be entitled to undertake "look and see" visits to Afghanistan to assess whether it is realistic to return without putting at risk their Convention or complementary protection status in the country of asylum. They should be given time to commit to the repatriation process and prepare to return.

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⁴ UNHCR, Note on the Protection of Afghan civilians following the 11th September terrorist attacks of the United States of America, October 2001.