



# Home Office

## OPERATIONAL GUIDANCE NOTE AFGHANISTAN

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### 1. Introduction

- 1.1** This document provides UK Border Agency (UKBA) caseworkers with guidance on the nature and handling of the most common types of claims received from nationals/residents of Afghanistan, including whether claims are, or are not likely to, justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Caseworkers **must not** base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseworkers must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. Where a claim for asylum or Humanitarian Protection is being considered, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. Where a person is being considered for deportation, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules. Caseworkers must also consider if the applicant qualifies for Discretionary Leave in accordance with the published policy.
- 1.4** If, following consideration, a claim is to be refused, caseworkers should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

## **2. Country assessment**

- 2.1** Caseworkers should refer to the relevant COI Service country of origin information material. An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern, including Afghanistan: <http://www.hrdreport.fco.gov.uk/human-rights-in-countries-of-concern/afghanistan/>

## **2.2 Actors of protection**

- 2.2.1** Caseworkers must refer to section 7 of the Asylum Instruction - [Considering the asylum claim and assessing credibility](#). To qualify for asylum an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence. Caseworkers must take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 2.2.2** Three ministries have responsibility both in law and in practice for providing security in the country. The Afghan National Police (ANP) and the Afghan Local Police (ALP), under the Ministry of the Interior (MOI), have primary responsibility for internal order, but increasingly were engaged in fighting the insurgency. The Afghan National Army (ANA), under the Ministry of Defence, is responsible for external security. The National Directorate of Security (NDS) [located in the President's Office] has responsibility for investigating cases of national security and also functions as an intelligence agency. In some areas insurgents rather than the ANP or ANA maintained control.<sup>1</sup> On 5 February [2013], the Minister of the Interior presented a draft 10-year vision for the Ministry and the ANP to the International

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<sup>1</sup> [US State Department \(USSD\) Country Reports on Human Rights Practices 2012: Afghanistan; 19/04/2013; 1d Role of the Police and Security Apparatus.](#)

Police Coordination Board. The strategy seeks to transform the police from a security force into a service focused on law enforcement and community policing.<sup>2</sup>

- 2.2.3** The Afghan Public Protection Force (APPF) is a Government security service provider intended to protect people, infrastructure, facilities and construction projects. The APPF is organized as a State Owned Enterprise (SOE) subordinate to MOI and is designed to contract with both domestic and international customers (examples include government aid organizations, nongovernmental organizations, private sector companies, ISAF, etc.) for security services within Afghanistan. The APPF replaces all non-diplomatic Private Security Companies (PSCs) in Afghanistan as the sole provider of pay-for-service security requirements; APPF guards have no mandate to investigate crimes or arrest suspects.<sup>3</sup>
- 2.2.4** As at 25 December [2012], the number of ANP personnel stood at 148,983 and ANA soldiers at 181,950, against targets of 152,000 and 195,000, respectively. The number of APPF personnel currently stands at 13,407. As at 4 February [2013], the Afghan Local Police programme had more than 20,105 personnel at 95 validated sites and was continuing to expand. While this local security initiative contributed to increased stability in some areas and progress in promoting accountability, concerns remain over insufficient implementation of policies regarding vetting, command and control and local-level oversight.
- 2.2.5** In 2012, the UN Assistance Mission in Afghanistan (UNAMA) documented 55 incidents, resulting in 62 civilian casualties (24 deaths and 38 injuries), attributed to the ALP.<sup>4</sup> There were approximately 1,563 female police officers, constituting just 1.1 percent of the total police force. The government's goal was to have 5,000 female police officers by 2014, but with just 350 female officers recruited during the year, reaching that goal appeared unlikely. While the government made efforts to recruit additional female police officers, cultural mores and discrimination rendered recruitment and retention difficult.<sup>5</sup> Human Rights Watch reported in April 2013 that female police officers are frequently the targets of harassment and assault. In recent years there have been numerous media reports of rape of female police officers by male colleagues. The lack of safe and separate toilets makes women particularly vulnerable. It considers that addressing the concerns of police women is necessary to address the rampant violence against women in wider Afghan society.<sup>6</sup>
- 2.2.6** International support for recruiting and training new ANP personnel continued with the goal of professionalizing the police force, including the continuing implementation of the General Directorate of Prisons and Detention Centres (GDPDC) staff prison reform and restructuring program. The international community worked with the government to develop and offer awareness and police training programs. In addition to core policing skills and internal investigation mechanisms to curb security force corruption and abuses, these programs emphasized law enforcement, the constitution, values and ethics, professional development, the prevention of domestic violence, and fundamental standards of human rights. Nevertheless, human rights problems persisted; observers criticized

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<sup>2</sup> [UN Security Council: The situation in Afghanistan and its implication for international peace and security; Report of the Secretary-General; 05/03/2013: paragraph 15.](#)

<sup>3</sup> [Wikipedia: Afghan Public Protection Force, web site accessed 31 May 2013](#)

<sup>4</sup> [UN Security Council: The situation in Afghanistan and its implication for international peace and security; Report of the Secretary-General; 05/03/2013 paragraphs 14 & 16.](#)

<sup>5</sup> [USSD Country Reports on Human Rights Practices 2012: Afghanistan; 19/04/2013; 6: Women](#)

<sup>6</sup> [Human Rights Watch, Afghanistan: Urgent Need for Safe Facilities for Female Police, 25 April 2013](#)

the inadequate preparation and lack of sensitivity of local security forces.<sup>7</sup>

**2.2.7** There were reports of official impunity and a lack of accountability throughout 2012. Observers believed that ALP and ANP personnel were largely unaware of their responsibilities and defendants' rights under the law.<sup>8</sup> According to UNAMA, accountability of NDS and ANP officials for torture and abuse was weak, not transparent, and rarely enforced. There was limited independent, judicial, or external oversight of the NDS and ANP as institutions, and of crimes or misconduct committed by NDS and ANP officials, including torture and abuse.<sup>9</sup> According to the January 2013 Report of the United Nations High Commissioner for Human Rights on situation of human rights in Afghanistan, "Civilian protection has declined in different parts of the country, even as the process of transitioning lead security responsibility from international military to Afghan National Security forces leadership has advanced throughout the last year".<sup>10</sup> It further notes that the "lack of professionalism and misconduct by members of the Afghan Local Police (ALP) continue to raise concerns in different parts of the country. Members of ALP have been accused of repeatedly intimidating and harassing residents, including with threats of sexual abuse of women in Chemtal district in Balkh province".<sup>11</sup> UNAMA notes particular concern with the absence of vetting during the conversion or incorporation of local defence groups into the ALP. Communities continued to report concerns regarding weakness in command and control of the ALP by the ANP, weak and ad hoc oversight, and lack of accountability for ALP members' past and ongoing human rights violations.<sup>12</sup>

**2.2.8** Freedom House in its 2013 Afghanistan report noted "In a prevailing climate of impunity, government officials as well as warlords in some provinces sanction widespread abuses by the police, military, local militias, and intelligence forces under their command, including arbitrary arrest and detention, torture, extortion, and extrajudicial killings. The Afghanistan Independent Human Rights Commission (AIHRC) receives hundreds of complaints of rights violations each year. In addition to the abuses by security forces, the reported violations have involved land theft, displacement, kidnapping, child trafficking, domestic violence, and forced marriage. The Afghan military and police continued to be plagued in 2012 by inadequate training, illiteracy, corruption, involvement in drug trafficking, and high rates of desertion. Hundreds of recruits were fired and joint patrols and training with foreign personnel were temporarily suspended in September 2012 in response to an increase in "insider" attacks that led to roughly 60 coalition deaths".<sup>13</sup>

**2.2.9** According to Human Rights Watch, "The Afghan government continues to allow well-known warlords, human rights abusers, corrupt politicians, and businesspeople to operate with impunity, further eroding its public support. Pro-government security forces were also responsible for abuses against civilians. While ALP abuses included reports of extortion, assault, rape, and murder of civilians, ALP "reform" by

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<sup>7</sup> [USSD Country Reports on Human Rights Practices 2012: Afghanistan; 19/04/2013: 1d: Role of the Police & Security Apparatus](#)

<sup>8</sup> [USSD Country Reports on Human Rights Practices 2012: Afghanistan; 19/04/2013: 1d: Role of the Police & Security Apparatus](#)

<sup>9</sup> [USSD Country Reports on Human Rights Practices 2012: Afghanistan; 19/04/2013: 1d: Role of the Police & Security Apparatus](#)

<sup>10</sup> [UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on situation of human rights in Afghanistan, 28 January 2013 paragraph 2](#)

<sup>11</sup> [UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on situation of human rights in Afghanistan, 28 January 2013 paragraph 23](#)

<sup>12</sup> [UNAMA Afghanistan Annual Report 2012: Protection of Civilians in Armed Conflict, February 2013. Afghan Local Police and Protection of Civilians p.42 and 47](#)

<sup>13</sup> [Freedom House, Freedom in the World 2013 Afghanistan, 16/03/2012](#)

the US and NATO focused solely on measures to halt the rapidly escalating number of “green on blue” killings where members of Afghan security forces, including possible Taliban infiltrators, attack their international military mentors”.<sup>14</sup> IHS Jane’s Sentinel reported 26 April 2012: “Northern provinces have become the scene of rivalry between two former United Front (UF, also known as Northern Alliance) factions, Jamiat-i-Islami and Jombesh-i-Milli. Their leading figures, respectively the Tajik Atta Mohammad and the Uzbek Abdul Rashid Dostum, had been members of the Karzai government and hold the recognised military rank of general. Neither Dostum nor Mohammad has demonstrated a genuine desire to seek peaceful resolution of their power struggle and ongoing violence indicates that northern regions will remain outside Kabul’s control for the foreseeable future”.<sup>15</sup>

