



# OPERATIONAL GUIDANCE NOTE

## AFGHANISTAN

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## 1. Introduction

- 1.1** This document provides UKBA caseowners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Afghanistan, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Caseowners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseowners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.
- 1.3** COI Service information is published on Horizon and on the internet at:
- [http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)
- 1.4** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

## **2. Country assessment**

**2.1** Caseowners must always consider this guidance together with the relevant COI Service country of origin information material and the relevant caselaw. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

**2.2** An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human-rights-report-2009>

### **Actors of protection**

**2.3** Caseowners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Caseowners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

**2.4** Security and law and order in Afghanistan is primarily the responsibility of three Afghan agencies and the International Security Assistance Force (ISAF). The Afghan National Police is mainly responsible for internal order, the Afghan National Army for external security, and the National Directorate of Security for national security and intelligence. ISAF's mission was originally restricted to Kabul but now covers the whole country.<sup>1</sup> Currently, ISAF efforts focus on increasing the capacity of Afghan security forces, including the Afghan National Army in order to hand over gradually lead responsibility for security.<sup>2</sup> A series of checkpoints known as the 'Ring of Steel' has been erected around Kabul's perimeter to provide the capital with an extra layer of protection.<sup>3</sup>

**2.5** The police are only able to fully represent the authority of the government of Afghanistan in the main cities. The Afghan police force that is responsible for Kabul has jumped from 5,000 officers to 18,000, and the Afghan army has established a new division with 7,000 soldiers to help protect the capital.<sup>4</sup> However their ability to provide protection is limited (see below).

**2.6** Police effectiveness in rural areas (over 90% of the country) is dependent on local leaders, including religious figures. The police force is beset by inadequate training, illiteracy, corruption, involvement in drug trafficking, and high levels of desertion. Most police are under-equipped, and lack ammunition and vehicles. In some cases, equipment requisitioned by their commanders is sold and the funds pocketed by the police officers. Commentators complain that donors continue to press for the force's expansion at the cost of quality and standards.<sup>5</sup>

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<sup>1</sup> Afghanistan COI Report 5 Nov 2010 Section 10

<sup>2</sup> <http://www.isaf.nato.int/>.

<sup>3</sup> e-Ariana: Afghan capital enjoys relative calm amid security crackdown 24 Oct 2010

<sup>4</sup> e-Ariana: Afghan capital enjoys relative calm amid security crackdown 24 Oct 2010

<sup>5</sup> Afghanistan COI Report 5 Nov 2010 Section 10

**2.7** Protection in Afghanistan generally is compromised by high levels of corruption, ineffective governance, a climate of impunity, lack of official impetus for the transitional justice process, weak rule of law and widespread reliance on traditional dispute resolution mechanisms that do not comply with due process standards, all of which contribute to a deteriorating human rights situation in the country.<sup>6</sup>

## **2.8 Case/law**

**[2005] UKIAT 00096 ZN:** CIPU list of warlords is not complete and there may be individuals who cannot rely on sufficient protection, even in Kabul.

**[2003] UKIAT 00057 K (Afghanistan); [2003] UKIAT 00076 AL (Afghanistan); and [2003] UKIAT 00088 S (Afghanistan)** all held that there is in general sufficiency of protection in Kabul.

**2.9** State protection outside of Kabul will only be accessible in exceptional cases. In Kabul the authorities, including the ISAF forces, are in general willing to offer protection to citizens. However, case owners must bear in mind that for the reasons above, their ability to provide effective protection is limited. It is important that case owners refer to the most up to date country information to ascertain whether, in the circumstances prevailing at the time the decision is made, sufficient protection is available in Kabul for an individual claimant, taking full account of their personal circumstances.

**2.10** Effective protection is not available, even in Kabul, for single women or female heads of household without a male support network.

## **Internal relocation**

**2.11** Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

**2.12** The law provides for freedom of movement within Afghanistan. However, social custom limits many women's freedom of movement without male consent or chaperone. The greatest restriction to movement in some parts of the country is the government limiting citizens' movement due to security concerns. In many areas insurgent violence, banditry, land mines, and improvised explosive devices make travel extremely dangerous, especially at night. Taxi, truck, and bus drivers have reported that security forces and armed insurgents operate illegal checkpoints and extort money and goods. The number of such checkpoints increases at night, especially in the border provinces. Residents have reported having to pay bribes to Afghan National Police and border police officials at checkpoints and the Khyber Pass border crossing between Jalalabad and Pakistan. The Taliban imposes nightly curfews on the local populace in regions where it exercises authority, mostly in the southeast.<sup>7</sup>

**2.13** Given the wide geographic reach of some armed anti-Government groups, a viable internal relocation option 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

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<sup>6</sup> UNHCR Eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan 17 December 2010

<sup>7</sup> US State Department Country Report on Human Rights Practices 2009, Afghanistan, published on 11 March 2010

(complex) suicide bombings, but also through more permanent infiltration in some neighbourhoods and the regular distribution of threatening “night-letters”.<sup>8</sup>

- 2.14** 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.<sup>9</sup>
- 2.15** For categories of individuals who fear harm as a result of harmful traditional practices and religious norms of a persecutory nature – such as women and children with specific profiles and LGBTI individuals – and for whom an internal relocation to another part of the country may be relevant, the endorsement of such norms by large segments of society and powerful conservative elements in the public administration needs to be taken into account.<sup>10</sup>
- 2.16** 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. 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.

#### **2.17 Caselaw.**

**RQ (Afghan National Army – Hizb-i-Islami – risk) Afghanistan CG [2008] UKAIT 00013.** This Country Guidance case considered the risk to former members of the Afghan National Army from the Taliban and Hizb-e-Islami. With regard to relocating to Kabul, the Asylum and Immigration Tribunal found:

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

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

internal relocation outside Kabul is unlikely to provide sufficiency of protection as the areas outside Kabul remain under the control of local warlords, and the population is suspicious of strangers; and

the safety of internal relocation to Kabul is a question of fact based on the particular history of an individual appellant and of the warlord or faction known to be seeking to harm him.

**PM and Others (Kabul – Hizb-i-Islami) Afghanistan CG [2007] UKAIT 00089.** This Country Guidance case considered the levels of risk that members of Hizb-e-Islami, and those simply associated with it, face in Afghanistan. With regard to relocating to Kabul, the Tribunal found that subject to an individual's personal circumstances, it is unlikely to be unduly harsh (or unreasonable) to expect them to relocate to Kabul if they have established a real risk of serious harm in (and restricted to) areas outside Kabul.

- 2.18** In practice, all returns are currently to Kabul. Careful consideration must be given to any other place of proposed internal relocation and how it will be accessed, taking account of the latest information about the security situation. A Country of Origin Information request should be submitted to Country of Origin Information Service if more information is needed. Assuming

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<sup>8</sup> UNHCR Eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan 17 December 2010

<sup>9</sup> UNHCR Eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan 17 December 2010

<sup>10</sup> UNHCR Eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan 17 December 2010

that the proposed place of internal relocation is safe, and can safely be accessed, internal relocation in Afghanistan will generally be reasonable 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.

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

### **3. Main categories of claims**

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by Afghans. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in Karanakaran should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** All Asylum Instructions can be accessed via Horizon. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

### **3.5 Credibility**

- 3.5.1** This guidance is not designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

### 3.6 General security situation

**3.6.1** Some applicants may claim that they are at risk of serious harm as a result of the poor security situation in Afghanistan.

**3.6.2 *Treatment*** During the first nine months of 2010 the security situation deteriorated in many parts of Afghanistan. Precise figures vary between organisations but all agree that the human cost escalated. Between 01 January and 30 June 2010, UNAMA recorded a 69% increase in security incidents compared to the same period in 2009. This resulted in a 31% increase in civilian casualties to a total of 3,268, including 1,271 deaths and 1,997 injuries. Women and children made up a greater proportion of those killed than in 2009. Anti-government elements were, according to the UN, responsible for the deaths and injuries of 76 per cent of the total number of civilian casualties for this period. Suicide and IED attacks caused the most civilian casualties attributed to anti-government elements, including 557 deaths and 1,137 injuries.<sup>11</sup>

**3.6.3** The Afghan Independent Human Rights Commission recorded a lower, 5.5%, increase in civilian casualties compared to the first seven months of 2009. They found that while land mines and IEDs by anti-government elements caused the most casualties, the number of casualties caused by suicide attacks decreased. Instead, execution and targeted killings replaced suicide attacks and were responsible for 197 civilians in the first seven months of 2010, compared to 225 civilians executed during the whole of 2009.<sup>12</sup>

**3.6.4** Anti-government elements significantly increased their assassination campaign during the period June – September 2010, with 21 people reported to be assassinated each week, compared to seven per week in the previous period. Most assassinations were in the south and south-east, primarily targeting Government officials, civilians and members of the Afghan National Security Forces. While militant Islamist insurgents are invariably depicted as falling under the convenient Taliban/Al-Qaeda banner, the reality is more complex. A limited pool of hard core Taliban supporters is supplemented by local men hired to fight, local leaders keen to preserve their revenue streams, opium farmers angered by government crop eradication programmes and foreign fighters seeking to use Afghanistan as part of a global jihad. Taliban fighters are most active in rural areas, where they force communities to provide them with different kinds of support.<sup>13</sup>

**3.6.5** While conflict and insecurity remain concentrated in the south and east, as the conflict has intensified in the traditional fighting areas of the south, it has moved to some parts of the relatively peaceful north, particularly Kunduz and Baghlan provinces.<sup>14</sup> The previously more stable north-eastern region saw a sharp rise in anti-government activities that intensified the conflict, causing an increase of 136 per cent in civilian deaths compared to the same period in 2009.<sup>15</sup>

**3.6.6** The Taliban have established a presence in Archin, Chardara and Imaam Sahib districts in Kunduz province, as a result of which some families are leaving the areas. Hundreds of families allegedly displaced by conflict in the north-eastern province of Kapisa have sought shelter in the eastern outskirts of Kabul. In addition, northern provinces have become the scene of rivalry between two former United Front (also known as Northern Alliance) factions, Jamiat-i-Islami and Jombesh-i-Milli. Neither of their leading figures has demonstrated a genuine desire to seek peaceful resolution of their power struggle and ongoing violence indicates that northern regions will remain outside Kabul's control for the foreseeable future.<sup>16</sup>

**3.6.7** Kabul has remained largely insulated from the worst violence over the last decade. While insurgent violence has expanded steadily throughout the country, Kabul has remained

<sup>11</sup> COIS Afghanistan: Security Situation Update March 2011

<sup>12</sup> COIS Afghanistan: Security Situation Update March 2011

<sup>13</sup> COIS Afghanistan: Security Situation Update March 2011

<sup>14</sup> Petraeus-sees-modest-gains-in-Afghanistan-Roundup 15 November 2010

<sup>15</sup> UNAMA Mid-year Report 2010 - Protection of civilians in armed conflict

<sup>16</sup> COIS Afghanistan: Security Situation Update March 2011

relatively quiet, although there are isolated incidents, some of them serious. The U.S. military and Afghan security officials claimed to have killed or captured hundreds of would-be assailants around Kabul during 2010, significantly blunting the effectiveness of insurgent forces looking to target the capital. A series of checkpoints known as the 'Ring of Steel' has been erected around Kabul's perimeter to provide the capital with an extra layer of protection.<sup>17</sup>

**3.6.8** Nearly twice as many refugees returned voluntarily to Afghanistan from Pakistan during the period March – September 2010 as in the same period in 2009. The number of conflict-induced Internally Displaced Persons (IDPs) continues to rise and displacement is largely taking place in the southern and western regions of Afghanistan. At the end of October 2010, the total estimated figure of IDPs stood at 330,298. Of these, 131,984 were displaced due to the conflict between June 2009 and October 2010. Most IDPs are in the insecure south and east of the country and many are not accessible by aid workers.<sup>18</sup> Over 4.5 million Afghan refugees have returned home, mostly from Pakistan and Iran, since 2002 in what has been described as the largest assisted repatriation programme in UNHCR's history.<sup>19</sup> It should be noted that many returns are occurring in the context of deteriorating conditions for Afghans outside the country rather than significant improvements in the security and human rights conditions in Afghanistan.<sup>20</sup>

**See also:** [Actors of protection](#)  
[Internal relocation](#)

### 3.6.9 Caselaw

**GS (Article 15(c): indiscriminate violence) Afghanistan CG [2009] UKAIT 00044** There is not in Afghanistan such a high level of indiscriminate violence that substantial grounds exist for believing that a civilian would, solely by being present there, face a real risk which threatens the civilian's life or person, such as to entitle that person to the grant of humanitarian protection, pursuant to article 15(c) of the Qualification Directive.

**3.6.10 Conclusion.** Claims based on the general security situation in Afghanistan must be considered with reference to the Interim Asylum Instruction on Humanitarian Protection: Indiscriminate Violence. Case owners should also refer to the Gender Asylum Policy Instruction where appropriate.

**3.6.11** There is indiscriminate violence in some parts of Afghanistan but it is not currently at such a level, in Afghanistan generally or a material part of it, that substantial grounds exist for believing that any civilian would, solely by being present there, face a real risk of serious harm.

**3.6.12** To establish a claim under Article 15c of the Qualification Directive it will therefore be necessary for a claimant to establish that particular factors place him or her at additional risk above that which applies to the civilian population generally, such that he or she is at real risk of serious harm from the levels of indiscriminate violence that do exist, and that internal relocation to a place where there is not a real risk of serious harm is not reasonable.

**3.6.13** It has not yet been established in caselaw what if any characteristics may place an individual in such an enhanced risk category in Afghanistan, so each case must be considered on its individual merits. In doing so, caseowners must consider carefully whether the existence of such factors mean that the harm they fear is not in fact indiscriminate, but targeted, if not at them personally, at a Refugee Convention defined population to which they belong, in which case a grant of asylum is likely to be more appropriate.

## 3.7 Fear of forced recruitment into the Taliban or other anti-government groups

<sup>17</sup> e-Ariana: Afghan capital enjoys relative calm amid security crackdown 24 Oct 2010

<sup>18</sup> IRIN Afghanistan: UNHCR worried about growing number of conflict IDPs 3 November 2010

<sup>19</sup> IRIN Afghanistan: Increased number of returnees from Pakistan 4 November 2010

<sup>20</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 1712/2010, section III, B, 3. Conflict Induced Displacement and Voluntary Returns

- 3.7.1 Treatment** The latest UNHCR Eligibility Guidelines note that “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”<sup>21</sup>. The U.S. Department of Defence quoted the Taliban leader, Mullah Omar, as providing guidance to his fighters to “capture or kill Afghans who support or work for the coalition or Afghan government”<sup>22</sup>. The latest report of the UN High Commissioner for Human Rights, published in January 2011 noted that “the Taliban expanded and strengthened its campaign of intimidation against a wider and larger group of civilians who worked for, or were perceived by the Taliban to be supportive of the Government of Afghanistan and international military forces”<sup>23</sup>.
- 3.7.2** The UN Secretary General noted that the “majority of assassinations continue to occur in the south and south-east, primarily targeting Government officials, civilians and members of the Afghan National Security Forces”<sup>24</sup>. Assassinations or executions of civilians, and even children, “surged by more than 95 per cent”<sup>25</sup>, while abductions, harassment and intimidation, set up of road blocks, distribution of threatening ‘night letters’ and the use of other intimidation tactics continued.<sup>26</sup> The UNHCR reported that individuals, including children, suspected of “spying” on behalf of the Afghan military or international forces have been summarily executed by armed anti-Government groups.<sup>27</sup>
- 3.7.3** There have been reports of forced recruitment of children into the Taliban or other armed groups in all regions, but particularly in the south, south-east and eastern regions. Internally Displaced People and isolated populations in conflict-affected areas in particular are at risk of child recruitment into non-state armed groups, including the Taliban, Haqqani network, Hezb-i-Islami and Jamat Sunat al-Dawa Salafia. In Uruzgan the Taliban reportedly used children to dig hiding places for Improvised Explosive Devices. There were many reports of insurgents using minor teenage boys as combatants in Paktya province. In Helmand province, authorities apprehended a child before he allegedly would have been equipped to become a suicide bomber. National Directorate of Security officials have held several children in the juvenile detention facility in Helmand on insurgency-related charges. Although most of the children were 15 or 16 years old, reports from Ghazni province indicated that insurgents recruited children as young as 12, particularly if they already owned motorbikes and weapons.<sup>28</sup>

#### **3.7.4 Case law**

**HK and others (minors – indiscriminate violence – forced recruitment by Taliban – contact with family members) Afghanistan CG [2010] UKUT 378 (IAC)** Children are not disproportionately affected by the problems and conflict currently being experienced in Afghanistan. Roadside blasts, air-strikes, crossfire, suicide attacks and other war-related incidents do not impact more upon children than upon adult civilians.

<sup>21</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 1712/2010, section III, A, 1 Individuals Associated with, or Perceived as Supportive of, the Government and the International Community, Including the International Security Assistance Force (ISAF).

<sup>22</sup> US Department of Defense, Report on Progress Toward Security and Stability in Afghanistan, 23/11/2010, section 3.1.

<sup>23</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of human rights, 19/01/2011, para. 11.

<sup>24</sup> United Nations, Report of the Secretary-General on the situation in Afghanistan and its implications for international peace and security, 14/09/2010, para. 16.

<sup>25</sup> Ibid, para. 50.

