

OPERATIONAL GUIDANCE NOTE

AFGHANISTAN

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1. Introduction

- 1.1** This document summarises 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. Caseowners should refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must be read in conjunction with any COI Service Afghanistan Country of Origin Information at:
- 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 information set out below. 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, caseowners 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).¹
- 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, but not before thousands of Taliban and Al Qaeda members were able to flee to Pakistan. 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 and comprising 30 members (11 Pashtuns, 8 Tajiks, 5 Hazaras, 3 Uzbeks and 3 representatives of smaller tribal and religious groups).²
- 2.3 In January 2004, a new constitution was adopted at a special Constitutional Loya Jirga (grand council). Islam is accorded a central role in a constitutional democracy with a strong presidential system and a two-chamber national assembly, strong emphasis 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. Dari and Pashto are official languages, and other languages are regarded as official in the area where the majority speaks them. The Constitution provides equal rights to men and women, and the right to practice minority religions, although human rights advocates have expressed concern that there are not adequate provisions to guarantee these and other rights in practice.³
- 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 sufficient to have materially 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%.⁴
- 2.5 The violence that had been expected to accompany the election did not materialise, but Spring 2005 saw an increase in violence. This was worst in the south of the country, but other areas were also affected. Although much of this violence was attributed to the Taliban, it was also suspected that foreign fighters were increasingly involved and in June 2005, Al Qaeda was blamed for the bombing of a Kandahar mosque in which 20 people were killed.⁵

¹ Home Office COI Service Afghanistan Country of Origin Information Report 2006 (Background Information: History) & Foreign and Commonwealth Office (FCO) Country Profile 2006

² COIS Afghanistan Country Report 2006 (Background Information: History), FCO Country Profile 2006 & Europa - Regional Surveys of the World: South Asia 2005 (page 61)

³ COIS Afghanistan Country Report 2006 (Background Information: Geography & Constitution) & FCO Country Profile 2006

⁴ COIS Afghanistan Country Report 2006 (Background Information: History)

⁵ COIS Afghanistan Country Report 2006 (Background Information: History), Radio Free Europe/Radio Liberty 'Afghanistan: violence spiralling as elections near' dated 22 August 2005, United Nations Assistance Mission in Afghanistan (UNAMA): Statement of the Special Representative of the Secretary General for

- 2.6** On 18 September 2005, Afghanistan held elections to the lower house of parliament (the 249 seat Wolesi Jirga) and for seats on 34 provincial councils. There was some violence in the run-up to polling day, mostly blamed on the Taliban, but the poll itself was relatively peaceful. Early reports suggested that ballots cast at around 300 of the 26,000 polling stations were excluded from the count because of fraud, but officials said there was no systematic fraud and expected that the outcome would reflect the will of the people.⁶
- 2.7** The 34 provinces are the multi-member electoral constituencies, with one-person-one-vote and the candidates with the highest number of votes winning the seats in that constituency. The number of seats in each constituency varies, with 33 in Kabul. The rules provide that if any successful candidate dies or is disqualified before the first session of the Wolesi Jirga the seat automatically goes to the losing candidate with the highest number of votes. As a result, there were concerns that candidates who were believed to have received sufficient votes to gain a seat in the Wolesi Jirga following September's election were being targeted by those lower down the list, with one top-scoring candidate having been murdered and several others having survived attempts on their life.⁷
- 2.8** Afghanistan's legal system was all but destroyed by the many years of conflict. The Bonn Agreement called for the establishment of a Judicial Commission to rebuild the domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions. The Afghan authorities, working with the United Nations Assistance Mission in Afghanistan (UNAMA), are taking steps to reform the judiciary and legal system and a Judicial Commission is working to address its rehabilitation. In Kabul, reconstruction of the state infrastructure has commenced.⁸
- 2.9** Although some progress in the reform efforts is being made, Afghanistan's justice system continues to suffer from severe and systemic problems. There is poor access to the courts and over half the population does not have access to judicial and legal services. In rural areas the legal system is ineffective and in some areas non-existent whilst the majority of disputes outside Kabul are dealt with by customary justice mechanisms. Where the court system does operate it is beset by lack of resources, systematic corruption, lack of political will to enforce the law, powerful patronage relationships and effective immunity from the law for individuals who are able to use their position to threaten, intimidate or otherwise influence proceedings. The results include lengthy pre-trial detentions that can exceed the potential sentence for the offence; violations of due process; lack of representation; and systematic unfairness against women, children, minorities and others.⁹
- 2.10** Afghanistan's security forces comprise the army and air force, police forces including national, border, highway and counter-narcotics, and the intelligence service. These forces are moving towards a more professional approach with the assistance of the international community, and the power of warlords and commanders has been reduced accordingly. However, in many, possibly most areas, these figures continue to exert influence, often because commanders have been appointed to official positions in the police force in the very areas where they have their power bases. The Government is seeking to address this but in many cases allegiances are to ethnic and local leaders rather than to the policies of the Government and the security services are unable to control the warlords, local commanders, drug cultivation and trafficking, common criminality and human rights abuses. Therefore, the extent to which the public can rely on the protection of the police depends to a large extent on the loyalties of the particular police officers they approach for help. There

Afghanistan on violence in Afghanistan dated 25 June 2005 & Guardian Unlimited: Special reports 'Kabul police chief dies in mosque bombing' dated 2 June 2005

⁶ COIS Afghanistan Country Report 2006 (Background Information: History) & BBC News 'Afghan initial poll winners named' dated 6 October 2005

⁷ Institute for war and peace reporting (IWPR). Afghan Recovery Report: Open season on winning candidates

⁸ COIS Afghanistan Country Report 2006 (Human Rights: Judiciary)

⁹ COIS Afghanistan Country Report 2006 (Human Rights: Judiciary)

are police who are loyal to the Government and who will uphold the law to the extent that they are able, but they are often constrained by a lack of resources.¹⁰

- 2.11** According to the report of the United Nations' independent expert on the situation of human rights in Afghanistan on 11 March 2005, "President Karzai and his Government ...are committed to advancing the promotion and protection of human rights in Afghanistan...." In 2006, the Foreign and Commonwealth Human Rights Annual Report also noted that the number of girls attending primary school had increased; a fully functioning and independent human rights commission was in place across the country; and President Karzai had made a commitment to pursue transitional justice issues.¹¹ However, the United Nations report also drew attention to an array of continuing violations including: repressive acts by factional commanders; arbitrary arrest and other violations by State security forces, including intelligence entities; unregulated activities of private security contractors; severe threats to human rights posed by the expanding illegal drug industry; sub-standard conditions in prisons; egregious violations of women's rights by the State and as related to an array of social practices; abuses linked to customary law decisions; violations of children's rights; inadequate attention to the disabled; land claims and other issues faced by returning refugees and Internally Displaced Persons (IDPs); and arbitrary arrest, illegal detentions and abuses committed by the United States-led Coalition forces.¹²
- 2.12** These problems are not uniformly spread and although human rights are 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 in 2006 has continued to assist the Government in maintaining security, and creating the conditions for stabilization and reconstruction, in Kabul, and their area of operation in the north, west and south of Afghanistan.¹³ However, as the United Nations Independent Expert observed in September 2004 "As political tensions ebb and flow in different regions, the human rights situation worsens or improves. Consequently, any regional reporting will differ, not only according to place, but also to time and circumstances." In September 2006, for example, the United Nations Secretary-General noted that the human rights implications of the deteriorating security situation in some areas of Afghanistan are grave and that civilians have at times become indirect victims of attacks by insurgents and military forces.¹⁴

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 instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason -

¹⁰ COIS Afghanistan Country Report 2006 (Human Rights: Security Forces)

¹¹ FCO: Human Rights Annual Report 2006 (pages 30 - 36)

¹² COIS Afghanistan Country Report 2006 (Human Rights: Abuses By Non-Government Armed Forces; Judiciary; Arrest and Detention: Legal Rights; Prison Conditions; and Women) & United Nations Economic and Social Council - Commission on Human Rights: Report of the independent expert on the situation of human rights in Afghanistan

¹³ COIS Afghanistan Country Report 2006 (Human Rights: Security Forces)

¹⁴ COIS Afghanistan Country Report 2006 (Human Rights: Introduction) & U.S. Department of State Report on Human Rights Practices (USSD) 2006: Afghanistan (Introduction)

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 Instructions on Assessing the Claim).

- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Caseowners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the Asylum Instructions on Assessing the Claim)
- 3.5** All Asylum Instructions can be accessed via the IND website at:
<http://www.ind.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 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 Transitional Administration, or by political factions due to a perceived association with the Taliban.
- 3.6.2 *Treatment.*** Pashtuns (also called Pathans) are Sunni Muslims predominant in the southeast and southwest of the country and are the largest single ethnic group in Afghanistan, constituting some 38% of the population. Pashtuns have much in common in terms of culture, language and traditions with their fellow Pashtu-speakers in the North West Frontier and Baluchistan provinces of Pakistan.¹⁵
- 3.6.3** 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 – Hamid 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.¹⁶
- 3.6.4** Pashtun leaders have held political power for much of Afghanistan's history. Some Pashtun leaders were broadly supportive of the Taliban regime and many Taliban fighters were Pashtuns. As a result, when Taliban rule ended in 2001, Pashtuns in the north of Afghanistan were the target of ethnically motivated violence and continue to suffer harassment and insecurity. Pashtuns in Kabul have not faced the same level of targeting but have reportedly encountered some harassment and discrimination by police and intelligence officials.¹⁷
- 3.6.5 *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 extent on the loyalties of individual officers. The International Security Assistance Force

¹⁵ COIS Afghanistan Country Report 2006 (Human Rights: Ethnic Groups)

¹⁶ COIS Afghanistan Country Report 2006 (Human Rights: Ethnic Groups) & The Christian Science Monitor 2004 edition. Key to governing Afghans: The clans

¹⁷ COIS Afghanistan Country Report 2006 (Human Rights: Ethnic Groups) & USSD 2006 (Sections 1, 3 & 5)

(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.¹⁸

- 3.6.6** Afghan society is characterised by ethnic and tribal affiliation and traditional family and community structures constitute the main protection and survival mechanism.¹⁹ 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 tribal protection does not, however, constitute sufficiency of protection for the purposes of the Refugee Convention.
- 3.6.7** 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 claimant, and indeed the claimant's own house. Factors to take into account in deciding whether sufficient protection is available to an individual claimant will include whether they, or their would be persecutors, have influential connections in the current administration.
- 3.6.8** While Pashtuns in Kabul have not been systematically targeted to the same extent as those in the north of the country, they do face some harassment and discrimination by local police and intelligence officials. Where the claimants fear of ill-treatment/persecution is at the hands of the state authorities they cannot apply to these authorities for protection.
- 3.6.9** 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 - 3.14.8.
- 3.6.10 *Internal relocation.*** The Constitution provides for freedom of movement within Afghanistan and many men and women travel relatively freely. However, in 2006 certain laws limited citizens' movement and the Government limited citizens' movement when justified by security interests. Local customs and traditions may also make it very difficult for women to travel without a male escort.²⁰ 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 or from some parts of Herat who fear persecution in their home area may relocate to the southeast or southwest 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 claimants 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 claimant would have a well-founded fear of persecution and where they could rely on sufficient protection against generalised threats by non-state agents.
- 3.6.11** 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

¹⁸ COIS Afghanistan Country Report 2006 (Human Rights: Security Situation; Security Forces; and Judiciary) & USSD 2006 (Section 1)

¹⁹ COIS Afghanistan Country Report 2006 (Human Rights: UNHCR Guidelines On Those Afghans Who May Be At Risk) & United Nations High Commissioner for Refugees (UNHCR): Humanitarian Consideration with regard to Return to Afghanistan May 2006

²⁰ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Movement) & USSD 2006 (Section 2)

support network.²¹ 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.

3.6.12 *Case law.*

[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.

3.6.13 *Conclusion.* Whilst Pashtuns from the southeast or southwest 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.

3.6.14 In the north of Afghanistan and parts of Herat 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 southeast or southwest of the country, where Pashtuns are not a minority, or to Kabul, where sufficient protection is generally available. In such cases a grant of asylum or Humanitarian Protection will not be appropriate.

3.6.15 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, caseowners 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 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 has resulted in them being at risk of ill-treatment by the Afghan authorities.

3.7.2 *Treatment.* Two factions arose following a split within Hizb-e-Islami in 1979 – Hizb-e-Islami (Hekmatyar) and Hizb-e-Islami (Khalis). The leader of Hizb-e-Islami (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. In September 2004, the United Nations appointed independent expert of the Commission on Human Rights noted that Hizb-e-Islami, the Taliban and Al-Qaeda were known as “anti-Coalition forces” or “anti-Government forces” which represent a significant security threat in Afghanistan. The independent expert also reported that Hizb-e-Islami had engaged in steady acts of relatively small-scale violence, targeted assassinations, bombings, rocket attacks and occasional armed assaults.²²

3.7.3 Following the Constitutional Loya Jirga, President Karzai appointed a number of former Hizb-e-Islami (Hekmatyar) commanders and political figures to high-level posts such as governor and minister-advisor indicating that some former members of the party have now formed an alliance with the Transitional Administration.²³

²¹ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Movement) & USSD 2006 (Section 2)

²² COIS Afghanistan Country Report 2006 (Human Rights: Abuses By Non-Government Armed Forces)

²³ COIS Afghanistan Country Report 2006 (Human Rights: Abuses By Non-Government Armed Forces)

- 3.7.4** 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 found that there would be few problems for those who are no longer considered a threat, although in the case of RS outlined below, there was found to be an ongoing real risk. There is no concrete evidence about what treatment current or former members would encounter if they were in fact facing difficulties with the authorities.
- 3.7.5 *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 extent on the loyalties of individual officers. The International Security Assistance Force (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.²⁴
- 3.7.6** 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 Mujahedin 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 claimant, and indeed the claimant's own house. Factors to take into account in deciding whether sufficient protection is available to an individual claimant will include whether they, or their would be persecutors, have influential connections in the current administration. For example, a number of former Hizb-e-Islami supporters hold prominent positions in Hamid Karzai's Government.²⁵
- 3.7.7** 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 - 3.14.8.
- 3.7.8 *Internal relocation.*** The Constitution provides for freedom of movement within Afghanistan and many men and women travel relatively freely. However, in 2006 certain laws limited citizens' movement and the Government limited citizens' movement when justified by security interests. Local customs and traditions may also make it very difficult for women to travel without a male escort.²⁶ This makes it practical for men and women with a male support network who have a well-founded but localised fear of persecution at the hands of non-state agents in one area of Afghanistan to relocate to other areas of the country where they would not be at risk. Low profile former Hizb-e-Islami supporters who are likely to be known only in their home area can relocate to another part of the country, and it is reasonable to expect them to do so. Claimants with a higher profile would be more likely to be widely known and would therefore be less likely to be able to rely on internal relocation to avoid a real risk of persecution. Caseowners will need to make a case by case judgement on where on the scale an individual claimant lies.
- 3.7.9** 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.²⁷ Sufficient protection is not available to them, even in Kabul, and it would

²⁴ COIS Afghanistan Country Report 2006 (Human Rights: Security Situation; Security Forces; and Judiciary) & USSD 2006 (Section 1)

²⁵ COIS Afghanistan Country Report 2006 (Human Rights: Abuses By Non-Government Armed Forces)

²⁶ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Movement) & USSD 2006 (Section 2)

²⁷ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Movement) & USSD 2006 (Section 2)

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.

3.7.10 Where the claimant's fear is of ill-treatment or persecution by the state authorities, relocation to a different area of the country to escape this threat is not possible.

3.7.11 Caselaw.

[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.

[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. The caselaw is not clear on whether there is a real risk of persecution for Hizb-e-Islami supporters. *RS* above was heard after, but promulgated before, *WK*. Therefore, caseowners should base their decisions on the circumstances of the individual claimant and the balance of the current country information. This points to former members of either faction not having any difficulty with the current administration so long as it is clear that they are no longer associated with Hizb-e-Islami. It is therefore unlikely that former members will have a well-founded fear of persecution by the state and a grant of asylum or Humanitarian Protection will not be appropriate. Claims from current members of the Hekmatyar faction should be referred to a Senior Caseworker.

3.7.13 It may be that a claimant 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 (see above). Claimants 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 claimants 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 Caseowners should note that Hizb-e-Islami has been responsible for serious human rights abuses, some of which amount to war crimes. If it is accepted that the claimant was an active operational member or combatant for Hizb-e-Islami and has been involved in such actions, caseowners should consider whether one of the Exclusion clauses is applicable. Caseowners 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 the Mujahedin warlords or local populace.

3.8.2 Treatment. In September 2004, the United Nations appointed independent expert of the Commission on Human Rights noted that Hizb-e-Islami, the Taliban and Al-Qaeda were known as "anti-Coalition forces" or "anti-Government forces" which represent a significant security threat in Afghanistan. The independent expert also reported that the Taliban had

engaged in steady acts of relatively small-scale violence, targeted assassinations, bombings, rocket attacks and occasional armed assaults. The level of insurgency has dramatically increased in the last 2 years, especially in southern Afghanistan where the Taliban has engaged in attacks against the transition process, the Government and its institutions, NATO forces, foreign interests and nationals, international organisations, and international aid workers and their local counterparts.²⁸

- 3.8.3** Some former Taliban officials, however, have distanced themselves from the militants who have continued attacks in the southern and eastern regions of Afghanistan. A number of Taliban figures and supporters have joined the reconciliation programme initiated by President Karzai and enjoyed success in the parliamentary elections of September 2005. This includes former Taliban Deputy Minister, Arsalan Rahmani who was appointed to the Meshrano Jirga (Upper House of parliament) in December 2005.²⁹
- 3.8.4** The extent to which those associated with the Taliban 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. There is no concrete evidence about what treatment current or former members of the Taliban would encounter if they were in fact facing difficulties with the authorities, but the Danish fact-finding mission of March/April 2004 found it unlikely that they face problems solely because they are former members of the Taliban.³⁰
- 3.8.5** The Danish fact-finding mission of March/April 2004 found that those who were guilty of human rights abuses were likely to get into trouble with local commanders or the local community, however, low profile or ordinary Taliban members generally did not face problems when integrating in the local community. In 2005, there were reports from the eastern and southeastern regions that Afghans are sometimes falsely accused of supporting active Taliban networks. The accusers may be local commanders or members of security forces intent on extorting money from influential and rich Afghans. In other instances, accusations may be a means to take revenge against an Afghan individual for private reasons.³¹
- 3.8.6** **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. The International Security Assistance Force (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.³²
- 3.8.7** 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 Mujahedin 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 claimant, and indeed the claimant's own house. Factors to take into account in deciding whether sufficient protection is available to an individual claimant will include whether they, or their would be persecutors, have influential connections in the current administration.

²⁸ COIS Afghanistan Country Report 2006 (Human Rights: Abuses By Non-Government Armed Forces)

²⁹ COIS Afghanistan Country Report 2006 (Human Rights: Abuses By Non-Government Armed Forces)

³⁰ COIS Afghanistan Country Report 2006 (Human Rights: Abuses By Non-Government Armed Forces)

³¹ COIS Afghanistan Country Report 2006 (Human Rights: Abuses By Non-Government Armed Forces)

³² COIS Afghanistan Country Report 2006 (Human Rights: Security Situation; Security Forces; and Judiciary) & USSD 2006 (Section 1)

- 3.8.8** 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 - 3.14.8.
- 3.8.9 *Internal relocation.*** The Constitution provides for freedom of movement within Afghanistan and many men and women travel relatively freely. However, in 2006 certain laws limited citizens' movement and the Government limited citizens' movement when justified by security interests. Local customs and traditions may make it very difficult for women to travel without a male escort.³³ This makes it practical for men and women with a male support network who have a well-founded but localised fear of persecution at the hands of non-state agents in one area of Afghanistan to relocate to other areas of the country where they would not be at risk. Low profile former Taliban supporters who are likely to be known only in their home area can relocate to another part of the country, and it is reasonable to expect them to do so. Claimants with a higher profile would be more likely to be widely known and would therefore be less likely to be able to rely on internal relocation to avoid a real risk of persecution. Caseowners will need to make a case by case judgement on where on the scale an individual claimant lies.
- 3.8.10** 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.³⁴ 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.
- 3.8.11** Where the claimant's fear is of ill-treatment or persecution by the state authorities, relocation to a different area of the country to escape this threat is not possible.
- 3.8.12 *Caselaw.***
- [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.
- [2005] UKIAT 00096 ZN:** CIPU [now COIS] list of warlords is not complete and there may be individuals who cannot rely on sufficient protection, even in Kabul.
- 3.8.13 *Conclusion.*** Caseowners should base their decisions on the circumstances of the individual claimant 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 and it is therefore unlikely that such claimants will have a well-founded fear of persecution by the state and a grant of asylum or Humanitarian Protection is not likely to be appropriate. Claims from current members of the Taliban should be referred to a Senior Caseworker.
- 3.8.14** It may be that a claimant 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 (see above). Claimants 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 claimants who would not be able to rely on sufficient protection in Kabul. In the latter case, a grant of asylum may be appropriate.

³³ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Movement) & USSD 2006 (Section 2)

³⁴ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Movement) & USSD 2006 (Section 2)

3.8.15 Caseowners should note that the Taliban has been responsible for serious human rights abuses, some of which amount to war crimes. If it is accepted that the claimant was an active operational member or combatant for the Taliban and has been involved in such actions, caseowners should consider whether one of the Exclusion clauses is applicable. Caseowners 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 1996.³⁵

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.³⁶

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.³⁷

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 families or high ranking members of social organisations such as the Democratic Youth Organization and the Democratic Women's Organization. Also 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

³⁵ COIS Afghanistan Country Report 2006 (Annex B: Political organisations and other groups)

³⁶ Amnesty International (AI). Afghanistan: Making human rights the agenda (Chapter 2)

³⁷ COIS Afghanistan Country Report 2006 (Human Rights: Political Affiliation)

Afghanistan); Hezb-e-Mili Afghanistan (National Party of Afghanistan); Hezb-e-Wahdat-e-Mili Afghanistan (National Solidarity Party of Afghanistan).³⁸

- 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.³⁹
- 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. The International Security Assistance Force (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.⁴⁰
- 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 by non-state agents 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 claimant, and indeed the claimant's own house. Factors to take into account in deciding whether sufficient protection is available to an individual claimant will include whether they, or their would be persecutors, have influential connections in the current administration. For example, several high ranking former communists are well placed in the administration.
- 3.9.9** Where a claimant'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 Constitution provides for freedom of movement within Afghanistan and many men and women travel relatively freely. However, in 2006 certain laws limited citizens' movement and the Government limited citizens' movement when justified by security interests. Local customs and traditions may make it very difficult for women to travel without a male escort.⁴¹ 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 would not therefore 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 the claimant's fear is of ill-treatment or persecution by the state authorities, relocation to a different area of the country to escape this threat is not possible.

³⁸ COIS Afghanistan Country Report 2006 (Human Rights: Political Affiliation)

³⁹ COIS Afghanistan Country Report 2006 (Human Rights: Political Affiliation)

⁴⁰ COIS Afghanistan Country Report 2006 (Human Rights: Security Situation; Security Forces; and Judiciary) & USSD 2006 (Section 1)

⁴¹ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Movement) & USSD 2006 (Section 2)

3.9.12 *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.

3.9.13 *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.

3.9.14 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 claimant 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 (see above). Claimants 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 claimants 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 claimant in such a position will also have rendered him liable to exclusion under the Refugee Convention.

3.9.15 Different considerations apply to women claimants but such claims are unlikely to arise in this category.

3.9.16 Caseowners should note that the PDPA have in the past been responsible for serious human rights abuses, some of which may amount to war crimes. If it is accepted that the claimant was involved in such actions, caseowners should consider whether one of the Exclusion clauses is applicable. Caseowners 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 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. The work of the organisation and the methods it used means that all NCO's and officers employed by KhAD and WAD were involved in serious human rights violations against real or perceived opponents of the communist regime. 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 KhAD, the extent to which they have been involved in human rights violations and their political and tribal links.⁴²

⁴² COIS Afghanistan Country Report 2006 (Human Rights: Political Affiliation)

- 3.10.3** Not all former KhAD operatives face risk from the current government or others within the country. Some estimates suggest that around half of the current Afghanistan intelligence services are 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 7th department of the intelligence service had earlier served the same position in KhAD.⁴³
- 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. The International Security Assistance Force (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.⁴⁴
- 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. 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 claimant, and indeed the claimant's own house. Factors to take into account in deciding whether sufficient protection is available to an individual claimant will include whether they, or their would be persecutors, have influential connections in the current administration.
- 3.10.6** Where a claimant'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 Constitution provides for freedom of movement within Afghanistan and many men and women travel relatively freely. However, in 2006 certain laws limited citizens' movement and the Government limited citizens' movement when justified by security interests. Local customs and traditions may also make it very difficult for women to travel without a male escort.⁴⁵ 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. Low profile former KhAD agents who are likely to be known only in their home area can relocate to another part of the country, and it is reasonable to expect them to do so. 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 not be known.
- 3.10.8** Where the claimant's fear is of ill-treatment or persecution by the state authorities, relocation to a different area of the country to escape this threat is not possible.

3.10.9 *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

⁴³ COIS Afghanistan Country Report 2006 (Human Rights: Political Affiliation)

⁴⁴ COIS Afghanistan Country Report 2006 (Human Rights: Security Situation; Security Forces; and Judiciary) & USSD 2006 (Section 1)

⁴⁵ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Movement) & USSD 2006 (Section 2)

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.

- 3.10.10 Conclusion.** The level of risk will depend on a claimant's profile in 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.
- 3.10.11** 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.
- 3.10.12** Where a well-founded fear of persecution is established, but it is a localised risk, it would not be unduly harsh to expect the claimant 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 claimant 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.
- 3.10.13** Different considerations apply to women but such claims are unlikely to arise in this category.
- 3.10.14** Caseowners should note that KhAD have been responsible for serious human rights abuses, some of which may amount to war crimes. If it is accepted that the claimant was an active operational member of KhAD and has been involved in such actions, then caseowners should consider whether one of the Exclusion clauses is applicable. Caseowners 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.** In June 2005, the United Nations High Commissioner for Refugees (UNHCR) estimated that there were around 3,700 Sikh and Hindu families still living in Afghanistan, the numbers increasing slowly but steadily as people returned from abroad, mainly India. The greatest concentrations are in Kabul (c. 185 families) Jalalabad (c. 160 families), Kunduz (100 families). Others live in Ghazni, Kandahar and Khost. The UNHCR estimated that previously up to 200,000 Sikhs and Hindus lived in Afghanistan.⁴⁶
- 3.11.3** There has been a major improvement in religious freedom following the fall of the Taliban. Sikh and Hindu leaders were consulted regularly during the preparation of the draft Constitution and elected three delegates, including a woman, to the Constitutional Loya Jirga (CLJ). In December 2005, it was reported that a representative for the Sikh and Hindu

⁴⁶ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Religion)

community had also been appointed to the Meshrano Jirga, the Upper House of parliament.⁴⁷

- 3.11.4** Such difficulties as Sikhs and Hindus do encounter do not appear to be at the hands of the Afghan authorities but as a result of societal discrimination and harassment. Sikh and Hindu communities have both complained of intimidation and verbal as well as, at times, physical abuse in public places, but the less distinguishable Hindu population faces little harassment. In 2003, a grenade was reportedly thrown into a Sikh temple and during 2005, there were reports that Sikhs and Hindus returning to Afghanistan faced difficulties in obtaining housing and land in Kabul and other provinces. It was also reported in 2005 that students belonging to the Sikh and Hindu faiths stopped attending schools due to harassment from both teachers and students, and that the Government had not implemented measures to protect these children.⁴⁸ The Government has, however, provided Sikhs and Hindus land on which to cremate their dead following claims that they had been denied access to their traditional cremation ground by local residents. During 2005, the Government also provided guards for five or six gurdwaras in Kabul and provided transport for worshippers to get to their temple.⁴⁹
- 3.11.5 *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 extent on the loyalties of individual officers. The International Security Assistance Force (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.⁵⁰ The Government of Afghanistan has encouraged the return of Sikhs and Hindus and shows signs that it is trying to address their concerns including in Kabul providing guards for a number of unused Sikh gurdwaras and transport for worshippers.⁵¹
- 3.11.6** 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 claimant 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 claimant, and indeed the claimant'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.
- 3.11.7** 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 - 3.14.8.
- 3.11.8 *Internal relocation.*** The Constitution provides for freedom of movement within Afghanistan and many men and women travel relatively freely. However, in 2006 certain laws limited citizens' movement and the Government limited citizens' movement when justified by security interests. Local customs and traditions may also make it very difficult for women to travel without a male escort.⁵² This makes it practical for men and women with a male

⁴⁷ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Religion) & U.S. Department of State International Religious Freedom Report (USIRFR) 2005: Afghanistan (Section II)

⁴⁸ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Religion) & USSD 2006 (Section 2)

⁴⁹ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Religion) & USIRFR 2005 (Section II)

⁵⁰ COIS Afghanistan Country Report 2006 (Human Rights: Security Situation; Security Forces; and Judiciary) & USSD 2006 (Section 1)

⁵¹ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Religion) & USIRFR 2005 (Section II)

⁵² COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Movement) & USSD 2006 (Section 2)

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 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.

3.11.9 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.⁵³ 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.

3.11.10 Case law.

[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.

3.11.11 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.

3.11.12 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.

3.11.13 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, internal relocation would be unduly harsh, and a grant of asylum may therefore be appropriate. In considering the credibility of such cases, caseowners 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 claimants may apply for asylum based on 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 claimant will sometimes state that when they attempted to retain their land or property, the warlord retaliated by orchestrating the claimant's arrest, killing the claimant's relatives or destroying relatives' houses.

⁵³ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Movement) & USSD 2006 (Section 2)

- 3.12.3 *Treatment.*** As a result of decades of armed conflict, ethnic allegiances and the prolonged absence of a legitimate centralized 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.⁵⁴ In 2005, the United Nations noted that parts of the country remained under the control of armed commanders and by groups engaged in illicit drug trade and 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.⁵⁵
- 3.12.4 *Sufficiency of protection.*** Through the implementation of the Bonn process and complex bargaining that reaches down to the district and village level, the Afghan Government has been able to extend its authority to most areas of the country and to curtail the overbearing influence of warlords in national level politics. The de facto veto that prominent warlords seemingly held over national policy from 2001-03 has largely been removed. However, the threat of warlordism has not receded. Politics at the local level is still highly militarized and factionalized, and regional commanders, who seemingly act with near impunity, remain the dominant presence in the political and economic life of villages and districts across the country. This can often leave Afghans in many areas of the country with little ability to access justice or protection from the central government.⁵⁶
- 3.12.5** There are also concerns that a number of warlords have been given key positions in President Karzai's Government and in December 2005 it was reported that the newly elected National Assembly will include 40 commanders still associated with armed groups, 24 members who belong to criminal gangs, 17 drug traffickers, and 19 members who face serious allegations of war crimes and human rights violations. There have also been allegations that Governors with records of human rights abuses and involvement in drugs are on a merry-go-round of presidential appointments. This means that when locals in one area object to an official, he is simply moved to the next province.⁵⁷
- 3.12.6** 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. The International Security Assistance Force (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.⁵⁸
- 3.12.7** 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

⁵⁴ COIS Afghanistan Country Report 2006 (Human Rights: Abuses By Non-Government Armed Forces)

⁵⁵ COIS Afghanistan Country Report 2006 (Human Rights: Abuses By Non-Government Armed Forces) & USSD 2006 (Section 1)

⁵⁶ COIS Afghanistan Country Report 2006 (Human Rights: Abuses By Non-Government Armed Forces)

⁵⁷ COIS Afghanistan Country Report 2006 (Human Rights: Abuses By Non-Government Armed Forces), International Crisis Group: 'World must help Afghanistan through its risky pause' Gareth Evans in Financial Times, 29 January 2006 & Afghan Research and Evaluation Unit (AREU): 'A House Divided? Analysing the 2005 Afghan Elections' December 2005 & USSD 2006 (Section 3)

⁵⁸ COIS Afghanistan Country Report 2006 (Human Rights: Security Situation; Security Forces; and Judiciary)

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 claimant, and indeed the claimant's own house. Factors to take into account in deciding whether sufficient protection is available to an individual claimant will include whether they, or their would-be persecutors, have influential connections in the current administration.

- 3.12.8** 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 - 3.14.8.
- 3.12.9 *Internal relocation.*** The Constitution provides for freedom of movement within Afghanistan and many men and women travel relatively freely. However, in 2006 certain laws limited citizens' movement and the Government limited citizens' movement when justified by security interests. Local customs and traditions may also make it very difficult for women to travel without a male escort.⁵⁹ 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. Therefore, claimants 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 claimants 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 claimant will include whether they, or their would-be persecutors, have influential connections in the current administration.
- 3.12.10** 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.⁶⁰ 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.
- 3.12.11 *Conclusion.*** Claimants 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 claimants 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.
- 3.12.12** 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 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 therefore be appropriate. In

⁵⁹ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Movement) & USSD 2006 (Section 2)

⁶⁰ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Movement) & USSD 2006 (Section 2)

considering the credibility of such cases, caseowners 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 beliefs and provisions of the sacred religion of Islam."⁶¹
- 3.13.3** Conversion from Islam is considered apostasy and is punishable by death under Shari'a. However, the new constitution makes no reference to Shari'a, and Article 7 commits the state to abide by the international treaties and conventions that require protection of this right. The judicial system in Afghanistan is largely comprised of conservative Islamic judges who follow Hanafi or Jafari doctrines recommending execution for converted Muslims, however, there are no recently reported cases of any Afghan being executed by court order for conversion or apostasy. This is possibly because converts will tend to keep a very low profile and small communities of Afghan converts are believed to practice Christianity in secrecy.⁶²
- 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. Mr Rahman actually converted sixteen 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 United Nations 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.⁶³
- 3.13.5** There has been a great deal of speculation about the level of societal discrimination which apostates would face and in 2005 there were some unconfirmed reports that converts to Christianity were threatened and even killed. Immigrants and non-citizens are free to worship in private locations and Christian affiliated international relief organisations generally operate throughout the country without interference. What evidence there is tends to point to proselytising being the greater risk than conversion in itself, however, 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 of parliament, Yunus Qanuni and Chief Justice Fazl Hadi Shinwar.⁶⁴

⁶¹ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Religion)

⁶² COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Religion)

⁶³ COIS Afghanistan Country Report 2006 (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

⁶⁴ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Religion), USSD 2006 (Section 2), USIRFR 2006 (Section II) & USIRFR 2005 (Section II)

- 3.13.6 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. The International Security Assistance Force (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.⁶⁵
- 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 claimants fear is of societal or non-state persecution, given Islamic law on apostasy and the conservative Islamic nature of the Afghan judiciary, apostates 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.
- 3.13.8 Internal relocation.** The Constitution provides for freedom of movement within Afghanistan and many men and women travel relatively freely. However, in 2006 certain laws limited citizens' movement and the Government limited citizens' movement when justified by security interests. Local customs and traditions may also make it very difficult for women to travel without a male escort.⁶⁶ This makes it reasonable 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.⁶⁷ 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 the treatment feared would be at the hands of the state, internal relocation is not an option. In relation to non-state actors, from the limited country information available societal antipathy to apostasy is assumed to be widespread and hence internal relocation will not be reasonable.
- 3.13.11 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.
- 3.13.12 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 recent 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.
- 3.13.13** However, each case must be considered carefully on its merits and in the event that an individual claimant 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.

⁶⁵ COIS Afghanistan Country Report 2006 (Human Rights: Security Situation; Security Forces; and Judiciary) & USSD 2006 (Section 1)

⁶⁶ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Movement) & USSD 2006 (Section 2)

⁶⁷ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Movement) & USSD 2006 (Section 2)

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.*** In December 2005, the United Nations Secretary General reported that given the oppression from which Afghan women emerged in late 2001, the gains they have made in the past few years, including in the legal, political and educational areas, are significant. In particular, there has been an enhancement of women's participation in the political process, the Government has undertaken steps to improve access to education for women, and they no longer face Taliban imposed restrictions on access to health care. These improvements are particularly noticeable in Kabul and other urban areas.⁶⁸
- 3.14.3** However, the reach of the Government is limited and women and girls in Afghanistan remain beset with security, economic, social and human rights challenges. In many areas, local customs and local commanders still dominate. Violence against women is pervasive. Women and girls are abducted, raped, forced into early marriages against their will in settlement of debts or feuds, subject to domestic violence, and liable to be murdered in a so-called honour killing if they try to escape these circumstances. This has resulted in increasing numbers of suicides, often by self-immolation.⁶⁹
- 3.14.4** Women and girls are particularly affected by the overall lack of security, which effectively limits their freedom to travel to school, work or to the hospital. For a majority of women these are in any case hypothetical restrictions because they are forbidden by male members of their family, or by local tribal and religious leaders, from working outside their homes or going to school. In June 2005, UNHCR identified as at particular risk women without male or community support, women's rights activists, women who have married non-Muslims or without the family's consent, and 'westernised' women.⁷⁰
- 3.14.5 *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 extent on the loyalties of individual officers. The International Security Assistance Force (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.⁷¹
- 3.14.6** Despite the new constitution guaranteeing equality for women, this has not yet been implemented effectively. Women are denied access to justice by their ignorance of their rights, the social stigma that attaches to them as victims, by the ineffectiveness of the investigative and judicial systems, and by the inability of the authorities to exert effective control over powerful warlords.⁷²
- 3.14.7** 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 has established the first unit of female police, and small numbers of women began to join the police force during 2005. However, in May 2005, Amnesty International reported allegations of bribery and corruption among police and of failure to follow up on cases involving violence against women.⁷³

⁶⁸ COIS Afghanistan Country Report 2006 (Human Rights: Women)

⁶⁹ COIS Afghanistan Country Report 2006 (Human Rights: Women) & USSD 2006 (Section 5)

⁷⁰ COIS Afghanistan Country Report 2006 (Human Rights: Women) & USSD 2006 (Section 5)

⁷¹ COIS Afghanistan Country Report 2006 (Human Rights: Security Situation; Security Forces; and Judiciary) & USSD 2006 (Section 1)

⁷² COIS Afghanistan Country Report 2006 (Human Rights: Women)

⁷³ COIS Afghanistan Country Report 2006 (Human Rights: Women)

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

3.14.9 *Internal relocation.* The Constitution provides for freedom of movement within Afghanistan and many men and women travel relatively freely. However, in 2006 certain laws limited citizens' movement and the Government limited citizens' movement when justified by security interests. Local customs and traditions may also make it very difficult for women to travel without a male escort.⁷⁴ 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, and it is reasonable to expect them to do so.

3.14.10 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.⁷⁵ 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.

3.14.11 *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.

3.14.12 *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. Recent 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 claimants in these categories who are able to demonstrate a well-founded fear of treatment amounting to persecution. In considering the credibility of such cases, caseowners will however wish to explore the means by which women in these circumstances travelled to the UK.

3.14.13 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 *Prison conditions*

3.15.1 Claimants may claim that 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.

3.15.2 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

⁷⁴ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Movement) & USSD 2006 (Section 2)

⁷⁵ COIS Afghanistan Country Report 2006 (Human Rights: Freedom of Movement) & USSD 2006 (Section 2)

considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

- 3.15.3 Consideration.** Prison conditions remained poor during 2005 and 2006, and there were reportedly many other secret or informal detention centres in the country. Prisoners lived in overcrowded, unsanitary conditions in collective cells and were not sheltered adequately from severe winter conditions. Prisoners reportedly were beaten, tortured, or denied adequate food whilst infectious diseases were common among prisoners.⁷⁶
- 3.15.4** A report by the United Nations independent expert on Human Rights dated 11 March 2005 noted that, despite some improvements, conditions at Pol-e Charkhi prison continued to be sub-standard including overcrowding, rudimentary medical facilities, dangerously limited medical supplies and inadequate sanitation. The conditions in Pol-e Charkhi were considered to be much better than those in other parts of the country. In Logar, the prison comprised a metal container buried in the ground and a cramped basement. Several prisoners were kept constantly shackled – a common practice throughout Afghanistan. The situation regarding prisons in Afghanistan remains serious. The Government, however, has committed to improve conditions, and a number of major prison projects are currently being carried out including two new prison facilities in Gardez and Mazar-e-Sharif, and a women's facility and a juvenile reformatory in Kabul.⁷⁷
- 3.15.5 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, conditions in prisons and detention facilities in Afghanistan are likely to reach the Article 3 threshold. Where caseowners believe that an individual is likely to face imprisonment on return to the Afghanistan they should also consider whether the claimant's actions means they fall to be excluded by virtue of Article 1F of the Refugee Convention. Where caseowners consider that this may be the case they should contact a senior caseworker for further guidance. Where individual claimants are able to demonstrate a real risk of imprisonment on return to Afghanistan and exclusion is not justified, a grant of Humanitarian Protection will 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. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.

⁷⁶ COIS Afghanistan Country Report 2006 (Human Rights: Prison Conditions) & USSD 2006 (Section 1)

⁷⁷ COIS Afghanistan Country Report 2006 (Human Rights: Prison Conditions)

- 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, in the current situation, characterized by weak rule of law and governance structures reports, child trafficking as well as child labour and forced recruitment, children continue to be exploited. Child abuse was endemic throughout the country during 2005. Abuses reportedly ranged from general neglect, physical abuses, abandonment, and confinement to work in order to pay off families' debts. Child trafficking was widespread.⁷⁸
- 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 on any more favourable grounds be granted Discretionary Leave for a period as set out in relevant Asylum Instructions.
- 4.4 Medical treatment**
- 4.4.1** Claimants 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 in August 2006 an estimated 6.5 million people remained dependant on food aid.⁷⁹
- 4.4.3** Average life expectancy is 44.5 years, 1 in 6 babies dies during or shortly after birth, 1 in 5 children dies before reaching the age of 5, 17,000 women die each year from pregnancy related causes, only 12% of the population have adequate sanitation and 13% have clean drinking water.⁸⁰
- 4.4.4** 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 NGOs, 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.⁸¹
- 4.4.5** 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.⁸²
- 4.4.6** The approach of the Afghan Government has been to concentrate on providing a universally available package of comprehensive basic health care provision to serve the whole population rather than specialist care for a few. In November 2006, the Foreign and

⁷⁸ COIS Afghanistan Country Report 2006 (Human Rights: Children)

⁷⁹ COIS Afghanistan Country Report 2006 (Human Rights: Medical Issues)

⁸⁰ COIS Afghanistan Country Report 2006 (Human Rights: Medical Issues)

⁸¹ COIS Afghanistan Country Report 2006 (Human Rights: Medical Issues)

⁸² COIS Afghanistan Country Report 2006 (Human Rights: Medical Issues) & FCO Country Profile 2006

Commonwealth Office (FCO) reported that approximately 40% of the population have access to healthcare.⁸³

- 4.4.7** In August 2006, the World Bank Group noted that 48 cases of HIV/AIDS had been reported through blood bank branches and in the same month IRIN news reported the number of registered cases of HIV as 58. There is no reliable data on the prevalence of HIV/AIDS in Afghanistan, however, and UNAIDS and the World Health Organisation (WHO) have estimated that the number of people living with HIV could be between 1,000 and 2,000. Dr Shokrullah Waheedi, head of preventive medicine in the Ministry of Public Health (MoPH), has also identified that a countrywide survey of the virus has not been conducted and that HIV/AIDS is spreading due to a lack of awareness.⁸⁴
- 4.4.8** The Government of Afghanistan has established a National HIV/AIDS/STI-control department, developed a five-year (2003-2007) strategic plan, and drawn up an annual plan of action to combat HIV/AIDS. Focal persons for HIV/AIDS have also been assigned at the Ministries of Religious Affairs, Education, and Women's Affairs. However, in May 2006 a UNHCR paper stated that it is currently not possible to treat HIV/AIDS in Afghanistan.⁸⁵
- 4.4.9** In general, medical treatment is not available in Afghanistan for serious diseases or chronic medical conditions. Where a caseowner considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** 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.⁸⁶
- 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).⁸⁷
- 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

⁸³ COIS Afghanistan Country Report 2006 (Human Rights: Medical Issues) & FCO Country Profile 2006

⁸⁴ COIS Afghanistan Country Report 2006 (Human Rights: Medical Issues)

⁸⁵ COIS Afghanistan Country Report 2006 (Human Rights: Medical Issues)

⁸⁶ United Nations High Commissioner for Refugees (UNHCR): Humanitarian Consideration with regard to Return to Afghanistan dated May 2006

⁸⁷ UNHCR: Humanitarian Consideration with regard to Return to Afghanistan dated May 2006

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 United Nations High Commissioner for Refugees (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 run 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 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Afghan nationals wishing to avail themselves of this opportunity for assisted return to Afghanistan should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.
- 6. Entry clearance facilities**
- 6.1** The designated posts for applications for entry clearance for Afghans are Islamabad in Pakistan and Dubai.⁸⁸
- 6.2** Afghan nationals require visas to enter Pakistan, but these are easy to obtain. There is a Pakistan Embassy in Kabul and Consulate General Offices in Mazar-e-Sharif, Balkh Province, Herat Province, Khandahar Province and Jalalabad, Ningarhar Province.⁸⁹
- 6.3** With regard to traveling to Pakistan, the United Nations operate daily flights from Kabul to Islamabad and Pakistan International Airlines (PIA) fly two or three times a week. There are two road crossings; at Torkham located between Ningarhar and Peshawar and at Chaman located between Khandahar and Quetta. The roads from Afghanistan to Pakistan are heavily used. There is a scheduled bus service from Jalalabad to Peshawar. There are also numerous privately run services which take people to and from the border. These usually involve passengers crossing the border by foot and picking up a connecting vehicle registered in the other country on the other side.⁹⁰
- 6.4** Although there is no infallible way of knowing how many individuals cross the Afghanistan/Pakistan border, Army General HQ estimates that there are 30,000 crossings per day. There were only three security incidents at border crossings in 2006. These all took place at the Torkham crossing and all were aimed at tankers carrying fuel to Afghanistan. The attacks have been clearly linked to ISAF presence in the area. There have been no security incidents targeting civilians.⁹¹

⁸⁸ UK Visas letter dated 9 February 2007

⁸⁹ Letters from UK Visas dated February 2007 & Letter from the Deputy High Commissioner in Islamabad

⁹⁰ Letters from UK Visas dated February 2007 & Letter from the Deputy High Commissioner in Islamabad

⁹¹ Letters from UK Visas dated February 2007 & Letter from the Deputy High Commissioner in Islamabad

6.5 Applications for entry clearance can be submitted in Peshawar or Quetta, both an hour's distance from the Afghan/Pakistani border, or in Islamabad. Afghan nationals applying for settlement in the United Kingdom are not required to submit their passports if they need them to travel back to Afghanistan. A photocopy of the passport is taken and the original document is requested if the Entry Clearance Officer decides to issue an entry clearance. All applications for settlement in the United Kingdom take twelve weeks to resolve, even if an interview is required.⁹²

6.6 From 1 April 2006 to 26 February 2007, there were a total of 4,966 entry clearance applications made by Afghan nationals received at the British High Commission in Islamabad.⁹³

6.7 Caselaw.

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

6.8 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 at the designated entry clearance post in Pakistan and that they routinely do so. Therefore, a claimant can be expected to travel to Pakistan or Dubai to apply for entry clearance in the normal way. Caseowners should still consider the individual factors of each case, but unless there are special factors relating to that individual which mean he cannot apply for entry clearance it would normally be reasonable to expect him to do so. Where in an individual case there are insurmountable obstacles to the person making an application for entry clearance and removal will therefore result in a breach of Article 8, a grant of Discretionary Leave will be appropriate.

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