**2.2.10** The North Atlantic Treaty Organisation (NATO) states “NATO’s primary objective in Afghanistan is to enable the Afghan authorities to provide effective security across the country and ensure that the country can never again be a safe haven for terrorists. Since August 2003, the NATO-led International Security Assistance Force (ISAF) has been conducting security operations, while also training and developing the Afghan National Security Forces (ANSF). Launched in 2011, the transition to Afghan full security responsibility is due to be completed at the end of 2014, when ISAF’s mission will end. NATO will then lead a follow-on mission to continue to support the development of ANSF capacity. Wider cooperation between NATO and Afghanistan will also continue under the Enduring Partnership agreement, signed in 2010 at the Lisbon Summit. NATO’s Senior Civilian Representative carries forward the Alliance’s political-military objectives in Afghanistan, liaising with the Afghan government, civil society, representatives of the international community and neighbouring countries”.<sup>16</sup>

**2.2.11** Commenting on the judicial system in its 2013 Afghanistan report, Freedom House states “The judicial system operates haphazardly, and justice in many places is administered on the basis of a mixture of legal codes by inadequately trained judges. Corruption in the judiciary is extensive, and judges and lawyers are often subject to threats from local leaders or armed groups. Traditional justice is the main recourse for the population, especially in rural areas. The Supreme Court, composed of religious scholars who have little knowledge of civil jurisprudence, is particularly in need of reform”.<sup>17</sup>

**2.2.12** The US State Department report on Human Rights Practices, Afghanistan, 2012 notes that “The law provides for an independent judiciary, but in practice the judiciary continued to be underfunded, understaffed, inadequately trained, ineffective, and subject to threats, bias, political influence, and pervasive corruption. Bribery, corruption, and pressure from public officials, tribal leaders, families of accused persons and individuals associated with the insurgency continued to impair judicial impartiality. Most courts administered justice unevenly, according to a mixture of codified law, Sharia (Islamic law), and local custom. Traditional justice mechanisms remained the main recourse for many, especially in rural areas. The formal justice system was relatively strong in urban centres, where the central government was strongest, and weaker in rural areas, where approximately 80 percent of the population lived. UNAMA documented targeted killings of judges across the country, including in Nangarhar and Laghman provinces. District prosecutors faced similar threats. The Supreme Court reported that there were an

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<sup>14</sup> [Human Rights Watch, World Report 2013 – Afghanistan, 31 January 2013](#)

<sup>15</sup> [Country of Origin Report Afghanistan, 15/02/2013, para 8.24](#)

<sup>16</sup> [NATO and Afghanistan, Nato web site: accessed 10 May 2013](#)

<sup>17</sup> [Freedom House, Freedom in the World 2013 Afghanistan, 16/03/2012](#)



estimated 1,886 judges at the primary, appellate, and Supreme Court levels, including 171 female judges, at year's end [2012]. Trial procedures rarely met internationally accepted standards".<sup>18</sup>

**2.2.13** The same USSD 2012 report states "In some areas not under government control, the Taliban enforced a parallel judicial system based on strict interpretation of Sharia. In some cases punishments imposed resulted in the accused being executed or mutilated. There was no government redress for punishments carried out by these parallel judicial structures".<sup>19</sup> In the informal system, elders relied on interpretations of Sharia and tribal customs, which generally discriminated against women. Cultural prohibitions on free travel and leaving the home unaccompanied prevented many women from working outside the home and reduced their access to education, health care, police protection, and other social services. The Ulama Council (a national clerics' body) issued statements that called for restrictions on women's ability to participate in society.<sup>20</sup>

**2.2.14** The US Department of Defence produces quarterly and annual reports on "Progress Toward Security and Stability in Afghanistan and United States Plan for Sustaining the Afghanistan National Security Forces". These reports provide up to date information on the security forces and rule of law, as well as on reconstruction.<sup>21</sup>

**2.2.15 Conclusion:** If the applicant's fear is of ill-treatment/persecution by the state authorities, or by agents acting on behalf of the state, then consideration needs to be given as to whether the fear is based on a localised, random or national threat. It should be noted that the role of the International Security Assistance Force (ISAF) is not as a source of protection for the individual citizen.

**2.2.16** If the ill-treatment/persecution is at the hands of non-state agents, then the provision of state protection outside of Kabul and other main cities might not be accessible due to the structural weakness of the security services. In Kabul and other cities the authorities are in general willing to offer protection to citizens; however their willingness and ability to do so needs to be judged against the individuals facts of each claim. It is important therefore that caseworkers refer to the most up to date country information to ascertain whether in the circumstances prevailing at the time the decision is made, effective protection is available for an individual applicant, taking full account of their personal circumstances.

**2.2.17** Effective protection is generally not available, even in Kabul, for women (see section 3.12.11)

## **2.3 Internal relocation.**

**2.3.1** Caseworkers must refer to the Asylum Instruction on [Internal Relocation](#) and in the case of a female applicant, the AI on [Gender Issues in the Asylum Claim](#), for guidance on the circumstances in which internal relocation would be a 'reasonable' option, so as to apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in

<sup>18</sup> [USSD Country Reports on Human Rights Practices 2012: Afghanistan; 19/04/2013: 1e Denial of Fair Public Trial](#)

<sup>19</sup> [USSD Country Reports on Human Rights Practices 2012: Afghanistan; 19/04/2013:1e Denial of Fair Public Trial](#)

<sup>20</sup> [USSD Country Reports on Human Rights Practices 2012: Afghanistan; 19/04/2013: 6 Women.](#)

<sup>21</sup> [US Department of Defence: Report on Progress Toward Security and Stability in Afghanistan and United States December 2012.](#)

the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account. Caseworkers must refer to the Gender Issues in the asylum claim where this is applicable. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

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

**2.3.3** The UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 17/12/2010, state the following in relation to internal relocation:<sup>22</sup>

- Given the wide geographic reach of some armed anti-Government groups, a viable internal relocation alternative may not be available to individuals at risk of being targeted by such groups. It is particularly important to note that the operational capacity of the Taliban (including the Haqqani network), the Hezb-e-Eslami (Gulbuddin) and other armed groups in the southern, south-eastern and eastern regions is not only evidenced by high-profile attacks, such as (complex) suicide bombings, but also through more permanent infiltration in some neighbourhoods and the regular distribution of threatening “night-letters.”
- Furthermore, some non-State agents of persecution, such as organized crime networks, local commanders of irregular or paramilitary outfits and militias, as well as the Taliban and the Hezb-e-Eslami (Gulbuddin), have links or are closely associated with influential actors in the local and central administration. As a result, they largely operate with impunity and their reach may extend beyond the area under their immediate (*de facto*) control.
- UNHCR generally considers [internal relocation] as a reasonable alternative where protection is available from the individual’s own extended family, community or tribe in the area of intended relocation. Single males and nuclear family units may, in certain circumstances, subsist without family and community support in urban and semi-urban areas with established infrastructure and under effective Government control. A case-by-case analysis will, nevertheless, be necessary given the breakdown in the traditional social fabric of the country caused by decades of war, massive refugee flows, and growing internal migration to urban areas.”

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<sup>22</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 17/12/2010 C.1 Internal Flight or Relocation Alternative Page 38-40.](#)

- 2.3.4** It is important to note that the UNHCR guidelines emphasise that “Traditional extended family and community structures of Afghan society continue to constitute the main protection and coping mechanism, ---- particularly in rural areas where infrastructure is not as developed. Afghans rely on these structures and links for their safety and economic survival, including access to accommodation and an adequate level of subsistence. Since the protection provided by families and tribes is limited to areas where family or community links exist, Afghans, particularly unaccompanied women and children, and women single head of households with no male protection, will not be able to lead a life without undue hardship in areas with no social support networks, including in urban centres. In certain circumstances, relocation to an area with a predominantly different ethnic/religious make-up may also not be possible due to latent or overt tensions between ethnic/religious groups”.<sup>23</sup>
- 2.3.5** The law provides for freedom of internal movement, foreign travel, emigration, and repatriation; however, the government sometimes limited citizens’ movement for security reasons. Taxi, truck, and bus drivers reported that security forces operated illegal checkpoints and extorted money and goods from travellers. The greatest restriction to movement in some parts of the country was the lack of security. In many areas insurgent violence, banditry, land mines, and improvised explosive devices (IEDs) made travel extremely dangerous, especially at night. Armed insurgents also operated illegal checkpoints and extorted money and goods. Social custom limited women’s freedom of movement without male consent or a male chaperone.<sup>24</sup>
- 2.3.6** In commenting on security in Kabul, the Danish Immigration Service Fact Finding Mission report on Afghanistan of May 2012 cited the International Police Co-operation Board as stating that “There are places in Afghanistan where Afghan National Police (ANP) is functioning well in terms of providing security, especially in Kabul and other big cities like Herat, Mazar-i-Sharif and Faizabad”. In the same report other sources noted: “UNHCR commented that in general Kabul could be an option for safety, but to what extent the city could be a safe place for a person fleeing a conflict depends on the profile of the person and the nature of the conflict the person has fled from”. “An international NGO informed the delegation that Kabul is one of few places in Afghanistan where the security situation is relatively good and stable even though incidents are occurring also in Kabul.” As regards tracing in Kabul the report goes on to note: “An international organization stated that if someone is fleeing a conflict in his or her area of origin, it depends on the seriousness of the conflict whether he or she will be traced down in Kabul. Afghanistan is a tribal society with close family networks, which means that if you really want to find someone, you will be able to trace him/her down. Concerning the possibility of tracking down someone in Kabul, an independent policy research organization in Kabul stated that Kabul is a big city and people do not even know their neighbours anymore. There are newcomers every day and people move around and stay in rented accommodation, however, that it is not difficult for the government to find people in Kabul if they are in search of a particular person”.<sup>25</sup>

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<sup>23</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 17/12/2010 C.1 Internal Flight or Relocation Alternative Page 38-40.](#)

<sup>24</sup> [USSD Country Reports on Human Rights Practices 2012: Afghanistan: 19/04/2013: 1d Freedom of Movement, Internally Displaced Persons, Protection of Refugees and Stateless Persons.](#)

<sup>25</sup> [Danish Immigration Service, Country of Origin Information \(COI\) for use in the asylum determination process, Fact Finding Mission to Kabul, May 2012 1. Internal Flight Alternative, 1.1 The security situation in Kabul p6.](#)



**2.3.7 Conclusion:** All returns from the UK are currently to Kabul and whilst Afghanistan has a significant displaced civilian population, the courts have identified that UK returnees are in a more favourable position due to the packages available to them (see 2.3.9 below). For further evidence on returnees accessing support – see section “Minors 3.13.13.”

**2.3.8** In accordance with current caselaw careful consideration must be given to the up to date security, human rights and humanitarian conditions in the prospective area of relocation at the time of the decision, including the availability of traditional support mechanisms, such as relatives and friends able to assist the displaced individual. Single males and nuclear family units may, in certain circumstances, subsist without family and community support in urban and semi-urban areas with established infrastructure and under effective Government control.

**2.3.9** In the Country Guidance case of AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) (18 May 2012) (see section 2.4 and summary of key findings) the Upper Tribunal concluded at Para 243: “Whilst when assessing a claim [in the context of Article 15(c)] in which the respondent asserts that Kabul city would be a viable internal relocation alternative, it is necessary to take into account (both in assessing “safety” and “reasonableness”) not only the level of violence in that city but also the difficulties experienced by that city’s poor and also the many IDPs [Internally Displaced Persons] living there, these considerations will not in general make return to Kabul unsafe or unreasonable, although it will still always be necessary to examine an applicant’s individual circumstances.” It is essential therefore that case owners when considering internal relocation to Kabul as a reasonable option, take account in their conclusions of the humanitarian situation in Kabul. Case owners should also note the following paragraphs in AK:

- Para 224: “we [the judges] do not think that the situation of UK returnees to Kabul (even limiting this category to persons whose home area is not Kabul) and IDPs in Kabul are wholly the same. As noted earlier [paras 84-85] (leaving to one side irregular migrant returnees), there are return and reintegration packages available. It would be unwise to exaggerate the importance of such packages: they are chiefly designed to cushion against immediate travails on return. That said, by assisting with skills training and inquiries related to employment opportunities, they clearly do help position returnees advantageously as compared to IDPs marooned in squatter settlements in outlying areas. (UK returnees who previously lived in Kabul would ordinarily have the additional advantage of knowing the city and having family and or social networks there).”
- Para 245: “Since we did not have full submissions on the issue of safety of different routes of return in Afghanistan, we do not seek to give guidance on it, although we are bound to say nothing in the evidence before us indicates that the main routes of travel from Kabul to other major cities and towns experience violence at an intensity sufficient to engage Article 15(c) for the ordinary citizen. The position may be different when it comes to travel from the main cities and towns to villages.....Routes of this kind may be under the control of the Taliban and/or other insurgents and hence will require a case-by-case approach”;

**2.3.10** 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. Sufficient protection is not available to them, even in Kabul, and it would therefore generally be unduly harsh to expect

single women and female heads of household who have a well-founded fear of persecution in one part of Afghanistan, and who do not have a male support network, to relocate internally. This conclusion was confirmed by the Upper Tribunal in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) (18 May 2012) – para 249 B (v).

## 2.4 Country guidance caselaw

All current UK Country Guidance case law can be found on the Tribunal web site at: <http://www.judiciary.gov.uk/media/tribunal-decisions/immigration-asylum-chamber.htm>

Caseworkers are reminded that case law must be read in conjunction with the most up to date country information. The current most relevant country case law is summarised below.

### Case of H. And B. v The United Kingdom, ECHR 9 April 2013

This case involved two Afghan nationals. The first appellant (H) had worked as a driver with the United Nations Assistance Mission in Afghanistan (UNAMA) and with the UN Project Service and had received threats from the Taliban to stop working with “foreigners and non Muslims”. The second (B) worked as an interpreter for the US armed forces and the International Security Assurance Force (ISAF); he was threatened by the Taliban, including with beheading, for working with “foreigners”.

The findings are:

- Para 93: the Court does not consider that there is currently in Afghanistan a general situation of violence such that there would be a real risk of ill-treatment simply by virtue of an individual being returned there.
- Para 97: that there is insufficient evidence before it at the present time to suggest that the Taliban have the motivation or the ability to pursue low level collaborators in Kabul or other areas outside their control.
- Para 98: There is also little evidence that the Taliban are targeting those who have, as requested by them, already stopped working for the international community and who have moved to other areas
- Para 100: that individuals who are perceived as supportive of the international community may be able to demonstrate a real and personal risk to them from the Taliban in Kabul depending on the individual circumstances of their case, the nature of their connections to the international community and their profile. However, the Court is not persuaded that the applicants have established that everyone with connections to the UN or the US forces, even in Kabul, can be considered to be at real risk of treatment contrary to Article 3 regardless of their profile or whether or not they continue to work for the international community.

As regards article 3:

- Para 105: From his [H] own evidence, before leaving Afghanistan, he had worked mainly in Kabul. There is no reason to suggest either that he had a high profile in Kabul such that he would remain known there after the passage of time or that he would be recognised elsewhere in Afghanistan as a result of his work.
- Para 113: the second applicant [B] has already complied with the terms of the notice [from the Taliban] and stopped working as an interpreter as the notice requests him to do. Thus, the Court does not consider that the notice submitted gives rise to substantial grounds for believing that the second applicant would be at real risk on return to Afghanistan.

Para 114: The Court finds that the second applicant [B] , a healthy single male of 24 years of age who speaks excellent English and left Afghanistan in April 2011 when already an adult (not during his formative years as argued by him), has failed to submit any evidence to the Court to suggest that his removal to Kabul, an urban area under Government control, where he still has family members including two sisters, would engage Article 3 of the Convention.

Para 115: the Court is not convinced that the second applicant [B] would be at risk in Kabul solely because of his previous work as an interpreter for the US forces but must instead examine the individual circumstances of his case, the nature of his connections and his profile. In that regard, the Court notes that, until early 2011, the second applicant worked as an interpreter in Kunar province where he had no particular profile. He has not submitted any evidence or reason to suggest that he would be identified in Kabul, an area outside of the control of the Taliban, or that he would come to the adverse attention of the Taliban there.

**Important:** Caseworkers should note that this judgment was handed down on 9 April 2013 and will not become final until 9 July 2013 as the parties have a three month period to seek referral to the Grand Chamber (i.e. an appeal). This referral request can then either be rejected, or the Grand Chamber consider and issue their own judgment. Unless or until the applicants seek a referral of the judgment to the Grand Chamber, H&B remains good law.

#### **[EU \(Afghanistan\) \[2013\] EWCA Civ 32 \(31 January 2013\)](#)**

The Court of Appeal applied the principles agreed in [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#). to the claims by six young Afghan men [the KA Appellants] to be entitled to indefinite leave to remain by reason of the Secretary of State's breach of her duty to endeavour to trace their respective families. The court found that whilst the Secretary of State's breach of duty may be relevant to the assessment of risk on return, to grant leave to someone who has no risk and has no independent claim to remain here, is in effect to accede to a claim to remain here as an economic migrant (paragraph 6). It would be inhumane to return an unaccompanied young child where there is no family to take care of him, but that rationale applies with less and less force with increasing age (paragraph 8). The court also found substance to the point that for whatever reason unaccompanied children arrive in the UK as a result of someone, presumably their families paying for the fare and arranging the journey, thus they are unlikely to cooperate in the return of the child to Afghanistan (paragraph 10)

#### **[Supreme Court. RT \(Zimbabwe\) & others v Secretary of State for the Home Department \[2012\] UKSC 38 \(25 July 2012\)](#)**

The Supreme Court ruled that the rationale of the decision in HJ (Iran) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

#### **[AK \(Article 15\(c\)\) Afghanistan CG \[2012\] UKUT 163 \(IAC\) \(18 May 2012\)](#)**

The Tribunal's key findings were:

A. Law:(i) The Tribunal continues to regard as correct the summary of legal principles governing Article 15(c) of the Refugee Qualification Directive as set out in [HM and others \(Article 15\(c\)\) Iraq CG \[2010\] UKUT 331 \(IAC\)](#) and more recently in [AMM and Others \(conflict; humanitarian crisis; returnees; FGM\) Somalia CG \[2011\] UKUT 00445 \(IAC\)](#) and [MK \(documents - relocation\) Iraq CG \[2012\] UKUT 00126 \(IAC\)](#).

(ii) The need, when dealing with asylum-related claims based wholly or significantly on risks arising from situations of armed conflict and indiscriminate violence, to assess whether Article 15(c) of the Qualification Directive is engaged, should not lead to judicial or other decision-makers going straight to Article 15(c). The normal course should be to deal with the issue of refugee eligibility, subsidiary (humanitarian) protection eligibility and Article 3 ECHR in that order.

(iii) One relevant factor when deciding what weight to attach to a judgment of the European Court of Human Rights (ECtHR) that sets out findings on general country condition in asylum-related cases, will be the extent to which the Court had before it comprehensive COI (Country of Origin Information). However, even if there is a recent such ECtHR judgement based on comprehensive COI, the Tribunal is not bound to reach the same findings: see AMM, para 115.

(iv) There may be a useful role in country guidance cases for reports by COI (Country of Origin) analysts/consultants, subject to such reports adhering to certain basic standards. Such a role is distinct from that a country expert.

B. Country conditions:

(i) This decision replaces [GS \(Article 15\(c\): indiscriminate violence\) Afghanistan CG \[2009\] UKAIT 00044](#) as current country guidance on the applicability of Article 15(c) to the on-going armed conflict in Afghanistan. The country guidance given in [AA \(unattended children\) Afghanistan CG \[2012\] UKUT 00016 \(IAC\)](#), insofar as it relates to unattended children, remains unaffected by this decision.

(ii) Despite a rise in the number of civilian deaths and casualties and (particularly in the 2010-2011 period) an expansion of the geographical scope of the armed conflict in Afghanistan the level of indiscriminate violence in that country taken as a whole is not at such a high level as to mean that, within the meaning of Article 15(c) of the Qualification Directive, a civilian, solely by being present in the country, faces a real risk which threatens his life or person.

(iii) Nor is the level of indiscriminate violence, even in the provinces worst affected by the violence (which may now be taken to include Ghazni but not to include Kabul), at such a level.

(iv) Whilst when assessing a claim in the context of Article 15(c) in which the respondent asserts that Kabul city would be a viable internal relocation alternative, it is necessary to take into account (both in assessing “safety” and reasonableness”) not only the level of violence in that city but also the difficulties experienced by that city’s poor and also the many Internally Displaced Persons (IDPs) living there, these considerations will not in general make return to Kabul unsafe or unreasonable.

(v) Nevertheless, this position is qualified (both in relation to Kabul and other potential places of internal relocation) for certain categories of women. The purport

of the current Home Office OGN on Afghanistan is that whilst women with a male support network may be able to relocate internally, "...it would be unreasonable to expect lone women and female heads of household to relocate internally" (February 2012 OGN, 3.10.8) and the Tribunal sees no basis for taking a different view.

**[AA \(unattended children\) Afghanistan CG \[2012\] UKUT 00016 \(IAC\) \(1 February 2012\)](#)**

- (1) The evidence before the Tribunal does not alter the position as described in **HK and Others (minors – indiscriminate violence – forced recruitment by Taliban – contact with family members) Afghanistan CG [2010] UKUT 378 (IAC)**, namely that when considering the question of whether children are disproportionately affected by the consequences of the armed conflict in Afghanistan, a distinction has to be drawn between children who were living with a family and those who are not. That distinction has been reinforced by the additional material before this Tribunal. Whilst it is recognised that there are some risks to which children who will have the protection of the family are nevertheless subject, in particular the risk of landmines and the risks of being trafficked, they are not of such a level as to lead to the conclusion that all children would qualify for international protection. In arriving at this conclusion, account has been taken of the necessity to have regard to the best interests of children.
- (2) However, the background evidence demonstrates that unattached children returned to Afghanistan, depending upon their individual circumstances and the location to which they are returned, may be exposed to risk of serious harm, inter alia from indiscriminate violence, forced recruitment, sexual violence, trafficking and a lack of adequate arrangements for child protection. Such risks will have to be taken into account when addressing the question of whether a return is in the child's best interests, a primary consideration when determining a claim to humanitarian protection.

**[HK and others \(minors- indiscriminate violence – forced recruitment by Taliban – contact with family members\) Afghanistan CG \[2010\] UKUT 378 \(IAC\) \(23 November 2010\)](#)**

1. Children are not disproportionately affected by the problems and conflict currently being experienced in Afghanistan. Roadside blasts, air- strikes, crossfire, suicide attacks and other war-related incidents do not impact more upon children than upon adult civilians.
2. While forcible recruitment by the Taliban cannot be discounted as a risk, particularly in areas of high militant activity or militant control, evidence is required to show that it is a real risk for the particular child concerned and not a mere possibility.
3. Where a child has close relatives in Afghanistan who have assisted him in leaving the country, any assertion that such family members are un-contactable or are unable to meet the child in Kabul and care for him on return, should be supported by credible evidence of efforts to contact those family members and their inability to meet and care for the child in the event of return.

**[NM \(Christian Converts\) Afghanistan CG \[2009\] UKAIT 00045](#)**

1. An Afghan claimant who can demonstrate that he has genuinely converted



to Christianity from Islam is likely to be able to show that he is at real risk of serious ill-treatment amounting to persecution or a breach of his Article 3 ECHR right on return to Afghanistan.

2. This decision replaces **AR (Christians - risk in Kabul) Afghanistan [2005] UKAIT 00035** only in so far as it deals with Muslims who have converted to Christianity

**ZH (Afghanistan) v Secretary of State for the Home Department [2009] EWCA Civ 470 (07 April 2009)**

The Court of Appeal found that:

Para 10. The mere fact that a child applicant for asylum falls within the policy of the Secretary of State is not ... of itself sufficient to discharge the burden on the child applicant to demonstrate that he is at real risk, or there is a serious possibility that he will be persecuted if returned. The threshold for what amounts to persecution is relatively high; the policy sidesteps that difficulty by being broader in scope. The unaccompanied child does not have to demonstrate that he would be at real risk of persecution if returned, to fall within the Secretary of State's policy. All he has to demonstrate is that he is unaccompanied, that his parents cannot be traced and that adequate reception arrangements cannot be made for him. Thus the policy is plainly broader in scope for perfectly understandable policy reasons than the narrower definition of what amounts to refugee status. Thus it does not follow automatically, simply from the fact that a child falls within the Secretary of State's broader policy, that there is a real risk or a serious possibility that that particular child's basic human rights will be so severely violated that he will suffer what amounts to persecution.

**RQ (Afghan National Army – Hizb-i-Islami – risk) Afghanistan CG [2008] UKAIT 00013 (20 August 2007)**

(1) There is a risk to serving soldiers from the Taliban and Hizb-i-Islami, principally during troop movements and home visits. A soldier cannot be expected to desert in order to access protection and in fact such protection would be unavailable to him as a deserter.

(2) There is always a risk to soldiers of a country's army from rebel factions and the forces against which they are fighting. That is a risk which is assumed by those serving their country in its armed forces, and while on active service and with his unit, a soldier of the Afghan National Army has sufficiency of protection. Any risk which arises during home leave and troop movements is reasonable to the Horvath standard; total protection cannot be expected and any military service entails an element of physical risk.

(3) After the end of military service, former Afghan National Army soldiers are not at risk engaging international protection solely for that reason, absent individual factors particular to their individual circumstances and characteristics which may put them at increased risk.

(4) Where there are individual risk factors it is a question of fact whether the interest in a former soldier is likely to be confined to his home area or be more widely pursued. In particular, elements of 'double cross' in relation to the Taliban or Hizb-i-Islami, if true, may be sufficient to elevate the pursuit of the appellant and the risk to him to such a level that international protection is engaged.

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

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

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

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

Other significant CG cases:

- [MI \(Hazara – Ismaili – associate of Nadiri family\) Afghanistan CG \[2009\] UKAIT 00035](#)

- [AJ \(Risk to Homosexuals\) Afghanistan CG \[2009\] UKAIT 00001](#)

- [PM and Others \(Kabul – Hizb-i-Islami\) Afghanistan CG \[2007\] UKAIT 00089](#)

- [SM and others \(Entry Clearance – proportionality\) Afghanistan CG \[2007\] UKAIT 00010](#)

- [SO and SO \(KhaD – members and family\) Afghanistan CG \[2006\] UKAIT 00003](#)

- [SL and Others \(Returning Sikhs and Hindus\) Afghanistan CG \[2005\] UKIAT 00137](#)

- [NS \(Social Group - Women - Forced marriage\) Afghanistan CG \[2004\] UKIAT 00328](#)

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

**3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Afghanistan. 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. All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

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

**3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in Karanakaran should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction '[Considering the asylum claim and assessing credibility](#)').

**3.3** For any asylum cases which involve children either as dependents or as the main applicants, case owners must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The UKBA instruction '[Every Child Matters: Change for Children](#)' sets out the key principles to take into account in all Agency activities.

- 3.4** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. 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 Instruction on [Discretionary Leave](#)).

### **Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR**

- 3.5** An assessment of protection needs under Article 15(c) of the Directive should only be required if an applicant does not qualify for refugee protection, and is ineligible for subsidiary protection under Articles 15(a) and (b) of the Directive (which broadly reflect Articles 2 and 3 of the ECHR). Caseworkers are reminded that an applicant who fears a return to a situation of generalised violence may be entitled to a grant of asylum where a connection is made to a Refugee Convention reason or to a grant of Humanitarian Protection because the Article 3 threshold has been met.

### **Other severe humanitarian conditions and general levels of violence**

- 3.6** There may come a point at which the general conditions in the country – for example, absence of water, food or basic shelter – are unacceptable to the point that return in itself could, in extreme cases, constitute inhuman and degrading treatment. Decision makers need to consider how conditions in the country and locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.
- 3.7** As a result of the [Sufi & Elmi v UK](#) judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and indirect actions of the parties to a conflict, regard should be had to an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for Humanitarian Protection.

### **Credibility**

- 3.8.** This guidance is not designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. For guidance on credibility see 'Section 4 – Making the Decision in the Asylum Instruction [‘Considering the asylum claim and assessing credibility’](#). Caseworkers must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the UKBA file. In all other cases, the caseworker should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

### **3.9 General Security Situation**

- 3.9.1** Please see the [Country Information and Guidance, Afghanistan: Security, August 2014](#).

### **3.10 Fear of the Taliban or other anti government groups**

**3.10.1** For guidance and information on persons who or are perceived to support the government / international military forces, see [Country Information and Guidance, Afghanistan: persons supporting or perceived to support the government and/or international forces, February 2015](#).

**3.10.2** For guidance on forced recruitment, see [Country Information and Guidance, Afghanistan: persons supporting or perceived to support the government and/or international forces, February 2015](#), and material below.

**3.10.1** Some applicants may make an asylum and/or human rights claim based on a fear of the Taliban or other anti government groups.

#### **3.10.3 Treatment.**

Night letters (shab nameha),

**3.10.10** The Taliban and other insurgent groups have created a climate of fear by issuing 'night letters' – threatening notes or posters pinned up during the night to trees, mosques or doors of buildings. The letters warn of attacks against perceived 'spies' working for the international forces, or government sympathisers, including teachers and government workers. In the run-up to the presidential elections, the Taliban issued night letters threatening that anyone found with indelible ink on their finger would have the finger cut off. (The ink is applied to voters' fingers in the polling station, to prevent double voting.)<sup>26</sup>

**3.10.11** In the Danish Fact Finding Mission "UNHCR explained that the use of night letters to intimidate people working for the Afghan government and Westerners is very widespread. In rural areas, the use of night letters is most widespread whereas the pattern of intimidation in Kabul is different and would most likely be in the form of phone calls rather than night letters. UNHCR stated that the intimidation by the Taliban will mostly be repeated until the victim is silenced by obeying orders. In cases of continued refusal to heed the warnings (for example continued collaboration with state authorities), intimidation can potentially lead to physical elimination. According to UNHCR, the intimidation will often also include the family members of the victim" "According to an international organization, the use of night letters and threats by the Taliban is quite common, but this is not a phenomenon limited to the Taliban as use of threats in general are very common in Afghanistan".<sup>27</sup>

**3.10.12** In the same report "CPAU (Co-operation for Peace and Unity) added that it is quite easy to fabricate a Taliban night letter and people sometimes even pretend to be the Taliban and threaten each other by night letters or SMS messages for different reasons. That is why when people receive a threatening message on their phone, they go to the mobile company to trace the number and identity of the person who has sent the message to find out whether the threat is real. CPAU pointed out that people usually do not go to the police, not even in Kabul, when they receive night letters or any other threatening message because the police would normally not take any action in these cases. "Asked what the consequences of receiving a letter

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<sup>26</sup> [Amnesty International: Don't trade away women's human rights, 11/07/2011](#)

<sup>27</sup> [Danish Immigration Service, Country of Origin Information \(COI\) for use in the asylum determination process, Fact Finding Mission to Kabul, May 2012: 4.3 Existence and consequences of receiving Night letters p31.](#)

would be, IOM stated it could be death. IOM had a staff member who received a warning and he was killed afterwards”.<sup>28</sup>

**3.10.13** In an article on 16 February 2013 The Times reported “Stamped with the crossed cutlasses emblem of the Taliban and carrying the name of its elusive leader Mullah Mohammed Omar, the letter warns its recipient to surrender to the insurgent group within 24 hours. “If you don’t surrender yourself, at night we will bring you out of your home and kill you and you won’t have the right to complain,” it says. The threat is devised to build a compelling case for the tens of thousands of Afghans who are fleeing the country each year in the lead up to the withdrawal of nearly all foreign forces at the end of next year. A death threat from the Taliban can go a long way to demonstrate a need for asylum. Yet, it is a fake, one of scores of bogus made-to-order threat letters that Taliban commanders are being paid to produce for asylum-seekers about to start journeys to Europe or Australia. While many face genuine threats, these so-called night letters show the lengths that some Afghans are prepared to go to bolster their asylum applications. It is a booming industry, and has triggered an investigation by the Taliban leadership, which has vowed to track down the authors and punish them according to their brutal Sharia code for supposed copyright infringement. People smugglers in eastern Nangarhar province, one of the main starting hubs for Afghan asylum-seekers, said that most the letters were being obtained from the Taliban’s shadow district governors in the applicant’s area and cost about \$400 (£260). Less official letters supplied by enterprising counterfeiters cost up to \$1,200. It is a fraction of what Afghans are prepared to spend. The cost of a boat to Australia is about \$15,000 and up to \$45,000 to fly to Canada on a forged passport. “Business is getting better and better,” one smuggler said. “People are always trying to leave because they don’t trust this Government to last. Rich people fly, poor people go by boat.”<sup>29</sup>

Ex Taliban [see also 3.10.3 re Peace and Reintegration Program]

**3.10.14** The Danish Fact Finding Mission reports “ An independent policy research organization in Kabul informed the delegation that some former mid-level members of the Taliban are now living in Kabul without any problems. CPAU stated that if these ex-Taliban go back to their place of origin, they will be at high risk of being targeted. However, if they move to Kabul, they will be safe because the Taliban would usually not make it a priority to kill former low profile members in Kabul”.<sup>30</sup>

Forced recruitment

**3.10.15** The same Danish report states “UNHCR referred to a leaked ISAF report on the state of the Taliban in relation to the change of strategy of the Taliban. According to this report, the Taliban do not have difficulties in recruiting people for their force. They have many volunteers and there is a willingness to join the movement. The Taliban may recruit collectively in the villages by offering education to poor people’s sons and by brain washing people.” “Based on its research, Co-operation for Peace and Unity” (CPAU) stated that poverty, unemployment, and a desire for higher social status in the community, rather than ideological reasons, are the main factors driving the recruitment to the Taliban”.<sup>31</sup>

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<sup>28</sup> [Danish Immigration Service, Country of Origin Information \(COI\) for use in the asylum determination process, Fact Finding Mission to Kabul, May 2012: 4.3 Existence and consequences of receiving Night letters p32](#)

<sup>29</sup> The Times, 16 February 2013: “Taliban death threats and why people are desperate to buy one” – hard copy available on request from COIS or CSLT.

<sup>30</sup> [Danish Immigration Service, Country of Origin Information \(COI\) for use in the asylum determination process, Fact Finding Mission to Kabul, May 2012 4.4 Situation for former members of the Taliban p33.](#)

<sup>31</sup> [Danish Immigration Service, Country of Origin Information \(COI\) for use in the asylum determination process, Fact Finding Mission to Kabul, May 2012: 4. 1 Recruitment by The Taliban p26.](#)



**3.10.16** The EASO report (referred to in 3.10.4) provides a comprehensive insight into the Taliban, a history of the conflict in Afghanistan and recruitment strategies. It notes that “Local and autonomous commanders, tribal structures and religious clerics are the main channels through which recruitment is facilitated within Afghanistan. As a general principle, it could be stated that the local cell — commander, tribe, family or madrassa — is the basic recruitment hub. In general, the direct use of coercion or retaliation for refusing enlistment by the Taliban is not typical for the current Afghan Insurgency. There are cases of forced recruitment, but these are considered as exceptional. To gain support and recruit fighters, they relied on economic needs, fear and coercion, pride and honour, tribe and tradition, religious persuasion, etc. Clerics played an indispensable role in the recruitment processes”.<sup>32</sup> In its summary the EASO report states “Other sources stated explicitly that force or coercion were not used for recruitment in their provinces: Ghazni, Herat and Logar. Sources discussing the general situation in Afghanistan commonly state that coercion is rare in the recruitment process. They sometimes refer to locations where it did happen: refugee camps and areas under strong influence of the Taliban. One source mentioned that the Taliban recruited porters and medical staff by force in areas under their control. Some sources gave arguments against forced recruitment: it would alienate communities or there is no need for it, since the Taliban dispose of sufficient volunteers”.<sup>33</sup>

**3.10.17** In July 2012 UNHCR welcomed the EASO report and noted “The report focuses on forced recruitment by the Taliban and concludes that the Taliban only uses forced recruitment exceptionally. The report defines “forced recruitment” narrowly, limiting its scope of application to situations where individuals are forced to join the Taliban under the use or threat of immediate violence. The report does not include in this definition Taliban recruitment mechanisms based on broader coercive strategies, including fear, intimidation and the use of tribal mechanisms to pressurize individuals into joining the Taliban. The report’s conclusion that forced recruitment is the exception rather than the rule should therefore not be taken to apply to these other forms of coercive recruitment. In circumstances where recruitment is based at least in part on fear, intimidation, tribal pressures or other coercive elements, it is exceedingly difficult in practice to make a clearcut distinction between individuals joining the Taliban voluntarily and individuals being forcibly recruited. Where Afghan asylum-seekers claim to have fled forcible recruitment by the Taliban, decision-makers in EU Member States will need to identify the precise nature of the coercion of which the applicant complains and decide the case on the basis of the applicant’s individual circumstances”.<sup>34</sup> Amnesty International expressed concern that the term “forced recruitment” is defined narrowly in the EASO report: “In its conclusion the EASO does not acknowledge the situations of persons joining or supporting the Taliban as result of indirect methods of intimidation such as through instilling fear among the local population by threatening night letters, killing individuals, including children, perceived as spies or supporters of the government, the extortion of fines, as well as pressuring individuals to join the Taliban through tribal, family and religious mechanisms, and other indirect means of coercion. Also, in the current context of reintegration and reconciliation efforts with the Taliban, it is expected that more people, including members of ethnic minority groups, may submit to Taliban demands, fearing reprisals”.<sup>35</sup>

<sup>32</sup> [EASO COI report: Afghanistan: Taliban Strategies – Recruitment, 10 July 2012 Executive Summary p10.](#)

<sup>33</sup> [EASO COI report: Afghanistan: Taliban Strategies – Recruitment, 10 July 2012; Summary, p30.](#)

<sup>34</sup> [UNHCR Forced Recruitment by the Taliban in Afghanistan - UNHCR's perspective, 10/07/2012](#)

<sup>35</sup> [Amnesty International. Amnesty International opinion on the EASO COI Report “Afghanistan: Taliban Strategies – Recruitment”, July 2012, 14/09/2012](#)

See also: [Actors of protection](#) (section 2.2 above)  
[Internal relocation](#) (section 2.3 above)  
[Caselaw](#) (section 2.4 above)

**3.10.18 Conclusion.** The risk from anti government groups will be highest in areas where they operate or have control. Caseworkers will need to take into account the most up to date country information, the nature of the threat and the particular profile of the claimant. For applicants who can demonstrate a well-founded fear of persecution for reason of their imputed political opinion and who are unable to acquire protection or relocate internally, a grant of asylum will be appropriate.

**3.10.19** Forced recruitment by Taliban military commanders, leaders or fighters (i.e. situations where individuals or their families are directly approached and forced to join up under threat of retaliation or violence if they refuse) has to be considered as exceptional. The risk will be highest in areas where armed anti-government groups are operating or have control and in refugee camps but the evidence is of recruitment driven more by broader coercive strategies, such as economics, fear, intimidation, pride and honour, religious persuasion and the use of tribal mechanisms to pressurise individuals into joining the Taliban, rather than by force.

**3.10.20** In considering internal relocation the Upper Tribunal found in the CG case of [AK \(Article 15\(c\)\) Afghanistan CG \[2012\] UKUT 163 \(IAC\) \(18 May 2012\)](#) [para 244]: “In relation to Ghazni, however, we note that it is accepted that there are significant numbers of districts in that province under Taliban control (although not the city itself) and we do not exclude that, for most civilians in such districts that is a factor that may make it unreasonable for them to relocate there, although that is not to say that a person with a history of family support for the Taliban, would have difficulties; much will depend on the particular circumstances of the case. Outside Taliban controlled districts, however, we do not find that internal relocation would in general be unreasonable”. Where return to an area controlled by anti government groups is an issue then up to date country information on the security position should be sought.

### **3.11 Locally engaged staff**

**3.11.1** For guidance and information on locally engaged staff see [Country Information and Guidance, Afghanistan: persons supporting or perceived to support the government and/or international forces, February 2015](#).

### **3.12 Women**

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

**3.12.2 Treatment.** The Afghan government has undertaken a number of efforts to protect women’s human rights. Afghanistan has a constitutional provision on gender equality and acceded without reservation in 2003 to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In the November 2010 NATO summit declaration, the government of Afghanistan

reaffirmed its commitment to —respect for human rights, in particular the rights of women. --- in December 2010, virtually all government interlocutors, including government-backed religious leaders, made a point of citing the protection of women’s human rights as a priority for the country. Their willingness to back up these words with action was less clear. The adoption of the Shi’a Personal Status Law in March 2009, which appeared to sanction marital rape and restricted the freedom of women to go outside the home, was considered by many to be a setback for women’s rights. In response, the Justice Ministry substantially revised the offending clauses in July 2009 and President Karzai signed the law. However, there are continued objections to articles in the law that pertain to minimum age of marriage, polygamy, inheritance rights, right of self-determination, freedom of movement, sexual obligations, and guardianship. Pervasive discrimination based on religious interpretations continues to place women in a second-class status and to limit their opportunities to obtain education, employment, and even medical care.<sup>36</sup>

**3.12.3** A December 2012 report published by UNAMA and analysing the implementation of the 2009 enactment of the Law on the Elimination of Violence against Women (EVAW) finds that “Although prosecutors and courts were increasingly applying the law in a growing number of reported incidents of violence against women, the overall use of the law remained low indicating there is still a long way to go before women and girls in Afghanistan are fully protected from violence through the law. Incidents of violence against women still remain largely under-reported due to cultural restraints, social norms and taboos, customary and religious beliefs, discrimination against women that leads to wider acceptance of violence against women, fear of social stigma and exclusion, and at times threat to life. Those incidents that reach law enforcement and judicial authorities or receive public attention through the media due to their egregious nature represent the tip of the ice-berg of incidents of violence against women throughout the country”.<sup>37</sup> According to figures in the 2012 annual Report on Protection of Civilians in Armed Conflict, prepared by UNAMA, the number of “attacks on women and children, and threats on perceived Government supporters, are on the rise”.<sup>38</sup>

**3.12.4** The US State Department’s Human Rights (HR) report 2012 for Afghanistan notes “The constitution prohibits discrimination between citizens and provides for the equal rights of men and women; however, local customs and practices that discriminated against women prevailed in much of the country. Although the situation of women marginally improved during the year, international gender experts considered the country very dangerous for women, and women routinely expressed concern that social and economic gains would be lost in the post-2014 transition. The 2009 EVAW law criminalizes violence against women, including rape, battery, or beating; humiliation; intimidation; and the refusal of food. The law punishes rape with “continued imprisonment”, widely interpreted to mean life imprisonment although not always implemented as such. If the act results in the death of the victim, the law provides for the death sentence for the perpetrator. The law punishes the “violation of chastity of a woman...that does not result in adultery (such as touching)” with imprisonment of up to seven years. Under the law rape does not include spousal rape. However, there was limited political will to implement the law, and a lack of its successful and proper enforcement continued. There were

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<sup>36</sup> [US Commission on International Religious Freedom Annual Report 2012 – USCIF watch list- Afghanistan , Covers 1/4/2011 to 29/-2/2012](#)

<sup>37</sup> [UNAMA, Still a Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan, December 2012, 1. Executive Summary and Recommendations](#)

<sup>38</sup> [UN News Centre, Afghan civilian deaths drop but attacks on women, children and political targets rise – UN, 19 February 2013](#)

reports that women who sought assistance under the EAW in a case of rape were subjected to virginity tests and in some instances had their cases converted into adultery cases. Interpretations of Sharia also impeded successful prosecution of rape cases. Prosecutors and judges in some remote provinces were unaware of the EAW law, and others were subject to community pressure to release defendants due to familial loyalties, threat of harm, or bribes [...] Rapes were difficult to document due to social stigma [...] Female victims faced stringent societal reprisal, from being deemed unfit for marriage to being imprisoned to being a victim of extrajudicial killing”.<sup>39</sup> The report further noted that “According to NGO reports, hundreds of thousands of women continued to suffer abuse at the hands of their husbands, fathers, brothers, armed individuals, parallel legal systems, and institutions of state such as police and justice systems”. The report concludes that “despite advances over the last decade, women continue to be vulnerable and marginalized economically and socially. Violence against women and girls remains prevalent, and the troubles of poverty, illiteracy, and poor health care continue to affect women disproportionately”.<sup>40</sup>

**3.12.5** Amnesty International (AI) in its report of October 2011 “Dont trade Away Women’s Human Rights” highlighted that the “UN Development Programme and Afghan government figures show there has been progress in education and women’s political participation in Afghanistan.

- In 2001, fewer than 1 million children attended school, almost none of them girls. Today, there are 7 million children attending school, of whom 37 per cent girls.
- In the 2010 parliamentary elections 40 per cent of voters were women and women won 27 per cent of seats (more than the 25 per cent reserved for female candidates under the constitution)”.

However “given the historical antipathy towards girls education of the Taliban and other anti-government groups, human rights activists rightly fear that these gains could be seriously undermined if the Afghan government reaches a political settlement with the insurgents”. AI also highlighted in its report that “Most of the progress made in girls education and women’s access to basic government services in the provinces of Ghazni, Logar and Wardak had been reversed. Girls’ education has been particularly hard hit by the Taliban and other armed groups. They have attacked teachers and students, and targeted girls’ schools. Women active in politics, including parliamentarians and provincial councillors, face attacks and threats from the Taliban and other armed groups. A climate of fear has been created by the issue of “night letters” and in areas under insurgent control, incidents of torture and other ill treatment towards civilians, including beatings and brutal punishments have been reported”.<sup>41</sup>

**3.12.6** Harmful traditional practices occur to varying degrees in both rural and urban communities throughout the country, and among all ethnic groups. Such practices include child and forced marriages, the giving away of girls to settle disputes, exchange marriages, forced isolation in the home and honour killings. Women may be detained on the grounds of perceived "morality crimes," such as "running away" from home (including in situations of domestic violence), being improperly unaccompanied or refusing marriage. Women and girls who run away can also be

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<sup>39</sup> [U.S. Department of State, Country Report s on Human Rights Practices for 2012: Afghanistan, 19 April 2013, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons, Women](#)

<sup>40</sup> [The US Department of Defence “ Report on Progress Toward Security and Stability in Afghanistan” December 2012, section 4 reconstruction and development, 4.5: Women’s issues, page 144](#)

<sup>41</sup> [Amnesty International: Dont trade away women’s human rights, October 2011, Before the Taleban and Under Attack again, pages 5-9.](#)



prosecuted under "intention" to commit zina (sexual intercourse outside of marriage) charges. Since adultery and "morality crimes" may elicit honour killings, detention of women accused of such acts has been, in some instances, justified by the authorities as a protective measure.<sup>42</sup> The U.S. Department of State reported in its 2012 annual human rights report that "An estimated 70 percent of marriages were forced, and despite laws banning the practice, a large proportion of brides were younger than the legal marriage age of 16 (or 15 with a guardian's and a court's approval). Local officials occasionally imprisoned women at the request of family members for opposing the family's choice of a marriage partner or being charged with adultery or bigamy. The AIHRC reported a significant increase to 60 honor killings during the first half of the year; however, the unreported number was believed to be much higher and thought to include reported cases of suicide and self-immolation that actually covered honor killings. The wide range of violence against women also included trafficking and abduction".<sup>43</sup>

**3.12.7** Although the restrictive practices of the Taliban regime have been lifted, women's freedom of movement continues to be hindered by threats of violence. Human Rights Watch reports that women who are students, teachers or associated with the government continue to be threatened, particularly through the delivery of "night letters"---. Further, social custom continues to limit many women's freedom of movement without male consent or chaperone.<sup>44</sup> The U.S. Department of State HR report noted that "Women who walked outside alone or went to work often experienced abuse or harassment, including groping, or were followed on the streets in urban areas. Cultural prohibitions on free travel and leaving the home unaccompanied prevented many women from working outside the home and reduced their access to education, health care, police protection, and other social services. Women who took on public roles that challenged gender stereotypes (such as female lawmakers, political leaders, NGO leaders, police officers, and news broadcasters) continued to be intimidated by conservative elements or received death threats to their or their families' lives. NGOs reported violence against women working in the public and nonprofit sectors, including killings, and initiated awareness raising campaigns to mobilize groups against harassment".<sup>45</sup>

**3.12.8** Freedom House in its 2013 Afghanistan report noted "Women's formal rights to education and employment have been restored, and in some areas women are once again participating in public life". However "societal discrimination and domestic violence against women remain pervasive, with the latter often going unreported because of social acceptance of the practice".<sup>46</sup> The US Department of State HR report stated "NGOs that ran women's shelters in Kabul reported an increase in referrals from police, likely reflecting improved ANP training and awareness. Women's access to shelters also increased due to international efforts to open new shelters and expand to more remote provinces. However, space at the 21 formal and informal shelters across the country was insufficient. Women who could not be reunited with their families were compelled to remain in shelters indefinitely due to the fact that "unaccompanied" women are not commonly

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<sup>42</sup> , [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 17/12/2010 III Eligibility for International Protection, A Potential Risk Profiles, 6 Women with specific profiles, b\) Harmful traditional practices c\) women perceived as contravening social mores, pages 22 & 23.](#)

<sup>43</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2012: Afghanistan, 19 April 2013, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons, Women](#)

<sup>44</sup> [Organisation for Economic Co-operation and Development, Social Institutions and Gender Index \(SIGI\): Gender equality and social institutions in Afghanistan, undated](#)

<sup>45</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2012: Afghanistan, 19 April 2013, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons, Women](#)

<sup>46</sup> [Freedom in the World 2013 Afghanistan 16/03/2013](#)



accepted in society. The difficulty of finding durable solutions for women compelled to stay in shelters was compounded by societal attitudes toward shelters, the belief that “running away from home” is a serious violation of social mores, and the ongoing victimization of women who were raped but perceived by society as adulterers. Women in need of shelter who could not find a place often ended up in prison, either due to a lack of shelter alternatives, for their own protection, or based on local interpretation of “running away” as a moral crime. According to a March Human Rights Watch report, up to 70 percent of the approximately 700 female prisoners in the country had been imprisoned for the act. The report asserted that these women were nearly always fleeing forced marriage or domestic violence. The AIHRC and MOWA indicated the actual number was lower, at approximately 25 percent of the 700 women and girls incarcerated. The AIHRC reported a significant increase to 60 honor killings during the first half of the year; however, the unreported number was believed to be much higher and thought to include reported cases of suicide and self-immolation that actually covered honor killings. Under the penal code, a man convicted of honor killing after finding his wife committing adultery cannot be sentenced to more than two years’ imprisonment. The wide range of violence against women also included trafficking and abduction.<sup>47</sup>

**See also:** [Actors of protection](#) (section 2.2 above)  
[Internal relocation](#) (section 2.3 above)  
[Caselaw](#) (section 2.4 above)

**3.12.9 Conclusion.** Since the fall of the Taliban the position of women in Afghanistan has improved, but from a very low baseline and the sustainability of the improvements remains uncertain in the longer term. Sexual and gender-based violence against women is endemic.

**3.12.10** Women cannot currently rely on protection from the Afghan authorities and it would be unreasonable to expect lone women and female heads of households to relocate internally. Women with a male support network may be able to relocate internally. Caselaw has established that women in Afghanistan are a particular social group in terms of the Refugee Convention; therefore a grant of asylum will be appropriate to applicants in this category who are able to demonstrate a well-founded fear of persecution for reason of their gender

### **3.13 Minors**

**3.13.1** Some applicants may claim that they are at risk as minors because of family connections to the Taliban / Anti Government Groups, including of forced recruitment.

**3.13.2** This section is to be read in conjunction with sections 3.3 (claim consideration); 3.9 General Security Situation and 3.10 Fear of the Taliban and other anti government groups.

**3.13.3 Treatment:** The United Nations-led country task force on monitoring and reporting on children and armed conflict received 166 reports of incidents involving grave child rights violations from 1 November [2012] to 31 January [2013]. A total of 79 deaths and 192 injuries to children were verified. Most were in the southern and

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<sup>47</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2012: Afghanistan, 19 April 2013, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons, Women](#)

eastern regions. The Ministry of Foreign Affairs expressed strong support for implementation of the action plan for the prevention of underage recruitment and its annexes on killing and maiming and sexual violence against children, including a commitment to convene the Interministerial Steering Committee and Technical Working Group on Children And Armed Conflict.<sup>48</sup>

**3.13.4** A study conducted by the UK-based Refugee Support Network and funded by and produced for UNHCR carried out interviews in 2012 with former unaccompanied minors in the UK and professionals who have worked or work with them, both in the UK and In Aghanistan, states that “the key issues that emerged include the vital role of extended family networks in reintegration processes, the impact of generalized insecurity and poverty in Afghanistan, a lack of education and employment opportunities, the perceived ‘Westernisation’ of returnees and the existence of mental health issues. The risk of forced recruitment by the Taliban or other anti-government groups was also examined, along with problems resulting from feuds, forced marriage and abuse. Interestingly, it was clear that the migration cycle does not necessarily end with forced return to Afghanistan, with many young returnees aiming to leave again as soon as possible”.<sup>49</sup>

**3.13.5** UNHCR in their 2010 Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan identifies the following potential risk categories: Children with specific profiles (a) forced recruitment; (b) access to education and (c) Sexual and gender based violence.<sup>50</sup>

**3.13.6** Sexual abuse and violence against children, including at the hands of family members, is reportedly commonplace in Afghanistan. Furthermore, the practice of bacha bazi (boy play) – keeping young boys for sexual and social entertainment, particularly by older and powerful men – has a degree of social acceptance, particularly in the north of the country. According to some reports, the practice, which involves boys as young as 10, is condoned and in some cases protected by the local authorities. The general climate of impunity and the vacuum in rule of law has adversely affected the reporting of sexual abuse and violence against children to the authorities and the prosecution of perpetrators.<sup>51</sup> Children are reportedly trafficked internally for sexual exploitation, domestic servitude and forced labour, including forced begging (through organized professional begging rings), and to a lesser extent trans-nationally for the purposes of forced prostitution and forced labour in the drug smuggling/trafficking trade in Pakistan and Iran.<sup>52</sup>

Forced recruitment:

**3.13.7** UNHCR notes in its Eligibility Guidelines that “In April 2010, the Afghan Ministry of Interior formally banned under-age recruitment in the police and provided for the demobilization and reintegration of children serving in the police forces at the time. However, there are concerns that children have been recruited by the Afghan security forces, including the Afghan National Security Forces and the Afghan National Police. Forced recruitment of children by armed groups, including the

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<sup>48</sup> [UN Security Council: The situation in Afghanistan and its implication for international peace and security: Report of the Secretary-General: 05/03/2013: paragraph 30](#)

<sup>49</sup> [UN High Commissioner for Refugees, Broken futures: young Afghan asylum seekers in the UK and on return to their country of origin, October 2012, 6. Forced return: what are former unaccompanied minors returning to?](#)

<sup>50</sup> [UNHCR, Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 17/12/2010 III Eligibility for International Protection, Children p25/26](#)

<sup>51</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 17/12/2010 III Eligibility for International Protection, Children p25/26](#)

<sup>52</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 17/12/2010 III Eligibility for International Protection, Children p25/26](#)

Taliban, the Haqqani network, Hezb-i-Islami, the Tora Bora Front and Jamat Sunat al-Dawa Salafia, is reported, particularly in the southern, south-eastern and eastern regions. Internally displaced children and children part of isolated populations in conflict-affected areas are particularly at risk of recruitment into armed anti-Government groups”<sup>53</sup>. The 2012 U.S. State Department report notes that “There were also reports that the Taliban and other insurgent forces recruited children younger than age 18, in some cases as suicide bombers and human shields, and in other cases to assist with their work, such as placing IEDs, particularly in southern provinces. The media, NGOs, and UN agencies reported that the Taliban tricked children, promised them money, used false religious pretexts, or forced them to become suicide bombers”<sup>54</sup>.

**3.13.8** UNHCR in its comments on the EASO report (see 3.10.15 above) commented “pay particular attention to the meaning of forced recruitment in relation to children, taking in account their susceptibility to indoctrination. Given that the EASO report highlights that indoctrination of Afghan children in madrassas and refugee and IDP camps is widespread, the voluntary nature of decisions by children to join the Taliban is questionable”<sup>55</sup>.

**3.13.9** The EASO report notes that “Recruitment of minors by different armed groups in Afghanistan and Pakistan is reported by different sources. Insurgent groups recruit minors as fighters, informants, guards or even as suicide bombers. Cases of forced recruitment of minors have been mostly reported in the border area between Pakistan and Afghanistan. Children are most vulnerable to recruitment by insurgents in areas where returned refugees and IDPs are living and where protective social and governmental structures do not exist”<sup>56</sup>. The same report notes on suicide bombers: “According to Giustozzi the Taliban have been quite ruthless in the recruitment of suicide bombers. They recruited adults for this but also young males 12–17 years old. Since 2010, female suicide bombers have appeared on the field as well. Giustozzi states there is no real evidence of forced recruitment of suicide bombers. Young boys are trained and indoctrinated, which takes from months to years. Many of them are madrassa students, Afghans or others in the Pakistani madrassas. Sometimes families linked to the Insurgency voluntarily give one of their youngsters to the insurgents for martyrdom in order to gain status within the insurgent organisation”<sup>57</sup>. Amnesty International considers that “the focus should be not on whether or not there is a real risk of “forced” recruitment for a child, but whether there is a real risk that the child will be recruited”<sup>58</sup>.

**3.13.10** UNAMA reports that it “received reports of 39 incidents of recruitment and use of children in the armed conflict, involving 116 children. Anti-Government Elements used children to carry out suicide attacks and act as guards or scouts for reconnaissance, and in some instances exploited them sexually. International law explicitly establishes sexual abuse and the recruitment of children to participate in hostilities as war crimes. UNAMA documented three cases where three children died carrying out suicide attacks and a further 48 children arrested by Afghan National Security Forces on allegations of plans to carry out suicide attacks. ANSF

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<sup>53</sup> [UNHCR, Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 17/12/2010 III Eligibility for International Protection, Children p25/26](#)

<sup>54</sup> [USSD Country Report on HR Practices 2012 Afghanistan, 19/04/2013 1g. Use of Excessive Force and Other Abuses in Internal Conflicts](#)

<sup>55</sup> [Forced Recruitment by the Taliban in Afghanistan - UNHCR's perspective, 10/07/2012](#)

<sup>56</sup> [EASO COI report: Afghanistan: Taliban Strategies – Recruitment, July 2012: 3.3 Minors p34](#)

<sup>57</sup> [EASO COI report: Afghanistan: Taliban Strategies – Recruitment, July 2012: 3.4 Suicide bombers p34](#)

<sup>58</sup> [Amnesty International, Amnesty International opinion on the EASO COI Report “Afghanistan: Taliban Strategies – Recruitment”, July 2012, 14/09/2012](#)

also arrested numerous children for alleged affiliation with Anti-Government Elements”.<sup>59</sup>

#### Support on return

**3.13.11** The Refugee Support Network notes as regards support on return that “The necessity of finding family, or extended family networks was not disputed by any of the Afghanistan-based professionals interviewed, who confirmed that in their experience “all the risks are exacerbated for young people who find themselves adrift. The likelihood of separated young people finding these vital family and community networks was however an area of disagreement. One professional who had worked with returnees stated that “the vast majority of unaccompanied young people will become accompanied as soon as they leave the airport”, and another explained that “All a young person has to do is go back to his village and he will find his family. If a boy doesn’t know where his family is, he will be asked ‘where are your people from?’ Then someone will say, ‘ah people from this area live over there’, so they will find someone”. The same professional clarified that young people were often genuine in telling UK professionals that they had lost contact with family, saying that “they can’t find them overseas because they lose numbers, but in country they can because of the word of mouth networks”. She continued “the number of young people with dead fathers is extremely high, and they won’t find their mother because women aren’t known on the street, but they will find some male relative somewhere”. Another professional had found that most young people “have resources and strong family networks”, but reiterated that “the true orphan alone really would end up on the streets”.

**3.13.12** The same report states “For those young people who are able to locate family, the response of the family to the returning young person varies, as does their subsequent life with that family. Several professionals indicated that even relationships which start well can quickly become troubled, particularly due to the shame associated with returning emptyhanded from abroad. One professional, who had worked with families in Afghanistan for over fifteen years, confirmed that “the son’s job is to provide for the family – for many families this is purpose of sending them overseas, so the shame is that they have gone to Europe and not succeeded. Another professional reiterated that families make “huge sacrifices to smuggle them out”.”<sup>60</sup>

**3.13.13 Conclusion:** Caseworkers should note section 3.3 of this OGN in dealing with any asylum cases which involve children either as dependents or as the main applicants.

**3.13.14** There is no evidence of a threat in general for minors from the Afghan authorities on the basis of family connections to the Taliban or other armed groups opposing the Government. Forced recruitment by Taliban military commanders, leaders or fighters (i.e. situations where individuals or their families are directly approached and forced to join up under threat of retaliation or violence if they refuse) has to be considered as exceptional. In the case of [HK and others \(minors- indiscriminate violence – forced recruitment by Taliban – contact with family members\) Afghanistan CG \[2010\] UKUT 378 \(IAC\) \(23 November 2010\)](#) the Upper Tribunal (UT) found that while forcible recruitment by the Taliban cannot be discounted as a

<sup>59</sup> [UNAMA Afghanistan Annual Report 2012: Protection of Civilians in Armed Conflict, February 2013](#). Executive summary

p11

<sup>60</sup> [UN High Commissioner for Refugees, Broken futures: young Afghan asylum seekers in the UK and on return to their country of origin, October 2012, 6. Forced return: what are former unaccompanied minors returning to? 6.1 Vital Importance of family.](#)

risk, particularly in areas of high militant activity or militant control, evidence is required to show that it is a real risk for the particular child concerned and not a mere possibility. It is important therefore that caseworkers refer to the most up-to-date country information and take into consideration the nature of the threat of forced recruitment and how far it would extend. Guidance on the general fear for individuals and their families of the Taliban and other armed groups opposing the Government is provided in section 3.10.

**3.13.15** If a grant of refugee status is unwarranted then caseworkers will need to consider whether the child would be at risk of serious harm on account of being an unaccompanied child. The UT concluded in [AA \(unattended children\) Afghanistan CG \[2012\] UKUT 00016 \(IAC\) \(1 February 2012\)](#) that there is a distinction between those who have a family and those who do not. Additionally, the following factors should be considered:

(a) the appellant's home area in the case of AA was assessed as a site of increased insurgency and insecurity at the time of his departure. Check the ANSO page for the relevant incident date maps etc:

<http://www.ngosafety.org/index.php?pageid=67>

(b) the appellant in the case of AA had provided some corroboration for his evidence;

(c) the appellant in the case of AA was aged 15 when he claimed asylum and was able to provide a "vivid account of the events" and gave "a description which was compelling in its detail, and highly unlikely to have been invented". He was also found to have "given a consistent account".

The UT was satisfied that the appellant would be at real risk of persecution as an unattached child from his particular home area who has lost all contact with his family, so that family protection will not be available to him.

**3.13.16** In consideration of return caseworkers should refer to Section 4 of this OGN. Note should be made of the Court of Appeal case of [EU \(Afghanistan\) \[2013\] EWCA Civ 32](#) (31 January 2013) – see caselaw section- paragraph 10 that the court also found substance to the point that for whatever reason unaccompanied children arrive in the UK as a result of someone, presumably their families paying for the fare and arranging the journey, thus they are unlikely to cooperate in the return of the child to Afghanistan

### **3.14 Converts to Christianity**

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

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



avoid worshipping in public.”<sup>61</sup> The criminal code makes no specific references to religious conversion. However, in the absence of a provision in the constitution or other laws, Article 130 of the constitution instructs that court decisions should be in accordance with constitutional limits and Hanafi religious jurisprudence to achieve justice. Under some interpretations of Islamic law, converting from Islam to another religion is deemed apostasy and considered an egregious crime. Male citizens over age 18 or female citizens over age 16 of sound mind who convert from Islam have three days to recant their conversions or possibly face death by stoning, or deprivation of all property and possessions, and/or the invalidation of their marriage.<sup>62</sup>

**3.14.3** Voice of the Martyrs in its 2013 country report for Afghanistan notes “Christians account for 0.05 percent [of the population]. While there is limited freedom to practice other religions, there is no freedom to propagate another faith or to convert from Islam. Authorities often ignore the persecution that occurs. Citizens are free to practice their own religion, but individuals and organizations suspected of evangelizing Muslims have been threatened or attacked by militants. Because of these limitations, the Church in Afghanistan remains almost entirely underground.”<sup>63</sup> The USSD in its 2012 International Religious Freedom report states that “Estimates of the Bahai and Christian communities are less clear because neither group practices openly for fear of persecution. Reportedly, the Christian community is between 500 and 8,000 persons. There are no public Christian churches. Afghan Christians worship alone or in small congregations in private homes. Many Afghan Christians converted while living as refugees in third countries. Chapels and churches for noncitizens of various faiths are located on several military bases, Provincial Reconstruction Teams, and at the Italian embassy in Kabul”.<sup>64</sup>

**3.14.4** The US Commission on International Religious Freedom (USCIRF) Annual Report 2013, Tier 2: Afghanistan reported “There were two known cases in 2010-11 of Afghans accused of conversion being prosecuted for apostasy and potentially facing death sentences. They were eventually released, with one seeking asylum in Europe. Marriage is formally restricted to Muslims; non-Muslims can marry as long as they do not publicly express their faith. The few Afghan Christians, converts from Islam or their children, long have been forced to conceal their faith and cannot worship openly. The situation for Christians worsened in 2010, when authorities arrested 26 Christians. After their release, many fled to India, where they have applied for refugee status due to a fear of religious persecution. There were no reports of Christians being arrested due to their faith during the reporting period. [2012]”.<sup>65</sup>

**3.14.5** There were reports of abuse of religious freedom, including one report of imprisonment and detention. Members of minority religious groups continued to suffer discrimination, and the government often did not protect minorities from societal harassment. The government enforced existing legal restrictions on religious freedom selectively and in a discriminatory manner. During the year, there were no incidents involving individuals attempting to proselytize, but some faith-

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<sup>61</sup> [UNHCR Eligibility guidelines for assessing the international protection needs of Asylum-seekers from Afghanistan 17 December 2010; III Eligibility for International Protection, A Potential Risk Profiles, 5. Members of Minority Religious Groups and Persons Perceived as contravening Shari'a law.](#)

<sup>62</sup> [US Department of State: International Religious Freedom Report 2012, Afghanistan, 20/05/2013, Section II – Status of Government Respect for Religious Freedom.. Legal/Policy framework](#)

<sup>63</sup> [Voice of the Martyrs 2013 country report Afghanistan \(accessed 13 May 2013\)](#)

<sup>64</sup> [US State Department International Religious Freedom Report: Afghanistan, 20/05/2013, Section 1 Religious Demography.](#)

<sup>65</sup> [US Commission on International Religious Freedom, Annual Report 2013, Tier 2, Afghanistan, 30/04/2013.](#)

based nongovernmental organizations (NGOs) reported continued monitoring by government entities. The right to change one's religion was not respected either in law or in practice. By the end of the year [2012] there were no reported cases of national or local authorities imposing criminal penalties on converts from Islam. There were no known cases of converts still in custody from previous years. There were no reports of persons being sentenced to death or executed for blasphemy.<sup>66</sup>

- 3.14.6** Non-Muslim minorities such as Sikhs, Hindus, and Christians continued to face social discrimination and harassment, and in some cases violence. This treatment was not systematic, but the government made minimal effort to improve conditions. Public opinion continued to be openly hostile toward Afghan converts to Christianity and to proselytizing by Christian organizations and individuals, including in cases where groups were falsely accused of proselytizing. Practicing Muslims and charities operated by Afghan Muslims were wrongly accused of proselytizing about Christianity or conversion to Christianity as a way to discredit the organizations..<sup>67</sup>
- 3.14.7** The NGO the Barnabas Fund reported that the Taliban has used social media to threaten Christians. In October 2011, the Taliban released on its website a warning that any Afghan suspected of converting to Christianity will be targeted for death. In January 2012, a Taliban blog posted pictures of Christians being baptized, individual baptismal certificates, and worship times".<sup>68</sup> The Christian Post reported in March 2011 that an Afghan Christian convert remained in jail awaiting sentencing after he was arrested in October 2010 in Mazar-e-Sharif.<sup>69</sup> According to the same article, he has faced "physical abuse and death threats from fellow prisoners and guards".<sup>70</sup>
- 3.14.8** Assist News Service reported in September 2012 "According to a story by the Iranian Christian news agency Mohabat News, Christian evangelism has turned into a sensitive and complicated issue in the last 10 years. Muslims target Christians every day. The rate of growth of Christianity in Afghanistan has caused Afghani Muslim clerics to consider it a threat. Also according to reports by news services, Afghani Muslim clerics warned the country's government against the spread of Christianity. Mohabat News said the Islamic council of Afghanistan, comprised of Islamic seminary students and clerics from all around the country, called on Hamid Karzai to limit the number of aid-workers and Christian missionaries coming to Afghanistan, because they can cause Afghans to convert to Christianity. Mohammad Hanif Atmar, the interior minister, appeared in the Afghanistan Parliament in May 2011. He said, "There are evidences of Christian evangelism in the country". Hundreds of Afghani university students, professors and Islamic experts protested against Christian evangelism in Kapisa province, in eastern Afghanistan. Mohabat News said protestors called on the Afghani government "to deal with those who promote Christianity in Afghanistan and deceive Muslims."<sup>71</sup>
- 3.14.9** The Assist News article concludes that "Today, the society in which people are raised with extreme Islamic thoughts from birth, is facing a deep change in its people's religious attitudes. Mohabat News said knowledgeable officials of the

<sup>66</sup> [US Department of State International Religious Freedom Report 2012, Afghanistan, 20/05/2013, Section II Status of Government respect for religious freedom, Government practices.](#)

<sup>67</sup> [US Department of State International Religious Freedom Report 2012, Afghanistan, 20/05/2013, Section III: societal respect for religious freedom.](#)

<sup>68</sup> [US Commission on International Religious Freedom Annual Report 2012 – USCIF watch list- