



# OPERATIONAL GUIDANCE NOTE

## AFGHANISTAN

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#### 1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Afghanistan and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, 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** This guidance must also be read in conjunction with any COI Service Afghanistan Country of Origin Information at: [http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)
- 1.3** 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 Instructions 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.

#### Source documents

1.4 A full list of source documents cited in footnotes is at the end of this note.

## 2. Country assessment

2.1 Since 1973, when Prime Minister Daud overthrew King Zahir Shah and established the country as a republic, Afghanistan has been ruled by a number of different regimes. In 1978, the People's Democratic Party of Afghanistan (PDPA) tried to impose a socialist state which led to armed resistance by conservative Islamic elements. In 1979, the Soviet Union invaded Afghanistan staying for 10 years until 1989, during which time a civil war with anti-Soviet mujahideen forces raged. Following the departure of Soviet troops, the mujahideen groups struggled amongst themselves. The Pashtun Taliban emerged as the dominant power controlling most of the country by 1998, however they were opposed by the mujahideen commanders in the predominately Tajik and Uzbek United Front (previously the Northern Alliance).<sup>1</sup>

2.2 In October 2001, the United States launched a military campaign against the Taliban regime when they refused to give up al-Qaeda leader Osama bin Laden following the terrorist attacks on US targets on 11 September 2001. The Taliban were quickly defeated, surrendering their spiritual home, Kandahar, in December 2001. At the end of November 2001, representatives of various Afghan groups assembled in Bonn, Germany and as a result, on 22 December 2001 an Interim Authority was inaugurated, headed by Hamid Karzai.<sup>2</sup>

2.3 In January 2004, a new Constitution was adopted at a special Constitutional Loya Jirga (grand council). The new Constitution established a presidential system of government with all Afghans equal before the law. Strong emphasis is placed on parliamentary control of the executive and separation of powers among the judiciary, executive, and legislative branches. The Constitution provides the framework for an independent judiciary, headed by a Supreme Court, and a legal framework that is consistent with the "beliefs and prescriptions" of Islam. It explicitly includes all minority groups in the definition of the nation, and there are provisions for the rights of the Shia minority. Dari and Pashto are official languages, and other languages are regarded as official in the area where the majority speaks them. A minimum number of seats for women are guaranteed in both Houses of the National Assembly.<sup>3</sup>

2.4 Afghanistan's first direct presidential election was held on 9 October 2004. Although there were shortcomings in the process, these were not generally considered significant enough to have altered the outcome. The winner of the election was Hamid Karzai, with 55.4% of the vote, well ahead of his closest rival on 16.3%. Presidential elections, due to take place in May 2009, have been postponed until August 2009 due to security and logistical problems.<sup>4</sup>

2.5 On 18 September 2005, Afghanistan held elections to the Lower House (the 249 seat Wolesi Jirga) and for 420 seats on 34 provincial councils. Candidates stood in their own right as individuals, with no parties officially recognised in the elections. Appointments to the Upper House (Meshrano Jirga) consisted of two-thirds elected indirectly by the local councils with the remaining third by presidential appointment. Under the Constitution, the President nominates one third of the seats in the Upper House and has an obligation in making nominations to ensure that minorities such as the disabled and the nomad Kuchi

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<sup>1</sup> Home Office COI Service Afghanistan Country of Origin Information Report February 2009 (Background Information: History) & Foreign and Commonwealth Office (FCO) Country Profile 2009

<sup>2</sup> COIS Afghanistan Country Report February 2009 (Background Information: History), FCO Country Profile 2009 & British Broadcasting Corporation (BBC) News Timeline: Afghanistan

<sup>3</sup> COIS Afghanistan Country Report February 2009 (Background Information: Constitution) & FCO Country Profile 2009

<sup>4</sup> COIS Afghanistan Country Report February 2009 (Preface: Latest News & Background Information: History), U.S. Department of State report on Human Rights Practices (USSD) 2008: Afghanistan (Introduction) & BBC News Timeline: Afghanistan

are represented. The widespread disruption that al-Qaeda and the Taliban threatened to orchestrate on polling day did not materialise, but irregularities and fraud cast a shadow over the integrity of the elections in some provinces. Certified results for the Wolesi Jirga were announced on 12 November 2005 and provincial election results for the Meshrano Jirga followed on 27 November 2005. The electoral process was completed on 10 December 2005 when President Karzai appointed the final 34 members of the Upper House. The inaugural session of the Afghan National Assembly took place on 19 December 2005. Yunus Qanuni and Sibghatullah Mujadidi were appointed the president of the Lower House and chairman of the Upper House respectively.<sup>5</sup>

- 2.6** Afghanistan's legal system was all but destroyed by the many years of conflict. Following the Bonn Agreement, Afghanistan temporarily reverted to the Constitution of 1964, which combined Shari'a with Western concepts of justice. The new Constitution, adopted in January 2004, made no specific reference to the role of Shari'a but stated that Afghan laws should not contravene the main tenets of Islam. In accordance with the new Constitution, the judicial branch consists of the Supreme Court, high courts, (appeal Courts), and primary courts. Judges are appointed with the recommendation of the Supreme Court and approval of the President.<sup>6</sup>
- 2.7** Although progress is being made, efforts to rebuild the judiciary have proceeded slowly. The Ministry of Justice, as well as the Supreme Court and the Attorney-General's Office, continue to experience a lack of resources, infrastructure, and qualified and experienced judges and prosecutors. The administration and implementation of justice varies in different areas of the country and many Afghans do not have access to judicial or legal services. Outside influence over the judiciary remains strong, and judges and lawyers are often unable to act independently because of threats from local power brokers or armed groups. Low salaries also contribute to creating conditions conducive to corruption.<sup>7</sup>
- 2.8** Courts primarily decide criminal cases in major cities, although civil cases are often resolved in the informal system. Due to the undeveloped formal legal system, in rural areas local elders and community councils (shuras) are the primary means of settling both criminal matters and civil disputes; they also allegedly levy unsanctioned punishments. Some estimates in 2008 suggested that 80% of all cases went through which reportedly did not always adhere to the constitutional rights of citizens and often violated the rights of women and minorities. In some remote areas not under government control, the Taliban reportedly enforce shuras handing out punishments such as beatings, hangings, and beheadings.<sup>8</sup>
- 2.9** The Government has distinct security forces: the Afghan National Army (ANA); the Afghan police services; and an intelligence apparatus, the National Directorate of Security (NDS). The Afghan National Police (ANP) is Afghanistan's over-arching police institution, which consists of the Afghan Uniformed Police (AUP) who are responsible for most day-to-day police activities; Afghan Border police (ABP); Afghan National Civil Order Police (ANCOP); and the Counter Narcotics Police of Afghanistan (CNPA).<sup>9</sup>
- 2.10** The ANP plays a major role in providing security in Afghanistan. International support for recruiting and training of new ANP personnel is conditional upon new officers being vetted in a manner consistent with international human rights standards to generate a more professional police force. The international community also works with the Afghan Government to develop training programmes and internal investigation mechanisms to curb

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<sup>5</sup> COIS Afghanistan Country Report February 2009 (Background Information: History) & FCO Country Profile 2009

<sup>6</sup> COIS Afghanistan Country Report February 2009 (Background Information: History & Human Rights: Judiciary) & USSD 2008: Afghanistan (Section 1)

<sup>7</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Judiciary)

<sup>8</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Judiciary) & USSD 2008: Afghanistan (Section 1)

<sup>9</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Security Forces)

security force corruption and abuses. In 2007 and 2008, more than 25,000 ANP members received training in the Constitution, police values and ethics, professional development, preventing domestic violence, and fundamental standards of human rights in addition to core policing skills. Serious shortcomings remain, however, with regard to training and equipping the police, whilst corruption and political appointments remain problems. There have also been reports of abuse and extrajudicial killings of civilians by ANP officers.<sup>10</sup>

- 2.11** The human rights situation in Afghanistan has improved since the collapse of the Taliban regime, but the country's human rights record remains poor due to a deadly insurgency, weak governmental and traditional institutions, corruption, drug trafficking, and the country's legacy of two-and-a-half decades of conflict. There are continuing reports of human rights abuses concentrated in rural areas where the rule of law is weakest and armed militia groups are still active. According to the U.S. Department of State, human rights problems include: torture and unlawful killings by the Government and its agents and insurgent groups; poor prison conditions; official impunity; restrictions on freedom of religion and religious conversions; violence and social discrimination against women; trafficking in persons; and child labour.<sup>11</sup>
- 2.12** These problems are not uniformly spread and although the human rights and security situation is poor through most of the country, the situation in Kabul is better. This is mainly due to the presence of the North Atlantic Treaty Organisation (NATO)-led International Security Assistance Force (ISAF) which continues to assist the Government in providing and maintaining security, and creating the conditions for stabilisation and reconstruction, in Kabul, and their area of operation in the north, west and south of Afghanistan.<sup>12</sup>
- 2.13** In September 2008, the UN Secretary General reported that while the main focus of the insurgency remains the southern and eastern parts of the country, insurgent influence has intensified in areas that were previously relatively calm, including in the provinces closest to Kabul. The UN Secretary General also noted more sophisticated planning of operations by insurgents, in particular asymmetric attacks; an increase in the number of attacks against aid workers, convoys and facilities; and an increase in civilian casualties. The overall number of security incidents in Kabul has decreased, however, reflecting the enhanced capability of the Afghan intelligence and security forces.<sup>13</sup>

### **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 those entitled to reside in Afghanistan. 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 guidance 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 -

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<sup>10</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Security Forces) & USSD 2008: Afghanistan (Introduction & Section 1)

<sup>11</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Introduction & Security Situation), Human Rights Watch World Report 2009: Afghanistan & USSD 2008: Afghanistan (Introduction & Section 1)

<sup>12</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Introduction, Security Situation & Security Forces)

<sup>13</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Security Situation)

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 Instruction on Considering the Asylum Claim).