<sup>26</sup> United Nations Assistance Mission in Afghanistan (UNAMA), Afghanistan Mid Year Report on Protection of Civilians in Armed Conflict, 2010, 10/08/2010, section Intimidation Tactics: Abductions, Assassinations, Executions, Illegal Checkpoints and Night Letters.

<sup>27</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 1712/2010, section III, A, 1, a) Civilians Associated with or Perceived as Supportive of ISAF.

<sup>28</sup> Afghanistan COI Report 5 Nov 2010 para 26.53 - 54



While forcible recruitment by the Taliban cannot be discounted as a risk, particularly in areas of high militant activity or militant control, evidence is required to show that it is a real risk for the particular child concerned and not a mere possibility.

Where a child has close relatives in Afghanistan who have assisted him in leaving the country, any assertion that such family members are uncontactable or are unable to meet the child in Kabul and care for him on return, should be supported by credible evidence of efforts to contact those family members and their inability to meet and care for the child in the event of return.

**3.7.5 Conclusion** The risk from anti-government groups and forced recruitment into the Taliban will be highest in areas where armed anti-government groups are operating or have control. It is important that case owners refer to the most up to date country information and take into consideration the nature of the threat and how far it would extend, and whether it would be unduly harsh to expect the claimant to relocate. This assessment will need to be based on the facts of the individual case. For claimants who can demonstrate a well-founded fear of persecution for reason of on account of their imputed political opinion and who are unable to acquire protection or relocate internally, a grant of asylum will be appropriate.

### **3.8 Converts to Christianity**

**3.8.1** Applicants may claim that they are at risk of societal or state persecution because they have converted to Christianity from Islam, contrary to Islamic law.

**3.8.2 Treatment** “Conversion from Islam is considered apostasy and is punishable by death according to several interpretations of Shari’a law. A person who has converted from Islam has three days to recant his/her conversion or otherwise face death by stoning, be deprived of all property and possessions, and have their marriage declared invalid. Although, in recent years the death penalty for conversion from Islam has reportedly not been carried out, arrests for conversion to Christianity have recently been reported. The arrests were reportedly made after calls by Members of Parliament for the arrest and execution of alleged Christian converts following a television broadcast of footage showing their baptism in May 2010. Often seen by family members and other traditional social structures as a source of shame, converts from Islam may also face isolation, pressure to recant and, in some cases, physical harm. As a result, converts often conceal their faith and avoid worshipping in public.”<sup>29</sup>

#### **3.8.3 Caselaw**

**NM (Christian Converts) Afghanistan CG [2009] UKAIT 00045** An Afghan claimant who can demonstrate that he has genuinely converted to Christianity from Islam is likely to be able to show that he is at real risk of serious ill-treatment amounting to persecution or a breach of his Article 3 ECHR right on return to Afghanistan

**3.8.4 Conclusion** Christian converts from Islam are in general at real risk of persecution in Afghanistan. Given the Afghan state’s position on apostasy, Christian converts will not be able to access sufficient protection anywhere in Afghanistan and internal relocation should not be relied upon. Genuine Christian converts should therefore be granted asylum unless, exceptionally, there is clear evidence why a particular individual would not be at risk. The onus remains on the claimant to establish that they are a genuine Christian convert.

**3.8.5** Note that this guidance applies to converts to Christianity from Islam only. Other claims with a Christianity component are not common from Afghans. If any such claim is received it should be considered on its individual merits, seeking advice as necessary from a Senior Caseworker.

### **3.9 Hindus and Sikhs**

**3.9.1** Hindus and Sikhs may claim that they face societal discrimination and harassment and that they cannot rely on the protection of the Afghan state authorities.

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<sup>29</sup> UNHCR Eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan 17 December 2010

- 3.9.2 Treatment** Reliable data on religious demography is not available, but there are an estimated 2,200 Sikhs and Hindus remaining in Afghanistan.
- 3.9.3** There are conflicting reports whether the situation of Afghanistan's small communities of Hindus and Sikhs has improved since the fall of the Taliban. Afghanistan's new constitution promises greater religious freedom. Hindus and Sikhs are allowed to practice their faith publicly, including at a Sikh temple, the Guru Dwara in Karte Parwan, Kabul. Sikhs are also represented in the Afghan parliament, with Awtar Singh the only non-Muslim member. Sikhs and Hindus have recourse to dispute resolution mechanisms such as the Special Land and Property Court, but reportedly in practice feel unprotected. They are also effectively barred from most government jobs.<sup>30</sup>
- 3.9.4** Societal hostility and harassment continue. Hindus suffer less from this than Sikhs as they are less visible. However, even Sikhs are generally 'tolerated', with some owning successful businesses, while Hindus report harassment by neighbours. Harassment is not systematic, but the government seems unable to do very much about it. Some Sikh and Hindu children are unable to attend government schools due to harassment from other students. The government has reportedly taken limited steps to address this, but not, for example, to the extent of acceding to requests from the Hindu community in Kandahar for a separate school for Sikh and Hindu children.<sup>31</sup>

See also: [Actors of protection](#)  
[Internal relocation](#)

### 3.9.5 Caselaw

**[2005] UKIAT 00137 SL and others Afghanistan CG (Returning Sikhs and Hindus)** Afghan Sikhs and Hindus are not at risk of either persecution for a Refugee Convention reason or of treatment contrary to their protected human rights under Article 3 of the European Convention simply by reason of being members of those minority communities anywhere in Afghanistan. Nevertheless, UNHCR guidance that these minority communities are the subject of societal discrimination must be given due weight in assessing the position of individual claimants on a case by case basis.

- 3.9.6 Conclusion** Sikhs or Hindus are not generally at real risk of persecution at the hands of the Afghan authorities solely because they are Sikhs or Hindus. Nor, generally, is societal harassment and discrimination against Sikhs and Hindus at such a level that it would constitute persecution. However, each case must be considered on its merits.
- 3.9.7** If a Sikh or Hindu man or married woman does establish that they would on return face a localised risk amounting to persecution it should generally be possible for them to avoid such treatment by internal relocation, for example to Kabul where there are well-established and close knit Sikh and Hindu communities. Each case must be considered on its merits but where internal relocation would avoid persecution and would be reasonable, a grant of asylum will not be appropriate.
- 3.9.8** Single Sikh and Hindu women and female heads of household without a male support network cannot reasonably relocate within Afghanistan. Therefore, if they would face ill-treatment which amounts to persecution they should be granted asylum unless there are clear case specific reasons not to do so.

### 3.10 Women

- 3.10.1** Women may claim to face sexual and gender-based violence and harmful traditional practices at the hands of their husbands or families, community members or armed opposition groups. They may also claim to have faced intimidation or violence because they are perceived to have breached social norms or taken part in politics or other public life.

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<sup>30</sup> Afghanistan COI Report 5 November 2010 Section 21

<sup>31</sup> Afghanistan COI Report 5 November 2010 Section 21

- 3.10.2 Treatment** Since 2001, the Government has taken important measures towards the improvement of the situation of women in the country. These include steps taken to ensure women's political participation, the implementation of international standards for the protection of women's rights into national legislation, and the establishment of the Ministry for Women's Affairs.<sup>32</sup>
- 3.10.3** However, sexual and gender-based violence against women in Afghanistan is endemic. Women perceived as not conforming to the gender roles ascribed to them by society, tradition and law may be subject to sexual and gender-based violence, including "honour killings", rape, abduction, forced abortion and domestic violence.<sup>33</sup> In some areas women have had their formal rights to education and employment restored and are able to participate in public life. However, women continue to face pervasive human rights violations and remain largely uninformed about their rights under the law<sup>34</sup>, particularly in areas under the effective control of the Taliban and Hezb-i-Eslami (Gulbuddin). The Elimination of Violence against Women Law criminalises several harmful traditional practices, including the buying and selling of women for marriage, offering women for dispute resolution, and child and forced marriages, but law enforcement authorities in some provinces appear to be unable or unwilling to apply the Law.<sup>35</sup>
- 3.10.4** Harmful traditional practices occur to varying degrees in both rural and urban communities throughout the country, and among all ethnic groups. Such practices include child and forced marriages, the giving away of girls to settle disputes, exchange marriages, forced isolation in the home and honour killings.<sup>36</sup> Discrimination is particularly acute in rural areas and villages. Despite the constitutionally protected right to travel freely, many women were forbidden to leave the home except in the company of a male relative. Such cultural prohibitions meant that many women could not work outside the home, and often could not receive access to education, health care, police protection, and other social services.<sup>37</sup>
- 3.10.5** Women may be detained on the grounds of perceived "morality crimes," such as "running away" from home (including in situations of domestic violence), being improperly unaccompanied or refusing marriage. Women and girls who run away can also be prosecuted under "intention" to commit zina (sexual intercourse outside of marriage) charges. Since adultery and "morality crimes" may elicit honour killings, detention of women accused of such acts has been, in some instances, justified by the authorities as a protective measure.<sup>38</sup>
- 3.10.6** Victims of sexual and gender based violence are often deterred from reporting such matters because of fear of stigmatisation and reprisals, including by their own community and family. There is also a lack of access to effective forms of justice and remedies for victims. This has resulted in sexual violence remaining largely unaddressed by either law enforcement or society. In some cases, women and girls escaping domestic violence are encouraged to return or are forcibly returned to their families by law enforcement authorities rather than being afforded protection. Effective prosecution of violent sexual crimes, including rape, is also reportedly undermined in some areas by the impunity enjoyed by perpetrators.<sup>39</sup>

**See also:** [Actors of protection](#)

<sup>32</sup> UNHCR Eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan 17 December 2010

<sup>33</sup> UNHCR Eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan 17 December 2010

<sup>34</sup> Afghanistan COI Report 5 November 2010 Section 25

<sup>35</sup> UNHCR Eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan 17 December 2010

<sup>36</sup> UNHCR Eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan 17 December 2010

<sup>37</sup> Afghanistan COI Report 5 November 2010 Section 25

<sup>38</sup> UNHCR, Eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan, 17 December 2010, Section A. 6. (c).

<sup>39</sup> UNHCR Eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan 17 December 2010

## Internal relocation

### 3.10.7 Caselaw

[2004] UKIAT 00328 NS In a country guidance case the IAT found that women in Afghanistan are a particular social group, but that each case must be decided on its merits. Whilst it is right that training for the police, including human rights and gender awareness training is underway or to begin very shortly, the evidence does not yet show that in fact police services are available to women without discrimination. Such discrimination can, at present, include exposing them to actual physical violence at police stations.

**3.10.8 Conclusion** Since the fall of the Taliban the position of women in Afghanistan has improved, but from a very low baseline. Sexual and gender-based violence against women is endemic. Women cannot currently rely on protection from the Afghan authorities and it would be unduly harsh to expect lone women and female heads of households to relocate internally. Women with a male support network may be able to relocate internally. Caselaw has established that women in Afghanistan are a particular social group in terms of the Refugee Convention, therefore a grant of asylum will be appropriate to applicants in this category who are able to demonstrate a well-founded fear of persecution for reason of their gender.

### 3.11 Prison conditions

**3.11.1** Applicants may claim that they cannot return to Afghanistan because there is a serious risk that they will be imprisoned on return and that prison conditions in Afghanistan are so poor as to amount to torture or inhuman treatment or punishment.

**3.11.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions themselves to breach Article 3 in order to justify a grant of asylum.

**3.11.3 Treatment** There are prisons in 34 provinces of Afghanistan administered by the Ministry of Justice, and 30 active rehabilitation centres for juveniles. Prison conditions in most facilities remain below minimum international standards. There are reports of over-crowding, inadequate food and water, poor sanitation facilities, and where available, infirmaries are under-equipped. Contagious and mentally ill prisoners are reportedly rarely separated from the general prison population, whilst children of women prisoners live with their mothers, particularly where they have no other family. There is no gender segregation. There are also reports that Government officials, local prison authorities, police chiefs, and tribal leaders practiced torture and abuses including, but not limited to, beating by stick, scorching bar, or iron bar; flogging by cable; battering by rod; electric shock; deprivation of sleep, water, and food; abusive language; sexual humiliation; and rape.<sup>40</sup> The government has taken some steps to improve conditions within the Ministry of Justice prisons and detention centres, but detention remains a critical human rights concern with demand for detention space far outstripping the capacity of the existing infrastructure and human resources of both the criminal justice and penal management systems.<sup>41 42</sup>

**3.11.4 Conclusion.** Prison conditions in Afghanistan are severe and taking into account the levels of overcrowding, poor sanitation, prevalence of disease and absence of medical facilities, lack of food and incidence of torture, are likely to reach the Article 3 threshold.

<sup>40</sup> UNHCR Eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan 17 December 2010

<sup>41</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of human rights, 19/01/2011, para 39.

<sup>42</sup> US State Department Country Report on Human Rights Practices 2009, Afghanistan, published on 11 March 2010

**3.11.5** Where case owners believe that an individual is likely to face imprisonment on return to Afghanistan they should also consider whether the applicant's actions means they fall to be excluded by virtue of Article 1F of the Refugee Convention. Where case owners consider that this may be the case they should contact a senior caseworker for further guidance. Where individual applicants are able to demonstrate a real risk of imprisonment on return to Afghanistan and exclusion is not justified, a grant of Humanitarian Protection may be appropriate.

#### **4. Discretionary Leave**

**4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

**4.2** With particular reference to Afghanistan the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should not imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.

#### **4.3 Minors claiming in their own right**

**4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in Afghanistan. Those who cannot be returned should, if they do not qualify for asylum or humanitarian protection, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

#### **4.4 Medical treatment**

**4.4.1** Applicants may claim they cannot return to Afghanistan due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

**4.4.2** UNHCR's previous Eligibility Guidelines stated that:

"In terms of access to healthcare, Afghanistan's poor healthcare system has a very strong urban bias in its existing infrastructure. Overall, there are only 210 health facilities with beds to hospitalize patients. With the exception of four provinces, the current ratio of doctors per patient stands at one doctor per 10,000 patients. Many Afghan women are reluctant to be, or may be prevented from being, treated by male health workers. At the same time, due to the reduction of available health facilities, women in rural areas are obliged to walk much longer distances to access health care, and frequently will not do so because they do not have a male relative ready to accompany them, or because of fear of insurgents. Women from rural areas are at an even greater risk of dying during childbirth. Such areas average fewer than six doctors, seven nurses and four midwives for every 100,000 women. In Panjshir province, for example, there are seventeen health centres. Each employs only one female doctor and one midwife to serve 30,000 to 60,000 people.

"While important progress in healthcare has been made through the Government's expansion of the basic package of health services, health infrastructure in Afghanistan is reported to be damaged and poorly maintained, lacking trained and skilled workers and medical supplies. Some observers claim that the health services are not able to meet the basic health needs of a majority of the population. The United Nations reports that the basic package of health

services now covers 82 per cent of the population. There are 900 clinics and approximately 40 percent of the population has access to healthcare. According to the Ministry of Public Health, over 600,000 persons lack basic healthcare services due to attacks on healthcare facilities and health workers – a figure that has doubled since 2007. The overall quality of health services in Afghanistan has however been improved. According to Fahim, ‘the infant mortality rate has reduced by 26 percent and now 80,000 fewer infants are dying each year compared to during Taleban [Taliban] rule.’<sup>43</sup>

- 4.4.3** Although the IOM notes that “Although there are only three Pharmaceutical companies in Afghanistan: Aria, Afghan American and Kemiagar which have very limited production, all kinds of medicines are becoming more widely available in the country, with a prevalence of imports from Pakistan, India and Iran.”<sup>44</sup>
- 4.4.4** Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

## **5. Returns**

- 5.1** There is no policy which precludes the enforced return to Afghanistan of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.3** The preferred option for repatriating those Afghan asylum applicants who having exhausted the independent appeal process are found not to need international protection is assisted voluntary return. This policy is in line with the Tripartite Memorandum of Understanding on Voluntary Return between the UK, the UNHCR and the Afghan Transitional Administration. However, as agreed with the Afghan authorities, from April 2003 those not choosing voluntary return and found to be without protection or humanitarian needs have been liable to be considered for enforcement action although those individuals or groups identified as vulnerable are excluded from the programme of enforced returns. We recognise that the Government of Afghanistan is still in the process of rebuilding the country and we do not wish to destabilise that process with a rapid influx of large numbers of people. All Afghans returning from the UK are offered access to a training and employment package and care is taken to return people gradually to those areas with adequate security and infrastructure where we are satisfied they will have sufficient support.
- 5.4** Afghan nationals may return voluntarily to any region of Afghanistan at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Border Agency, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 5.5** Until 31 March 2011 the AVR scheme is implemented on behalf of the UK Border Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining any travel documents and booking

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<sup>43</sup> UNHCR Eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan 17 December 2010

<sup>44</sup> Afghanistan COI Report 5 November 2010 Section 25

flights, as well as organising reintegration assistance in Afghanistan. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Afghan nationals wishing to avail themselves of this opportunity for assisted return to Afghanistan should be put in contact with the IOM offices in London 0800 783 2332 or [www.iomlondon.org](http://www.iomlondon.org).

- 5.6 From 1 April 2011, Refugee Action replace IOM as the service provider for the delivery of AVR programmes. The AVR Programmes remain the same. Details can be found on Refugee Action's web site at: [www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx](http://www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx)

## 6. **List of source documents**

A full list of source documents cited in footnotes in this guidance is set out below:

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