- 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 the individual circumstances.
- 3.4** 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 on credibility see the Asylum Instructions on 'Considering the Asylum Claim' and 'Assessing Credibility in Asylum and Human Rights Claims'.
- 3.5** All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:  
<http://www.ukba.homeoffice.gov.uk/documents/asylumpolicyinstructions/>
- 3.6 Pashtuns**
- 3.6.1** An applicant may claim that their Pashtun ethnicity has been a factor which has led to their ill-treatment at the hands of members of other ethnic groups. Some applicants may claim that their ill-treatment has been by someone in a position of power such as a local commander/governor, local police or intelligence officials, by someone with links to the Afghan Government, or by political factions due to a perceived association with the Taliban.
- 3.6.2 *Treatment.*** In June 2005, the United Nations High Commissioner for Refugees (UNHCR) reported that Pashtuns were the largest ethnic group in Afghanistan, constituting about 38% of the population. Most Pashtuns are members of one of two main tribes, the Ghalji and the Durrani. The Ghalji are more numerous but the Durrani have long dominated - President Karzai is Durrani. Outside the Pashtun-dominated south, tribal identity is less important than wider ethnic, sectarian, and regional affiliations on which many of the most powerful warlords' power is based. The tribal system continues to dominate in the south, and as a result power is less concentrated, with competing sub-tribes, conflicting claims to leadership, and small-scale militias.<sup>14</sup>
- 3.6.3** In December 2007, the UNHCR reported that Afghans of Pashtun ethnic origin from northern and central Afghanistan, in particular some districts of Jowzjan, Sar-i-Pul and Faryab and Kapisa, are possibly at risk of persecution and are unable to recover their land and property subsequent to displacement. The U.S. Department of State has also reported that in northern areas, commanders have targeted Pashtun women for sexual violence.<sup>15</sup>
- 3.6.4 *Sufficiency of protection.*** A judicial and legal system with limited function exists in Afghanistan. In Kabul, the police authorities are generally willing to enforce the law, although their ability to do so is limited by inadequate resources and dependent to some extent on the loyalties of individual officers. ISAF works alongside the Afghan Security Forces to maintain security in and around Kabul and as a result the general security environment there is much better than in other areas.<sup>16</sup>
- 3.6.5** Extended family and community structures within Afghanistan society are the predominant means for obtaining protection and economic survival, including access to

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<sup>14</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Ethnic Groups) & The Christian Science Monitor 2004 edition. Key to governing Afghans: The clans

<sup>15</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Ethnic Groups)

<sup>16</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Security Situation; Security Forces; & Judiciary)

accommodation.<sup>17</sup> Community and tribal protection for Pashtuns may be available in some areas, particularly where they are in the majority and may reduce the likelihood of mistreatment occurring. Such protection does not, however, constitute sufficiency of protection for the purposes of the Refugee Convention.

- 3.6.6** Based on the existence of the limited judicial and legal system, the willingness of the police authorities to enforce the law, and the presence of ISAF, a sufficiency of protection is generally available in Kabul. However, each case must be considered on its merits and there will be individual cases where sufficient protection will not be available. For example, in ZN ([2005] UKIAT 00096), the Tribunal found that the Adjudicator was entitled to conclude that sufficient protection would not be available against a warlord who had already shown that he was capable of attacking persons associated with the applicant, and indeed the applicant's own house. Factors to take into account in deciding whether sufficient protection is available to an individual applicant will include whether they, or their would be persecutors, have influential connections in the current administration.
- 3.6.7** Sufficient protection is not available, even in Kabul, for single women or female heads of household without a male support network. For further information on the question of sufficiency of protection for women, see paragraphs 3.14.5 - 3.14.7.
- 3.6.8** **Internal relocation.** The law provides for freedom of movement within Afghanistan, but certain laws limit citizens' movement and the Government limits citizens' movement due to security interests. Local customs and traditions may also make it very difficult for women to travel without a male escort.<sup>18</sup> This makes it practical for men and women with a male support network who have a well-founded but localised fear of persecution in one area of Afghanistan to relocate to other areas of the country where they would not be at risk. For example, Pashtun men or married women from the north of the country who fear persecution in their home area may relocate to the south of the country where they do not constitute a minority and where there is no evidence that they would be at risk, and it would be reasonable to expect them to do so. Equally, it would not be unduly harsh to expect applicants in these categories who faced a generalised risk of persecution on account of their ethnicity to relocate to Kabul where the improved security situation reduces the likelihood that the applicant would have a well-founded fear of persecution and where they could rely on sufficient protection against generalised threats by non-state agents.
- 3.6.9** 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.<sup>19</sup> Sufficient protection is not available to them, even in Kabul, and it would therefore be unduly harsh to expect single women and female heads of household who have a well-founded fear of persecution in one part of Afghanistan, and who do not have a male support network, to relocate internally.

**3.6.10 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.

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<sup>17</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Freedom of Movement)

<sup>18</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Freedom of Movement) & USSD 2008: Afghanistan (Section 2)

<sup>19</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Women; Freedom of Movement; & UNHCR Guidelines On Those Afghans Who May Be At Risk) & USSD 2008: Afghanistan (Section 5)

- 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.

**[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 sufficiency of protection in Kabul.

- 3.6.11 Conclusion.** Whilst Pashtuns from the south of Afghanistan may face harassment or discrimination on account of their perceived links with the former Taliban regime they are unlikely to be able to establish that they face treatment amounting to persecution based solely on their ethnicity, therefore a grant of asylum or Humanitarian Protection is not likely to be appropriate.
- 3.6.12** In the north of Afghanistan the situation for Pashtuns is improving, but Pashtuns from these areas may be able to demonstrate that in those areas they face a level of discrimination and harassment which in serious cases could amount to persecution. Sufficient protection is not currently available in these areas. Men, and women with a male support network, do however have the option to relocate internally, either to the south of the country, where Pashtuns are not a minority, or to Kabul, where sufficient protection is generally available (see RQ, PM and Others, and ZN above). In such cases a grant of asylum or Humanitarian Protection will not be appropriate.
- 3.6.13** The position for single women and female heads of household without a male support network is complicated by the fact that in most cases it would be unduly harsh to expect them to relocate internally, and sufficient protection cannot be relied upon, even in Kabul. Where there is a well-founded fear of treatment that could amount to persecution, sufficiency of protection should not be relied upon and internal relocation would be unduly harsh, a grant of asylum may therefore be appropriate. In considering the credibility of such cases, case owners will however wish to explore the means by which women in these circumstances travelled to the UK.
- 3.7 Current or former Hizb-e-Islami (Hakmatyar) members or sympathisers**
- 3.7.1** Applicants may claim that their own or a family member's membership of or support for Hizb-e-Islami (Hakmatyar) has resulted in them being at risk of ill-treatment by the Afghan authorities, Mujahideen warlords, or the local populace.
- 3.7.2 Treatment.** Founded in the 1970s, Hizb-e-Islami (Hakmatyar) reached the height of its power in 1992 when the Soviet-backed Government of President Najibullah fell to a coalition of mujahideen factions, including Hizb-e-Islami. Its leader, Gulbuddin Hekmatyar, was designated a terrorist by the US State Department in February 2003 for participation in

and support for terrorist acts committed by al-Qaeda and the Taliban.<sup>20</sup>

- 3.7.3** The extent to which those associated with Hizb-e-Islami face difficulty with the Afghan authorities depends upon whether they are considered still to be in conflict with the authorities or other powerful figures in Afghanistan. The Danish fact-finding mission of March/April 2004 noted that, according to the UNHCR, ex-Hizb-e-Islami, including former commanders, do not have any problems with the Government in Afghanistan if they make it clear that they are no longer working with Hekmatyar.<sup>21</sup> There is no concrete evidence about what treatment current or former members would encounter if they were in fact facing difficulties with the authorities.
- 3.7.4** *Sufficiency of protection.* A judicial and legal system with limited function exists in Afghanistan. In Kabul, the police authorities are generally willing to enforce the law, although their ability to do so is limited by inadequate resources and dependent to some extent on the loyalties of individual officers. ISAF works alongside the Afghan Security Forces to maintain security in and around Kabul and as result the general security environment there is much better than in other areas.<sup>22</sup>
- 3.7.5** Based on the existence of the limited judicial and legal system, the willingness of the police authorities to enforce the law and the presence of ISAF, a sufficiency of protection is generally available in Kabul for those who claim they are at risk of reprisals from Mujahideen warlords or the local populace. However, each case must be considered on its merits and there will be individual cases where sufficient protection will not be available. For example, in ZN ([2005] UKIAT 00096), the Tribunal found that the Adjudicator was entitled to conclude that sufficient protection would not be available against a warlord who had already shown that he was capable of attacking persons associated with the applicant, and indeed the applicant's own house. Factors to take into account in deciding whether sufficient protection is available to an individual applicant will include whether they, or their would be persecutors, have influential connections in the current administration.
- 3.7.6** Sufficient protection is not available, even in Kabul, for single women or female heads of household without a male support network. For further information on the question of sufficiency of protection for women, see paragraphs 3.14.5 - 3.14.7.
- 3.7.7** *Internal relocation.* The law provides for freedom of movement within Afghanistan, but certain laws limit citizens' movement and the Government limits citizens' movement due to security interests. Local customs and traditions may also make it very difficult for women to travel without a male escort.<sup>23</sup> This makes it practical for men and women with a male support network who have a well-founded but localised fear of persecution in one area of Afghanistan to relocate to other areas of the country where they would not be at risk. Case owners should assess on an individual case by case basis whether internal relocation is a viable option for applicants who fear non-state actors.
- 3.7.8** 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.<sup>24</sup> Sufficient protection is not available to them, even in Kabul, and it would

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<sup>20</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Abuses By Non-Government Armed Forces & Annexes: Annex B – Political organisations and other groups)

<sup>21</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Abuses By Non-Government Armed Forces)

<sup>22</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Security Situation; Security Forces; & Judiciary)

<sup>23</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Freedom of Movement) & USSD 2008: Afghanistan (Section 2)

<sup>24</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Women; Freedom of Movement; & UNHCR Guidelines On Those Afghans Who May Be At Risk) & USSD 2008: Afghanistan (Section 5)



therefore be unduly harsh to expect single women and female heads of household who have a well-founded fear of persecution in one part of Afghanistan, and who do not have a male support network, to relocate internally.

**3.7.9** Where this category of applicants' fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in *Januzi* ([2006] UKHL 5):

*"The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."*

**3.7.10** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of Afghanistan where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

### **3.7.11 Caselaw.**

**PM and Others (Kabul – Hizb-i-Islami) Afghanistan CG [2007] UKAIT 00089.** The Tribunal considered the levels of risk that members of Hizb-e-Islami, and those simply associated with it, face in Afghanistan and found:

- Those returned from the United Kingdom will not, without more, be at real risk at the airport or after arrival in Kabul.
- Those returned from the United Kingdom are not at real risk, without more, of being suspected by the authorities as insurgents
- The past of an individual seeking accommodation or work in Kabul, or elsewhere, may be discovered and mentioned to the authorities. Similarly, the authorities may become aware of someone newly arrived in an area. That may result in a person being detained for questioning but there is no satisfactory evidence such questioning gives rise to a real risk of serious harm.
- 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.
- There is no satisfactory evidence that a person who has been associated in the past with Hizb-i-Islami will always be regarded as such.
- There is no longer evidence of real risk to individuals said to have possible knowledge of the whereabouts of Gulbuddin Hekmatyar. (RS Afghanistan [2004] UKIAT 00278 should no longer be followed).

See paragraph 3.6.12 for summaries of the Tribunal's findings in the cases of **RQ** and **ZN**.

#### **[2004] UKIAT 00280 WK Afghanistan (Credibility - Hizb-i-Islami - Pashtuns- Kabul)**

The IAT examined the position of Hizb-e-Islami supporters and found that there has been no deterioration in their position. This finding was based on the evidence in the April 2004 CIPU report.

#### **[2004] UKIAT 00278 RS Afghanistan (Hezbe-Islami - expert evidence)**

The IAT examined the position of Hezbe Islami members and the expert evidence of Dr. Lau, to which they attached considerable weight. It was credible that once an individual had joined a group or party others would associate them with that group for life. The rewards offered by the US mean that anybody has a strong incentive to detain and question those thought to have been associated with Hezbe Islami, even if not recently. Therefore, known low level former supporters are still likely to be at risk.

**3.7.12 Conclusion.** As stated in *PM and Others*, members of Hizb-e-Islami and those associated

with it are not at real risk of being suspected by the authorities as insurgents upon return from the United Kingdom. It is therefore unlikely that applicants in this category will establish a well-founded fear of persecution at the hands of the state and a grant of asylum or Humanitarian Protection will not generally be appropriate. Still, case owners should base their decisions on the particular circumstances of the individual applicant's case as well as current country information, and the Tribunal's findings in PM and Others.

- 3.7.13** It may be that an applicant is able to establish a well-founded fear of treatment by non-state actors that might amount to persecution. Within Kabul, sufficient protection against such treatment will be available in most cases, but each claim must be decided on its merits in accordance with the above findings in PM and Others, RQ, and ZN. Applicants from outside Kabul can reasonably relocate to Kabul unless there is evidence that their would be persecutors would be likely to pursue them there and there is evidence that they would fall into the small category of applicants who would not be able to rely on sufficient protection in Kabul. In the latter case, a grant of asylum may be appropriate.
- 3.7.14** Case owners should note that Hizb-e-Islami has been responsible for serious human rights abuses. If it is accepted that the applicant was an active operational member or combatant for Hizb-e-Islami and has been involved in such actions, case owners should consider whether one of the Exclusion clauses is applicable. Case owners should refer such cases to a Senior Caseworker in the first instance.
- 3.8 Current or former Taliban members or sympathisers**
- 3.8.1** Applicants may claim that their own or a family member's membership of or support for the Taliban has resulted in them being at risk of ill-treatment by the Afghan authorities, or reprisals from mujahideen warlords or the local populace.
- 3.8.2 *Treatment.*** The level of Taliban insurgency has increased significantly in the last 3 years, especially in southern Afghanistan, but also in areas that were previously relatively calm. The Taliban has engaged in attacks against the Government and its institutions, NATO forces, foreign interests and nationals, international organisations, and non-governmental organisation workers.<sup>25</sup>
- 3.8.3** Some former Taliban figures and supporters, however, have distanced themselves from the militants and have instead joined the reconciliation programme initiated by President Karzai. In March 2007, Karzai signed a Bill providing sweeping amnesty for war crimes committed over more than two decades of conflict in Afghanistan allowing that "all parties involved in the pre-2002 conflicts are granted legal and judicial immunity." And furthermore, "the Taliban as well as warlords who have been accused of grave human rights violations are exempt from prosecution for crimes committed before the establishment of the December 2001 Interim Administration in Afghanistan."<sup>26</sup>
- 3.8.4** The Danish fact-finding mission of March/April 2004 noted that, according to the UNHCR, former members of the Taliban who were guilty of human rights abuses were likely to encounter problems with the local community. However, the UNHCR also reported that low profile, or ordinary members did not generally face problems when integrating into local communities and had no problems solely because of their association with the Taliban.<sup>27</sup>
- 3.8.5 *Sufficiency of protection.*** A judicial and legal system with limited function exists in Afghanistan. In Kabul, the police authorities are generally willing to enforce the law, although their ability to do so is limited by inadequate resources and dependent to some

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<sup>25</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Security Situation & Abuses By Non-Government Armed Forces) & USSD 2008: Afghanistan (Introduction & Sections 1, 2 & 4)

<sup>26</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Abuses By Non-Government Armed Forces)

<sup>27</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Abuses By Non-Government Armed Forces)

extent on the loyalties of individual officers. ISAF works alongside the Afghan Security Forces to maintain security in and around Kabul and as result the general security environment there is much better than in other areas.<sup>28</sup>

- 3.8.6** Based on the existence of the limited judicial and legal system, the willingness of the police authorities to enforce the law and the presence of ISAF, a sufficiency of protection is generally available in Kabul for those who claim they are at risk of reprisals from Mujahideen warlords or the local populace. However, each case must be considered on its merits and there will be individual cases where sufficient protection will not be available. For example, in ZN ([2005] UKIAT 00096), the Tribunal found that the Adjudicator was entitled to conclude that sufficient protection would not be available against a warlord who had already shown that he was capable of attacking persons associated with the applicant, and indeed the applicant's own house. Factors to take into account in deciding whether sufficient protection is available to an individual applicant will include whether they, or their would be persecutors, have influential connections in the current administration.
- 3.8.7** Sufficient protection is not available, even in Kabul, for single women or female heads of household without a male support network. For further information on the question of sufficiency of protection for women, see paragraphs 3.14.5 – 3.14.7.
- 3.8.8** **Internal relocation.** The law provides for freedom of movement within Afghanistan, but certain laws limit citizens' movement and the Government limits citizens' movement due to security interests. Local customs and traditions may also make it very difficult for women to travel without a male escort.<sup>29</sup> This makes it practical for men and women with a male support network who have a well-founded but localised fear of persecution in one area of Afghanistan to relocate to other areas of the country where they would not be at risk. Case owners should assess on an individual case by case basis whether internal relocation is a viable option for applicants who fear reprisals from mujahideen warlords or the local populace.
- 3.8.9** 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.<sup>30</sup> Sufficient protection is not available to them, even in Kabul, and it would therefore be unduly harsh to expect single women and female heads of household who have a well-founded fear of persecution in one part of Afghanistan, and who do not have a male support network, to relocate internally.
- 3.8.10** Where this category of applicants' fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):
- “The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts.”*
- 3.8.11** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of

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<sup>28</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Security Situation; Security Forces; & Judiciary)

<sup>29</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Freedom of Movement) & USSD 2008: Afghanistan (Section 2)

<sup>30</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Women; Freedom of Movement; & UNHCR Guidelines On Those Afghans Who May Be At Risk) & USSD 2008: Afghanistan (Section 5)

ill-treatment/persecution in their home area would be able to relocate to a part of Afghanistan where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

### 3.8.12 *Case law.*

**[2003] UKIAT 00088 S (Afghanistan):** The Tribunal found that, applying the *Horvath* test, there is a sufficiency of protection in Kabul and that it would not be unduly harsh to return the appellant there. The Tribunal also agreed with the Adjudicator's finding that as a rank and file Taliban supporter, the appellant was not of interest to the Afghan authorities.

See paragraph 3.6.12 for summaries of the Tribunal's findings in the cases of **RQ**, **ZN**, and **PM and Others**.

**3.8.13 Conclusion.** Case owners should base their decisions on the circumstances of the individual applicant and the balance of the current country information. This points to former members of the Taliban not having any difficulty with the current administration so long as it is clear that they are no longer associated with Taliban. It is therefore unlikely that such applicants will have a well-founded fear of persecution by the state and a grant of asylum or Humanitarian Protection will not generally be appropriate. Claims from current members of the Taliban should be referred to a Senior Caseworker.

**3.8.14** It may be that an applicant is able to establish a well-founded fear of treatment by non-state actors that might amount to persecution. Within Kabul, sufficient protection against such treatment will be available in most cases, but each claim must be decided on its merits in accordance with the above findings in PM and Others, RQ, and ZN. Applicants from outside Kabul can reasonably relocate to Kabul unless there is evidence that their would be persecutors would be likely to pursue them there and there is evidence that they would fall into the small category of applicants who would not be able to rely on sufficient protection in Kabul. In the latter case, a grant of asylum may be appropriate.

**3.8.15** Case owners should note that the Taliban has been responsible for serious human rights abuses. If it is accepted that the applicant was an active operational member or combatant for the Taliban and has been involved in such actions, case owners should consider whether one of the Exclusion clauses is applicable. Case owners should refer such cases to a Senior Caseworker in the first instance.

### 3.9 **Former People's Democratic Party of Afghanistan (PDPA) supporters**

**3.9.1** Former members of the PDPA may claim that they face persecution by the Afghan state because of the oppressive regime that they supported or were a part of. They may also claim fear of persecution by warlords or other political factions with whom they came into conflict during the time that the PDPA was in power.

**3.9.2 Treatment.** The PDPA was the Soviet backed communist party which ruled Afghanistan from 1978 to 1992. The PDPA was founded in 1965 and split in to two factions in 1967: Khalq (The People), led by Nur Mohammed Taraki and Hafizullah Amin and Parcham (The Banner), led by Babrak Kamal. Khalq was more rural-based, mostly comprising members of the Pashtun tribes. Parcham was more urban oriented and was dominated by Dari speakers. In 1977, the two factions reunited under Soviet pressure. In 1988, the name of the party was changed to Watan (Homeland) Party. The PDPA based Government collapsed in 1992 when, following the Peshawar Accords, mujahideen troops entered Kabul and the last President of a 'communist' government in Afghanistan, Mohammed Najibullah (previously head of the intelligence service KhAD) had to seek refuge in a UN-building in Kabul where he stayed until he was killed by Taliban troops entering Kabul in September 1996.<sup>31</sup>

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<sup>31</sup> COIS Afghanistan Country Report February 2009 (Annexes: Annex B – Political organisations and other

- 3.9.3** The PDPA Government attempted to suppress opposition to social and agrarian reform through repressive tactics including the “disappearance” and summary execution of thousands of people. The Government’s repressive measures sparked uprisings throughout the country, which were crushed, and drove refugees and armed opponents of the Government across the borders into Pakistan and Iran. In their efforts to crush the Mujahideen, the Afghan Government and Soviet forces engaged in massive human rights violations, including widespread torture and executions.<sup>32</sup>
- 3.9.4** Many former PDPA members as well as former officials of the KhAD are working in the Government, including the security apparatus. A congress of the PDPA in late 2003 led to the creation of Hezb-e-Mutahid-e-Mili (National United Party) with 600 members and other former PDPA officials have founded several other new parties. Many former PDPA members and officials of the Communist Government, particularly those who enjoy the protection of and have strong links to currently influential factions and individuals, are safe from exposure resulting from their political and professional past.<sup>33</sup>
- 3.9.5** However, risk of persecution may persist for some members of the PDPA. The exposure to risk depends on the individual’s personal circumstances, family background, professional profile, links, and whether he was associated with the human rights violations of the communist regime in Afghanistan between 1979 and 1992. Categories that may be at greater risk if they do not enjoy factional protection from Islamic political parties or tribes or influential personalities include high ranking members of PDPA, irrespective of faction but only if they are known and have a public profile, for example high ranking members of Central and Provincial Committees and their family members, and secretaries of PDPA’s committees in public institutions. In June 2005, the UNHCR noted that those at greater risk also included high ranking members of the Democratic Youth Organization and the Democratic Women’s Organization. The UNHCR also referred to people who openly promote the following parties led by former leaders of PDPA, particularly in rural areas: Hezb-e-Mutahid-e-Mili; De Afghanistan De Solay Ghorzang Gond (Peace Movement Party of Afghanistan); Hezb-e-Mili Afghanistan (National Party of Afghanistan); Hezb-e-Wahdat-e-Mili Afghanistan (National Solidarity Party of Afghanistan).<sup>34</sup>
- 3.9.6** In 2004, the International Crisis Group (ICG) also expressed the opinion that former high ranking PDPA members would be able to live in Afghanistan so long as they did not pursue a communist agenda, although a former PDPA central committee member they referred to did need considerable protection. The ICG thought that some former PDPA members could not safely return to Afghanistan, but that a number of former members were selected by President Karzai to work for the Government, and that many ministries could not exist without their skills. This appears to reflect a pragmatic approach recognising that many of these people were only trying to make a living and had no strong political interests.<sup>35</sup>
- 3.9.7** **Sufficiency of protection.** A judicial and legal system with limited function exists in Afghanistan. In Kabul, the police authorities are generally willing to enforce the law, although their ability to do so is limited by inadequate resources and dependent to some extent on the loyalties of individual officers. ISAF works alongside the Afghan Security Forces to maintain security in and around Kabul and as result the general security environment there is much better than in other areas.<sup>36</sup>
- 3.9.8** Based on the existence of the limited judicial and legal system, the willingness of the police authorities to enforce the law and the presence of ISAF, a sufficiency of protection is

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<sup>32</sup> Amnesty International. Afghanistan: Making human rights the agenda (Chapter 2)

<sup>33</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Political Affiliation)

<sup>34</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Political Affiliation)

<sup>35</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Political Affiliation)

<sup>36</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Security Situation; Security Forces; & Judiciary)

generally available in Kabul for those who claim they are at risk of reprisals from Mujahideen warlords or the local populace. However, each case must be considered on its merits and there will be individual cases where sufficient protection will not be available. For example, in ZN ([2005] UKIAT 00096), the Tribunal found that the Adjudicator was entitled to conclude that sufficient protection would not be available against a warlord who had already shown that he was capable of attacking persons associated with the applicant, and indeed the applicant's own house. Factors to take into account in deciding whether sufficient protection is available to an individual applicant will include whether they, or their would be persecutors, have influential connections in the current administration.

**3.9.9** Where an applicant's well-founded fear is of ill-treatment/persecution by the state authorities they cannot apply to these authorities for protection and the question of sufficiency of protection does not arise.

**3.9.10 *Internal relocation.*** The law provides for freedom of movement within Afghanistan, but certain laws limit citizens' movement and the Government limits citizens' movement due to security interests. Local customs and traditions may also make it very difficult for women to travel without a male escort.<sup>37</sup> This makes it practical for men and women with a male support network who have a well-founded but localised fear of persecution in one area of Afghanistan to relocate to other areas of the country where they would not be at risk. Case owners should assess on an individual case by case basis whether internal relocation is a viable option for applicants who fear reprisals from warlords, other political factions, or the local populace. It would not be unduly harsh to expect low profile members/supporters of the PDPA, who are likely to be known only in their home area, to relocate to another part of the country. However, some nationally known high profile former PDPA members could be recognisable throughout Afghanistan and in such cases would therefore be less likely to be able to rely on internal relocation to avoid a real risk of persecution.

**3.9.11** Where this category of applicants' fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):

*"The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."*

**3.9.12** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of Afghanistan where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

### **3.9.13 *Caselaw***

**[2006] UKAIT 00003 SO and SO Afghanistan CG (KhaD - members and family).** The AIT found that in assessing whether family members of a PDPA and/or KhaD member would be at risk, it must be borne in mind that there may be factors reducing or removing risk such as the death of the PDPA/KhaD member and the amount of time that has elapsed since his death.

See paragraph 3.6.12 for summaries of the Tribunal's findings in the cases of **RQ, ZN, and PM and Others.**

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<sup>37</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Freedom of Movement) & USSD 2008: Afghanistan (Section 2)

- 3.9.14 Conclusion.** It is unlikely that low ranking former PDPA members and supporters will be able to establish that they have a well-founded fear of persecution in the area where they are known. However, even where they are able to do so, in cases where the fear is of non-state actors, this is likely to be a localised problem and it would not be unduly harsh to expect them to relocate, either to Kabul, where in most cases there would be sufficient protection, or elsewhere in the country where they would not be known. Such cases would not therefore qualify for asylum or Humanitarian Protection.
- 3.9.15** High-ranking former PDPA members may be able to establish that they have a well-founded fear of persecution, although those who have been living in Afghanistan since 1992 will need to demonstrate why they have come to the attention of their persecutors at the present time. Where a well-founded fear of persecution is established, but it is a localised risk, it would not in most cases be unduly harsh to expect the applicant to relocate within Afghanistan. Within Kabul, sufficient protection against such treatment will be available in most cases, but each claim must be decided on its merits in accordance with the above findings in PM and Others, RQ, and ZN. Applicants from outside Kabul can reasonably relocate to Kabul unless there is evidence that their would be persecutors would be likely to pursue them there AND there is evidence that they would fall into the small category of applicants who would not be able to rely on sufficient protection in Kabul. In the latter case, a grant of asylum may be appropriate. However, it is important to consider whether the activities which have placed the applicant in such a position will also have rendered him liable to exclusion under the Refugee Convention.
- 3.9.16** Different considerations apply to women applicants but such claims are unlikely to arise in this category.
- 3.9.17** Case owners should note that the PDPA have in the past been responsible for serious human rights abuses. If it is accepted that the applicant was involved in such actions, case owners should consider whether one of the Exclusion clauses is applicable. Case owners should refer such cases to a Senior Caseworker in the first instance.
- 3.10 Former KhAD agents**
- 3.10.1** Applicants may claim to fear persecution by the Afghan authorities and/or local commanders or other groups due to their (or a family member's) previous involvement in the KhAD.
- 3.10.2 Treatment.** The Khadimat-e Atal'at-e Dowlati (KhAD) which operated from 1980 until 1992 was the security service of the highly repressive communist regime. Although renamed Wazarat-e Amani-ye Dowlati (WAD) in 1986 it continued to be generally known as KhAD. At both the national and the provincial/district level, certain Directorates within the KhAD were engaged in active security operations, during which many human rights violations occurred. These were above all the Directorates for Operative Activities for Internal Control of KhAD Personnel, for Counter-Rebellion, for Surveillance of Foreign and National Suspects, for the Protection of the Government and its Representatives, for Activities linked to Infiltration of Mujahideen, the Directorate of Interrogation, as well as the Police KhAD, and the corresponding functional units at provincial and district level. However, there were also non-operational (support) Directorates within the KhAD at the central, provincial and district levels, including: Administration and Finance, Cadre / Personnel, Post and Parcels, Propaganda and counter propaganda, Logistics, Telecommunications and Decoding, Press and Educational Institutions, and Agents and Informers.<sup>38</sup>
- 3.10.3** Some former KhAD agents may face risks similar to those that may be faced by some former high-ranking PDPA members. The level of risk will depend on a number of considerations including their profile in the KhAD, the extent to which they have been

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<sup>38</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Political Affiliation)

involved in human rights violations and their political and tribal links. Not all former KhAD operatives face risk from the current government or others within the country. Some estimates in 2004 suggested that around half of the Afghanistan intelligence services were former KhAD officers, recruited due to a lack of qualified personnel from other sources. For example, it was reported in 2004 that the director in the 7<sup>th</sup> department of the intelligence service had earlier served the same position in the KhAD.<sup>39</sup>

- 3.10.4 Sufficiency of protection.** A judicial and legal system with limited function exists in Afghanistan. In Kabul, the police authorities are generally willing to enforce the law, although their ability to do so is limited by inadequate resources and dependent to some extent on the loyalties of individual officers. ISAF works alongside the Afghan Security Forces to maintain security in and around Kabul and as result the general security environment there is much better than in other areas.<sup>40</sup>
- 3.10.5** Based on the existence of the limited judicial and legal system, the willingness of the police authorities to enforce the law and the presence of ISAF, a sufficiency of protection is generally available in Kabul for those who claim they are at risk of reprisals from Mujahideen warlords or the local populace. However, each case must be considered on its merits and there will be individual cases where sufficient protection will not be available. For example, in ZN ([2005] UKIAT 00096), the Tribunal found that the Adjudicator was entitled to conclude that sufficient protection would not be available against a warlord who had already shown that he was capable of attacking persons associated with the applicant, and indeed the applicant's own house. Factors to take into account in deciding whether sufficient protection is available to an individual applicant will include whether they, or their would be persecutors, have influential connections in the current administration.
- 3.10.6** Where an applicant's well-founded fear is of ill-treatment/persecution by the state authorities they cannot apply to these authorities for protection and the question of sufficiency of protection does not arise.
- 3.10.7 Internal relocation.** The law provides for freedom of movement within Afghanistan, but certain laws limit citizens' movement and the Government limits citizens' movement due to security interests. Local customs and traditions may also make it very difficult for women to travel without a male escort.<sup>41</sup> This makes it practical for men and women with a male support network who have a well-founded but localised fear of persecution in one area of Afghanistan to relocate to other areas of the country where they would not be at risk. Case owners should assess on an individual case by case basis whether internal relocation is a viable option for applicants who fear reprisals from local commanders, other groups, or the local populace. It would not be unduly harsh to expect low profile former KhAD agents who are likely to be known only in their home area, to relocate to another part of the country. However, there may be some former KhAD agents who, due to their involvement in widespread human rights violations, could not reasonably relocate to an area where their former activities would be known.
- 3.10.8** Where this category of applicants' fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):

*"The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."*

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<sup>39</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Political Affiliation)

<sup>40</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Security Situation; Security Forces; & Judiciary)

<sup>41</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Freedom of Movement) & USSD 2008: Afghanistan (Section 2)



**3.10.9** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of Afghanistan where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

**3.10.10 *Caselaw.***

**[2006] UKAIT 00003 SO and SO Afghanistan CG (KhaD - members and family).**

The AIT found that given evidence that significant numbers of former KhaD officers work in the present Afghanistan Intelligence Service, it cannot be said that past service in KhaD suffices to establish a risk of return. The Tribunal also concluded that cases have to be considered by weighing up a number of factors, including some personal to the appellant. In this regard, past or present personal conflicts are more important than political conflicts. In assessing whether family members of a PDPA and/or KhaD member would be at risk, the Tribunal concluded that it must be borne in mind that there may be factors reducing or removing risk such as the death of the PDPA/KhaD member and the amount of time that has elapsed since his death.

See paragraph 3.6.12 for summaries of the Tribunal's findings in the cases of **RQ, ZN, and PM and Others.**

**3.10.11 *Conclusion.*** The level of risk will depend on an applicant's profile in the KhAD, the extent to which they have been involved in human rights violations and their political and tribal links. It is possible that even low ranking former KhAD agents and supporters will be able to establish that they have a well-founded fear of persecution in the area where they are known. However, even where they are able to do so, this is likely to be a localised problem and it would not be unduly harsh to expect them to relocate, either to Kabul, where there is sufficient protection, or elsewhere in the country where they would not be known. Such cases would not therefore qualify for asylum or Humanitarian Protection.

**3.10.12** High-ranking former KhAD agents, or those whose activities would have caused them to be widely known throughout Afghanistan, are more likely to be able to establish that they have a well-founded fear of persecution although those who have been living in Afghanistan since 1992 will need to demonstrate why they have come to the attention of their persecutors at the present time.

**3.10.13** Where a well-founded fear of persecution is established, but it is a localised risk, it would not be unduly harsh to expect the applicant to relocate within Afghanistan, either to Kabul if they have connections with the current administration and sufficient protection would therefore be available, or to parts of the country where they are not known. However, former KhAD agents who enjoyed a national profile and who do not have connections in the current administration will not be able to rely on sufficient protection and could not reasonably be expected to relocate elsewhere in Afghanistan. In these circumstances, it is very likely that the activities in which the applicant was engaged would engage one of the exclusion clauses in the Refugee Convention. It is therefore unlikely that any claim based on being a KhAD agent would result in a grant of asylum or Humanitarian Protection.

**3.10.14** Different considerations apply to women but such claims are unlikely to arise in this category.

**3.10.15** Case owners should note that the KhAD have been responsible for serious human rights abuses. If it is accepted that the applicant was an active operational member of the KhAD and has been involved in such actions, then case owners should consider whether one of the Exclusion clauses is applicable. Case owners should refer such cases to a Senior Caseworker in the first instance.

### 3.11 Hindus and Sikhs

**3.11.1** 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.

**3.11.2 *Treatment.*** Reliable data on religious demography is not available because an official nationwide census has not been conducted in decades, but observers estimate that there are approximately 2,200 Sikh and Hindu believers in Afghanistan.<sup>42</sup>

**3.11.3** The Sikh and Hindu communities are allowed to practise their faith publicly. There are seven gurdwaras, Sikh places of worship, in Kabul, and approximately six Hindu temples in four cities. However, members of the Sikh and Hindu communities reportedly continue to face some social discrimination, harassment and, in some cases, violence. Some Sikh and Hindu children are reportedly unable to attend government schools due to harassment from teachers and students. The Government has taken limited steps to protect these children and reintegrate them into the classroom environment. In July 2007, for example, the Government opened the first-ever government-sponsored school for Sikh and Hindu children in Ghazni.<sup>43</sup>

**3.11.4 *Sufficiency of protection.*** A judicial and legal system with limited function exists in Afghanistan. In Kabul, the police authorities are generally willing to enforce the law, although their ability to do so is limited by inadequate resources and dependent to some extent on the loyalties of individual officers. ISAF works alongside the Afghan Security Forces to maintain security in and around Kabul and as result the general security environment there is much better than in other areas.<sup>44</sup>

**3.11.5** Sufficient protection may normally be considered to be available for men and married women who demonstrate a generalised risk of opportunistic targeting on account of their religion. However, each case must be considered on its merits and there will be individual cases where sufficient protection will not be available. Where there is credible evidence that the applicant will be targeted personally and persistently, for example as part of a vendetta by a powerful warlord, sufficient protection cannot be relied upon for any individual unless they have powerful connections. For example, in ZN ([2005] UKIAT 00096), the Tribunal found that the Adjudicator was entitled to conclude that sufficient protection would not be available against a warlord who had already shown that he was capable of attacking persons associated with the applicant, and indeed the applicant's own house. There is no evidence that Sikhs and Hindus have been the subject of such concerted attention, but sufficiency of protection should in these circumstances be considered on a case by case basis.

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

**3.11.7 *Internal relocation.*** The law provides for freedom of movement within Afghanistan, but certain laws limit citizens' movement and the Government limits citizens' movement due to security interests. Local customs and traditions may also make it very difficult for women to travel without a male escort.<sup>45</sup> This makes it practical for men and women with a male support network who have a well-founded but localised fear of persecution in one area of Afghanistan to relocate to other areas of the country where they would not be at risk. It

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<sup>42</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Freedom of Religion)

<sup>43</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Freedom of Religion), USSD 2008: Afghanistan (Section 2) & U.S. Department of State International Religious Freedom Report 2008: Afghanistan (Section I)

<sup>44</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Security Situation; Security Forces; & Judiciary)

<sup>45</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Freedom of Movement) & USSD 2008: Afghanistan (Section 2)

would not therefore be unduly harsh to expect Sikhs and Hindus who had a well-founded fear of persecution in their home area on account of their religion to relocate to Kabul where at worst only low-level discrimination and harassment occur, there are well-established and close-knit Sikh and Hindu communities, and where they could rely on sufficient protection against generalised threats by non-state agents.

**3.11.8** 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.<sup>46</sup> Sufficient protection is not available to them, even in Kabul, and it would therefore be unduly harsh to expect single women and female heads of household who have a well-founded fear of persecution in one part of Afghanistan, and who do not have a male support network, to relocate internally.

### **3.11.9 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.

**3.11.10 Conclusion.** It is unlikely that Sikhs or Hindus will be able to establish that they are at risk of persecution or treatment contrary to Article 3 at the hands of the Afghan authorities solely because of their membership of these minority groups.

**3.11.11** There is some evidence of societal discrimination against Sikhs and Hindus. Generally this appears to be impersonal and not to a level that would constitute persecution or mistreatment to Article 3 levels. However, each case should be considered on its merits. Where an individual is able to establish that they are at real risk of treatment that reaches these thresholds, internal relocation should be considered. Internal relocation to Kabul, where sufficient protection would be available, is a reasonable option for men and married women. It is therefore unlikely that a grant of asylum or Humanitarian Protection will be appropriate.

**3.11.12** The position for single women and female heads of household without a male support network is complicated by the fact that in most cases it would be unduly harsh to expect them to relocate internally, and sufficient protection cannot be relied upon, even in Kabul. Where there is a well-founded fear of treatment that could amount to persecution, sufficiency of protection should not be relied upon, and internal relocation would be unduly harsh, a grant of asylum may therefore be appropriate. In considering the credibility of such cases, case owners will however wish to explore the means by which women in these circumstances travelled to the UK.

### **3.12 Fear of warlords**

**3.12.1** Some applicants may make an asylum and/or human rights claim on the basis that they face ill-treatment amounting to persecution at the hands of a warlord.

**3.12.2** These types of claim are most often from Hindus or Sikhs (see section 3.11) and/or those who claim to have had their land/property taken away by a warlord. The applicant will sometimes state that when they attempted to retain their land or property, the warlord retaliated by orchestrating the applicant's arrest, killing the applicant's relatives or destroying relatives' houses.

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<sup>46</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Women; Freedom of Movement; & UNHCR Guidelines On Those Afghans Who May Be At Risk) & USSD 2008: Afghanistan (Section 5)

- 3.12.3 Treatment.** As a result of decades of armed conflict, ethnic allegiances and the prolonged absence of a legitimate centralised state, local and regional power within Afghanistan is subject to the authority exercised by a variety of armed actors commonly referred to as warlords. These warlords' local commanders wield authority through a combination of arms, mutually supportive relationships with other armed actors, social networks and ethnic allegiances. Some key figures in Afghan politics might be described as classic warlords through their exercise of a monopoly of economic and military authority over a sizeable area. Others, who might be termed petty warlords or local commanders, exercise authority over a relatively small area and have only minor backing by genuine force. Often, the power of less dominant commanders is the result of linkages and networks with a number of armed actors. Overall, there exist numerous non-state armed groups throughout the country. Afghans throughout the country have told Human Rights Watch that they view regional warlords, ostensibly allied with the Government, as a major source of insecurity.<sup>47</sup>
- 3.12.4** The ANP has primary responsibility for internal order and in 2007 expanded its reach to new areas, including the eastern border region with Pakistan, through the use of auxiliary police. Still, in some areas powerful individuals, some of whom reportedly are linked to the insurgency, reportedly maintain considerable power as a result of the Government's failure to assert control.<sup>48</sup>
- 3.12.5** Despite concerns regarding the power of warlords in some areas of the country, a judicial and legal system with limited function does exist in Afghanistan. In Kabul, the police authorities are generally willing to enforce the law, although their ability to do so is limited by inadequate resources and dependent to some extent on the loyalties of individual officers. ISAF works alongside the Afghan Security Forces to maintain security in and around Kabul and as result the general security environment there is much better than in other areas.<sup>49</sup>
- 3.12.6** Based on the existence of the limited judicial and legal system, the willingness of the police authorities to enforce the law and the presence of ISAF, a sufficiency of protection is generally available in Kabul for those who claim they are at risk of reprisals from Mujahideen warlords or the local populace. However, each case must be considered on its merits and there will be individual cases where sufficient protection will not be available. For example, in ZN ([2005] UKIAT 00096), the Tribunal found that the Adjudicator was entitled to conclude that sufficient protection would not be available against a warlord who had already shown that he was capable of attacking persons associated with the applicant, and indeed the applicant's own house. Factors to take into account in deciding whether sufficient protection is available to an individual applicant will include whether they, or their would be persecutors, have influential connections in the current administration.
- 3.12.7** Sufficient protection is not available, even in Kabul, for single women or female heads of household without a male support network. For further information on the question of sufficiency of protection for women, see paragraphs 3.14.5 – 3.14.7.
- 3.12.8 Internal relocation.** The law provides for freedom of movement within Afghanistan, but certain laws limit citizens' movement and the Government limits citizens' movement due to security interests. Local customs and traditions may also make it very difficult for women to travel without a male escort.<sup>50</sup> This makes it practical for men and women with a male support network who have a well-founded but localised fear of persecution in one area of

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<sup>47</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Abuses By Non-Government Armed Forces)

<sup>48</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Abuses By Non-Government Armed Forces) & USSD 2008: Afghanistan (Section 1)

<sup>49</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Security Situation; Security Forces; & Judiciary)

<sup>50</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Freedom of Movement) & USSD 2008: Afghanistan (Section 2)

Afghanistan to relocate to other areas of the country where they would not be at risk. Therefore, applicants who encounter problems with a minor warlord who has influence in their local area can relocate to another part of the country, and it is reasonable to expect them to do so. However, there may be some applicants who encounter problems with warlords whose influence reaches beyond the local area and for them internal relocation may not be an option. Factors to take into account in deciding whether internal relocation is available to an individual applicant will include whether they, or their would-be persecutors, have influential connections in the current administration.

**3.12.9** 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.<sup>51</sup> Sufficient protection is not available to them, even in Kabul, and it would therefore be unduly harsh to expect single women and female heads of household who have a well-founded fear of persecution in one part of Afghanistan, and who do not have a male support network, to relocate internally.

**3.12.10 Conclusion.** Applicants who are unable to demonstrate that they have been targeted by a warlord for reason of one of the five Refugee Convention grounds, will not have a well founded fear of persecution under the Convention and therefore a grant of asylum would not be appropriate. Some applicants may be able to demonstrate that they have encountered ill-treatment, serious harassment or threats from a warlord for non-Convention reasons and may also be able to demonstrate a real risk of future mistreatment contrary to Article 2 and/or Article 3 of the ECHR, for the same reasons, should they be returned to Afghanistan. Where the threshold of Articles 2 or 3 of the ECHR is met and a real risk of future mistreatment is established, but it is a localised risk, it would not be unduly harsh to expect men, and women with a male support network, to relocate within Afghanistan, either to Kabul where sufficient protection would be generally available, or to parts of the country away from the respective warlord. Each case must be considered on its individual merits, however, and where there exists a real risk of future mistreatment at the hands of an influential warlord contrary to Article 2 and/or Article 3 of the ECHR, where sufficient protection would not be available and where internal relocation would be unduly harsh, a grant of Humanitarian Protection will be appropriate.

**3.12.11** The position for single women and female heads of household without a male support network is complicated by the fact that in most cases it would be unduly harsh to expect them to relocate internally, and sufficient protection cannot be relied upon, even in Kabul. Where there is a real risk of future mistreatment contrary to Article 2 and/or Article 3 of the ECHR, sufficiency of protection should not be relied upon and internal relocation would be unduly harsh, a grant of Humanitarian Protection may be appropriate. In considering the credibility of such cases, case owners will however wish to explore the means by which women in these circumstances travelled to the UK.

### **3.13 Converts to Christianity**

**3.13.1** Applicants will most commonly claim that they have converted to Christianity from Islam, probably in the United Kingdom, that this is contrary to Islamic law, and that they face the risk of societal persecution or state persecution including execution if they are returned to Afghanistan.

**3.13.2 Treatment.** Although Article 2 of the 2004 Constitution states that the followers of other religions are free to exercise their faith and perform their religious rites within the limits of the provisions of law, the boundaries of the law are open to interpretation. The Constitution makes no specific provision for converts and guarantees of religious freedom generally would appear to be subject to the constitutional catch-all that “no law can be contrary to the

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<sup>51</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Women; Freedom of Movement; & UNHCR Guidelines On Those Afghans Who May Be At Risk) & USSD 2008: Afghanistan (Section 5)

beliefs and provisions of the sacred religion of Islam.”<sup>52</sup>

- 3.13.3** Conversion from Islam is considered apostasy and is punishable by death under some interpretations of Shari’a. There are no recently reported cases of any Afghan being executed by court order for conversion or apostasy. This is because practising converts will tend to keep a very low profile and are believed to practise Christianity in secrecy.<sup>53</sup>
- 3.13.4** In March 2006, Abdul Rahman was charged and tried in Kabul for converting from Islam to Christianity and could have faced the death penalty unless he re-converted. Abdul Rahman actually converted years earlier, but he came to the attention of the authorities when his estranged family denounced him in a custody dispute over his two children. Following increasing pressure from the international community and intervention from President Karzai, however, Abdul Rahman’s case was reviewed by the judiciary and he was deemed mentally unfit to stand trial. Abdul Rahman was subsequently freed from prison and the UN helped arrange his emigration to Italy where he was granted asylum. In September 2006, the UN Secretary-General reported that following the case of Abdul Rahman there have been three similar cases in which Afghan citizens were accused of apostasy by local religious leaders and were forced to leave the country.<sup>54</sup>
- 3.13.5** There has been a great deal of speculation about the level of societal discrimination which apostates would face. In 2007 and 2008 there were unconfirmed reports of harassment of Christians thought to be involved in proselytism. In a letter dated 17 March 2008, the FCO stated that it was advised that Christians are regularly discriminated against and face verbal and physical abuse from the authorities, former friends and also family members. According to the FCO, the authorities do not generally investigate allegations of harassment or ill-treatment or bring those responsible to justice. There was some publicly displayed anger over Abdul Rahman’s release from prison in March 2006 and it was reported that around one thousand people protested in the Northern city of Mazar-e-Sharif with calls of him to be tried and executed. Abdul Rahman’s release was also criticised by the leader of the Lower House, Yunus Qanuni, and Chief Justice Fazl Hadi Shinwar. In December 2007, the UNHCR noted the cases of two Afghan families, in which some members had converted to Christianity, who reported being harassed by their community before they decided to leave the country.<sup>55</sup>
- 3.13.6 *Sufficiency of protection.*** A judicial and legal system with limited function does exist in Afghanistan. In Kabul, the police authorities are generally willing to enforce the law, although their ability to do so is limited by inadequate resources and dependent to some extent on the loyalties of individual officers. ISAF works alongside the Afghan Security Forces to maintain security in and around Kabul and as result the general security environment there is much better than in other areas.<sup>56</sup>
- 3.13.7** Where the treatment feared is at the hands of the state, the question of sufficiency of protection does not arise. However, even where the applicant’s fear is of societal or non-state persecution, Christian converts may reasonably be unwilling due to the state’s position on apostasy to seek the protection of the Afghan authorities. Therefore, in either case, sufficient protection should not be considered to be available for apostates in Afghanistan.

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<sup>52</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Freedom of Religion)

<sup>53</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Freedom of Religion) & USSD 2008: Afghanistan (Section 2)

<sup>54</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Freedom of Religion), BBC News ‘Afghan Christian asks for asylum’ dated 27 March 2006, & BBC News ‘Afghan convert arrives in Italy’ dated 29 March 2006

<sup>55</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Freedom of Religion), U.S. Department of State Report on International Religious Freedom 2008: Afghanistan (Section II)

<sup>56</sup> COIS Afghanistan Country Report February 2009 (Preface: Latest Events, Human Rights: Security Situation; Security Forces; & Judiciary)

- 3.13.8 Internal relocation.** The law provides for freedom of movement within Afghanistan, but certain laws limit citizens' movement and the Government limits citizens' movement due to security interests. Local customs and traditions may also make it very difficult for women to travel without a male escort.<sup>57</sup> This makes it practical for men and women with a male support network who have a well-founded but localised fear of persecution in one area of Afghanistan to relocate to other areas of the country where they would not be at risk.
- 3.13.9** 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.<sup>58</sup> Sufficient protection is not available to them, even in Kabul, and it would therefore be unduly harsh to expect single women and female heads of household who have a well-founded fear of persecution in one part of Afghanistan, and who do not have a male support network, to relocate internally.
- 3.13.10** Where this category of applicants' fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in *Januzi* ([2006] UKHL 5):
- "The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."*
- 3.13.11** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of Afghanistan where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

**3.13.12 Caselaw.**

**[2005] UKIAT 00035 AR.** There is no evidence that the theoretical risk of the death penalty for apostasy is applied in practice and the general risk to the claimant does not reach Article 3 levels.

- 3.13.13 Conclusion.** There is little information on the actual treatment of apostates in Afghanistan because it is understood that those who do convert maintain a low profile. As noted in the case of AR [2005] UKIAT 00035 and in the high-profile case of Abdul Rahman, there is no evidence that the current Afghan administration has or intends to apply the death penalty for apostasy; nor does the evidence suggest that the level of societal discrimination for apostasy in general amounts to persecution. It is therefore unlikely that an applicant will be able to establish treatment that might warrant a grant of asylum.
- 3.13.14** However, each case must be considered carefully on its merits and in the event that an individual applicant is able to establish a well-founded fear of treatment amounting to persecution, they would not be able to rely on the protection of the Afghan authorities, nor would internal relocation be a reasonable option. Therefore, where there is a real risk of persecution a grant of asylum would be appropriate.

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<sup>57</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Freedom of Movement) & USSD 2008: Afghanistan (Section 2)

<sup>58</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Women; Freedom of Movement; & UNHCR Guidelines On Those Afghans Who May Be At Risk) & USSD 2008: Afghanistan (Section 5)

### 3.14 Women

- 3.14.1** Women may claim to face domestic violence at the hands of their husbands or families. 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.
- 3.14.2 *Treatment.*** There have been significant advances in respect for women's rights since the fall of the Taliban, notably through the establishment of the Ministry for Women's Affairs and the National Action Plan for Women. The Afghan Government has implemented numerous policies and programmes addressing gender issues which have led to improvements on women's economic advancement, participation in public life, and access to education and healthcare.<sup>59</sup>
- 3.14.3** However, Afghan women and girls reportedly continue to confront discrimination in almost every aspect of their lives. In December 2007, the UNHCR noted that Afghan women, both in urban and rural areas, must conform to conservative and traditional norms of behaviour in order to be safe from physical and psychological violence or abuse. Pressure to conform is very strong, both from within families and communities, and by the public. According to the UNHCR, Afghan women who, having resided abroad, adopt 'Western' values, which are considered to be inconsistent with social mores in Afghan society, would only be able to continue to enjoy relative social, cultural and economic freedom if they can rely on strong family protection. Such protection is more readily available in Kabul than in the provinces. Single women who do not have male relatives in Afghanistan, who are willing and able to provide support, face particular difficulties, most notably on social restrictions including freedom of movement.<sup>60</sup>
- 3.14.4** In its paper of December 2007, the UNHCR identified domestic violence, sexual harassment and rape, trafficking, honour killings, and forced and early marriage as some of the worst types of violence perpetrated against women in Afghanistan. Domestic violence not only has serious physical and psychological effects on women, but also causes other serious problems such as self-immolation, suicide, escape from the family, forced prostitution and addiction to narcotics.<sup>61</sup>
- 3.14.5 *Sufficiency of protection.*** A judicial and legal system with limited function does exist in Afghanistan. In Kabul, the police authorities are generally willing to enforce the law, although their ability to do so is limited by inadequate resources and dependent to some extent on the loyalties of individual officers. ISAF works alongside the Afghan Security Forces to maintain security in and around Kabul and as result the general security environment there is much better than in other areas.<sup>62</sup>
- 3.14.6** Despite the new Constitution guaranteeing equality, women are reportedly denied access to justice by their ignorance of their rights, the social stigma attached to them as victims, the ineffectiveness of the investigative and judicial systems, and the dominance of traditional dispute resolution mechanisms, especially in rural areas. The balance of the evidence points to an improving situation with regard to seeking redress from the authorities, especially in Kabul. In 2004, the Government established the first unit of female police, though the UN Development Fund for Women (UNIFEM) has reported that there were only 233 policewomen in Afghanistan in February 2007. UNIFEM has also noted that approximately 4% of sitting judges in Afghanistan are women.<sup>63</sup>

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<sup>59</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Women)

<sup>60</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Women) & USSD 2008: Afghanistan (Section 5)

<sup>61</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Women)

<sup>62</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Security Situation; Security Forces; & Judiciary)

<sup>63</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Women) & USSD 2008: Afghanistan (Section 5)



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

**3.14.8 *Internal relocation.*** The law provides for freedom of movement within Afghanistan, but certain laws limit citizens' movement and the Government limits citizens' movement due to security interests. Local customs and traditions may also make it very difficult for women to travel without a male escort.<sup>64</sup> This makes it practical for women with a male support network who have a well-founded but localised fear of persecution in one area of Afghanistan to relocate to other areas of the country where they would not be at risk, and it is reasonable to expect them to do so.

**3.14.9** Unescorted internal travel for single women and female heads of household who do not have a male support network is difficult - discrimination and harassment are common - as would be establishing themselves in an area where they did not have such a support network.<sup>65</sup> Sufficient protection is not available to them, even in Kabul, and it would therefore be unduly harsh to expect single women and female heads of household who have a well-founded fear of persecution in one part of Afghanistan, and who do not have a male support network, to relocate internally.

#### **3.14.10 *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.

**3.14.11 *Conclusion.*** Since the fall of the Taliban the position of women in Afghanistan has improved, but this is from a very low baseline. Discrimination is still rife and domestic and societal violence common. Lone women and female heads of households are generally unable to seek protection from the authorities and it would be unduly harsh to expect them 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 treatment amounting to persecution. In considering the credibility of such cases, case owners will however wish to explore the means by which women in these circumstances travelled to the UK.

**3.14.12** The availability of a male support network will impact upon the decision on whether women face a real risk of treatment that might amount to persecution, but where they are able to establish that they do, asylum should be granted. The existence of a male support network does not constitute sufficient protection for the purposes of deciding the asylum claim.

#### **3.15 Claims based on the security situation in Afghanistan**

**3.15.1** Applicants may make an asylum and/or human rights claim based on the security situation in Afghanistan, stating that it is unsafe for them to return as they may be caught up and injured or killed in a violent incident. These types of claims may be raised in conjunction with other claims as listed above. Applicants are more likely to cite the security situation in southern Afghanistan where the Taliban insurgency is most prevalent.

**3.15.2 *Treatment.*** The level of Taliban insurgency has increased significantly in the last 3 years,

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<sup>64</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Freedom of Movement) & USSD 2008: Afghanistan (Section 2)

<sup>65</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Women; Freedom of Movement; & UNHCR Guidelines On Those Afghans Who May Be At Risk) & USSD 2008: Afghanistan (Section 5)

especially in southern Afghanistan. In September 2008, the UN Secretary General reported that while the main focus of the insurgency remains the southern and eastern parts of the country, insurgent influence has intensified in areas that were previously relatively calm, including in the provinces closest to Kabul. The UN Secretary General also noted more sophisticated planning of operations by insurgents, in particular asymmetric attacks; an increase in the number of attacks against aid workers, convoys and facilities; and an increase in civilian casualties. The overall number of security incidents in Kabul has decreased, however, reflecting the enhanced capability of the Afghan intelligence and security forces there.<sup>66</sup>

**3.15.3 Sufficiency of protection.** As this category of applicants' fear is of mistreatment on the basis of the general country situation and not particular state or non-state agents, the availability of sufficient state protection is not relevant.

**3.15.4 Internal relocation.** While the general security situation across Afghanistan deteriorated during 2008, the main focus of the insurgency remains the southern and eastern parts of the country. ISAF works alongside the Afghan Security Forces to maintain security in and around Kabul and as a result the general security environment there is much better than in other areas.<sup>67</sup>

**3.15.5** The law provides for freedom of movement within Afghanistan, but certain laws limit citizens' movement and the Government limits citizens' movement due to security interests. Local customs and traditions may also make it very difficult for women to travel without a male escort.<sup>68</sup> This makes it practical for women with a male support network who have a well-founded but localised fear of persecution in one area of Afghanistan to relocate to other areas of the country where they would not be at risk, and it is reasonable to expect them to do so.

**3.15.6** Unescorted internal travel for single women and female heads of household who do not have a male support network is difficult - discrimination and harassment are common - as would be establishing themselves in an area where they did not have such a support network.<sup>69</sup> It would therefore be unduly harsh to expect single women and female heads of household who have a well-founded fear of persecution in one part of Afghanistan, and who do not have a male support network, to relocate internally.

### **3.15.7 Caselaw.**

**GS (Existence of internal armed conflict) Afghanistan CG [2009] UKAIT 00010.** The Secretary of State conceded that as at 7 January 2009 for the purpose of International Humanitarian Law (IHL) there is an internal armed conflict in Afghanistan extending the whole of the territory of Afghanistan.

**ECJ Elgafaji 17 February 2009.** The ECJ in this case found that Article 15(c) of the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, in conjunction with Article 2(e) thereof must be interpreted as meaning that:

- The existence of serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his circumstances
- The existence of such a threat can exceptionally be considered to be established

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<sup>66</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Security Situation) & USSD 2008: Afghanistan (Introduction & Section 1)

<sup>67</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Security Situation & Security Forces)

<sup>68</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Freedom of Movement) & USSD 2008: Afghanistan (Section 2)

<sup>69</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Women; Freedom of Movement; & UNHCR Guidelines On Those Afghans Who May Be At Risk) & USSD 2008: Afghanistan (Section 5)

where the degree of indiscriminate violence characterising the armed conflict taking place – assessed by the competent national authorities before which an application for subsidiary protection is made or by the courts of a Member State to which a decision refusing such an application is referred – reaches such a high level that substantial grounds are shown for believing that a civilian returned to the relevant country or as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to the threat.

- 3.15.8 Conclusion.** Whilst there is currently an internal armed conflict in the whole territory of the state of Afghanistan as defined by International Humanitarian Law, the general security situation does not of itself give rise to a well-founded fear of persecution for a Refugee Convention reason unless the applicant is at serious risk of adverse treatment over and above others. If an applicant can demonstrate that they have been individually targeted, and that internal relocation would be unduly harsh, a grant of asylum may be appropriate.
- 3.15.9** Where those seeking protection fall outside the scope of the Refugee Convention, they may seek Humanitarian Protection under immigration rule 339C which implemented the provisions with respect to subsidiary protection in Articles 2(e) and 15(c) of the EU Qualification Directive.
- 3.15.10** On 17 February 2009, the European Court of Justice (ECJ) issued a judgment in the case of *Elgafaji v NL* (Case C-465/07) concerning Article 15(c) which clarifies the test for whether Article 15(c) applies in particular cases. The ECJ found that Article 15(c) of the Qualification Directive provides protection that is supplementary to that provided by Article 3 of ECHR if in a country or part of a country that is in a state of internal or international armed conflict, indiscriminate violence: *“reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence in the territory of that country or region, face a real risk of being subject to the serious threat referred to in Article 15(c) of the Directive”*.
- 3.15.11** In *Elgafaji*, the ECJ emphasised that in order for someone to qualify for protection on the basis of indiscriminate violence without needing to show why they individually would be at risk, the level of violence would need to be so high that **anyone**, irrespective of his or her personal circumstance, returned to the country or part of the country in question, would be at risk *“solely on account of his presence in the territory of that country or region”*. The ECJ recognised that such a high level of indiscriminate violence will be ‘exceptional’. The judgment whether levels of indiscriminate violence in a particular country or part of a country reach such a high level is one for the authorities and the courts of the member states.
- 3.15.12** The evidence does not support a conclusion that levels of indiscriminate violence are so high in any part of Afghanistan that anyone returned to any part of the country would be at risk from indiscriminate violence. It is therefore necessary to consider in each case the circumstances of the individual applicant to ascertain whether s/he personally would be at real risk from indiscriminate violence in all the circumstances of the case. If s/he would be, a grant of Humanitarian Protection may be appropriate. However, in order for a claim for Humanitarian Protection to succeed on those grounds, an individual who was able to establish that they personally would be at risk from indiscriminate violence in one part of Afghanistan would also need to show that there was not a viable relocation option open to them in another part of Afghanistan.

### **3.16 Prison conditions**

- 3.16.1** Applicants may claim they cannot return to Afghanistan due to the fact that 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.

- 3.16.2** 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 to breach Article 3 in order to justify a grant of asylum.
- 3.16.3** According to the U.S. Department of State, prison conditions remain poor. Most are reportedly decrepit, severely overcrowded, unsanitary, and fall well short of international standards. There are reports of prisoners being beaten and tortured. In 2008, the Afghanistan Independent Human Rights Commission continued to report that inadequate food and water, poor sanitation facilities, insufficient blankets, and infectious diseases were common conditions in the country's prisons. Infirmaries, where they existed, were under equipped. Contagious and mentally ill prisoners were rarely separated from other prisoners.<sup>70</sup>
- 3.16.4 *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. Where case owners believe that an individual is likely to face imprisonment on return to the 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 the Asylum Instructions 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 they have family to return to or there are adequate reception, care and support arrangements.
- 4.3.2** Afghanistan acceded to the Convention on the Rights of the Child in 2002 and has strengthened legal provisions to protect children. However child abuse is reportedly endemic throughout the country, including general neglect, physical abuses, abandonment, and confinement to work in order to pay off family debts.<sup>71</sup>
- 4.3.3** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave

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<sup>70</sup> USSD 2008: Afghanistan (Section 1)

<sup>71</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Children) & USSD 2008: Afghanistan (Section 5)

on any more favorable grounds 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** The health infrastructure in Afghanistan damaged or destroyed by years of conflict, is gradually being re-established by the Afghan Government with the help of the international community. The health services inherited at the end of 2001 were limited in capacity and coverage, and while the Ministry of Health has shown leadership, the health status of the Afghan people is still among the worst in the world. The majority of the population lacks access to safe drinking water and sanitary facilities. Disease, malnutrition and poverty are rife and an estimated 6.5 million people remain dependant on food aid.<sup>72</sup>
- 4.4.3** However, there have been some positive developments. The World Bank, the United States Agency for International Development, and the European Community are helping the Afghan Ministry of Health, through non-governmental organisations, to provide a basic healthcare service to the entire population. The package consists of services for maternal and newborn health; child health and immunisation; nutrition; communicable disease; mental health; disability; and supply of essential drugs. The Ministry of Health has also established a Child and Adolescent Health Department and a Department of Women and Reproductive Health to tackle high infant and maternal mortality rates.<sup>73</sup>
- 4.4.4** Immunisation is having a real impact. In March 2006, a Ministry of Public Health, UNICEF and World Bank nationwide campaign was launched to immunise 7 million children, in all of Afghanistan's 34 provinces, against polio. Since 2002, UN agencies have administered 16 million vaccinations against measles, saving an estimated 35,000 lives. Cholera and diarrhoeal diseases are being tackled through health education, water chlorination and the construction of wells throughout the country.<sup>74</sup>
- 4.4.5** In June 2007, the North Atlantic Treaty Organisation (NATO) reported that 83% of the population now has access to medical facilities, compared to 9% in 2004. NATO also noted that more than 4,000 medical facilities had opened since 2004.<sup>75</sup>
- 4.4.6** Reliable data on HIV prevalence in Afghanistan is sparse. In August 2008, the World Bank noted that 478 HIV cases had been reported, however, UNAIDS and the World Health Organization have estimated that the number of people living with HIV could be between 1,000 and 2,000. The World Health Organisation is supporting the Government's efforts to combat HIV/AIDS and the Ministry of Health has announced efforts to provide antiretroviral therapy for the first time to forty of those diagnosed with HIV/AIDS.<sup>76</sup>
- 4.4.7** In general, medical treatment is not available in Afghanistan for serious diseases or chronic medical conditions. 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.

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<sup>72</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Medical Issues) & FCO Country Profile 2009

<sup>73</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Medical Issues) & FCO Country Profile 2009

<sup>74</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Children) & FCO Country Profile 2009

<sup>75</sup> FCO Country Profile 2009

<sup>76</sup> COIS Afghanistan Country Report February 2009 (Human Rights: Medical Issues)

## **5. Returns**

- 5.1** 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.
- 5.2** In May 2006, the UNHCR stressed the importance of traditional community and family structures in providing support mechanisms that the availability of support to an individual is therefore limited to the area where those links exist, and that return elsewhere may expose returnees to insurmountable difficulties.<sup>77</sup>
- 5.3** The UNHCR identified a number of categories of would be returnees who may therefore face particular difficulties on return. These include unaccompanied females; single parents with small children and without a breadwinner; unaccompanied elderly people; unaccompanied children; victims of serious trauma (including rape); physically disabled persons; mentally disabled persons; and persons with medical illness (contagious, long-term or short-term).<sup>78</sup>
- 5.4** In each case, asylum and human rights claims made by people in the above categories must be decided on the basis of the circumstances of the particular individual and the risk to that individual, using the latest available country information and the relevant guidance contained in this OGN and the IDIs. The fact that an individual is included in a category defined by UNHCR is not in itself decisive.
- 5.5** 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.
- 5.6** Afghan nationals may return voluntarily to any region of Afghanistan at any time by way of the Voluntary Assisted Return and Reintegration Programme 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 travel documents and booking 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. Those wishing to avail themselves of this opportunity for assisted return should be put in contact with the IOM offices in London on 0800 783 2332 or [www.iomlondon.org](http://www.iomlondon.org).

## **6. Entry clearance facilities**

- 6.1** The British Embassy in Kabul does not have the facility to process any applications for

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<sup>77</sup> United Nations High Commissioner for Refugees (UNHCR): Humanitarian Consideration with regard to Return to Afghanistan dated May 2006

<sup>78</sup> UNHCR: Humanitarian Consideration with regard to Return to Afghanistan dated May 2006

entry clearance. Therefore, applications need to be made via one of the Visa Application Centres in Pakistan (Islamabad, Lahore, Karachi, and Mirpur) run by Gerry's International on behalf of the British High Commission (BHC).<sup>79</sup>

- 6.2** Afghan nationals require visas to enter Pakistan. The Pakistani Embassy and Consulate Offices in Afghanistan notified the UK Border Agency in September 2008 that they would no longer issue visas for Afghan nationals wishing to travel to Pakistan in order to lodge a visa application for a third country. As a result of the change in policy by the Government of Pakistan, the UK Border Agency has designated the BHC in New Delhi as an additional post that will accept visa applications from Afghan nationals.<sup>80</sup>
- 6.3** The number of applications for entry clearance made by Afghans in Pakistan since the Government of Pakistan changed their visa policy indicates that Afghans still have no difficulty entering Pakistan to apply for entry clearance. Applicants simply inform the Government of Pakistan that they are entering Pakistan for a visit; they are then issued a visa to enable them to enter Pakistan.<sup>81</sup>
- 6.4** It is possible to travel from Afghanistan to Pakistan safely either by air with Pakistan International Airlines or by road. From April 2008 to 1 December 2008, the BHC in Islamabad received 2,048 applications from Afghan nationals of which 1,099 were for settlement (including EEA family permits).<sup>82</sup>
- 6.5** On 6 March 2007, the BHC in Islamabad introduced a requirement that biometric data (fingerprints and a digital photograph) be supplied with all visa applications. The requirement is not unique to Afghan applicants nor is it limited to the BHC in Pakistan. New applications for settlement are normally dealt with within fifty days.<sup>83</sup>
- 6.6** Following the bombing of the Marriot Hotel in Islamabad in September 2008 and a subsequent review of security by commercial partners, all visa applicants wishing to lodge their application in Pakistan must first get an appointment for one of the Visa Application Centres. Following the attack, the Visa Application Centres in Islamabad, Lahore and Karachi were temporarily closed. All three centres have reopened, but the Mirpur Visa Application Centre remains closed whilst further security enhancements are put in place. The Mirpur centre is expected to reopen within the next three months.<sup>84</sup>
- 6.7** Visa applications in India should be lodged at the Visa Application Centre in New Delhi, with processing times and requirements for applications similar to those in Pakistan. All Afghan nationals require a visa to enter India. The visa is free of charge and takes approximately two weeks to be processed. Once issued the visa is valid for six months. There are flights to India three days a week. Kam Air flies once a week and Indian Airways fly twice weekly.<sup>85</sup>
- 6.8** **Case law.**

**SM and others (Entry Clearance - proportionality) Afghanistan CG [2007] UKAIT 00010.** The AIT found that there were no facilities for Afghan nationals to obtain entry clearances from Afghanistan or elsewhere. Where an appellant meets all the relevant requirements under the immigration rule and but for the absence of entry clearance he would qualify and the respondent cannot show that it is practicable for him to obtain entry clearance, the claim may succeed under Article 8 if the appellant shows that entry clearance

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<sup>79</sup> FCO: UK in Afghanistan – Visas for the UK, FCO: UK in Pakistan – Visas for the UK & UK Border Agency letter dated 16 December 2008

<sup>80</sup> UK Border Agency letter dated 16 December 2008

<sup>81</sup> UK Border Agency letter dated 16 December 2008

<sup>82</sup> UK Border Agency letter dated 16 December 2008

<sup>83</sup> UK Border Agency letter dated 16 December 2008

<sup>84</sup> UK Border Agency letter dated 16 December 2008

<sup>85</sup> UK Border Agency letter dated 16 December 2008

cannot in practice be obtained because of the lack of accessible facilities.

**6.9 Conclusion.** Since the case of SM and Others, there is now clear evidence that Afghan nationals are able, without undue difficulty, to make visa applications in Pakistan, and that they routinely do so. Afghans can also make visa applications at the Visa Application Centre in New Delhi, India. However, three recent judgments handed down from the House of Lords, most notably *Chikwamba v The Secretary of State for the Home Department* [2008], have had an impact on the way the UK Border Agency must consider human rights claims under Article 8 of the ECHR. Case owners should refer to the Article 8 Casework Instructions for the up-to-date policy in light of these judgments. All cases should be considered on their own merits, but in some cases it is likely to be disproportionate to expect Afghan nationals who have established family ties in the UK, and for whom there are insurmountable obstacles to family life in its entirety being exercised abroad, to return to Afghanistan and apply for entry clearance.

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**Directorate of Central Operations and Performance**  
**8 April 2009**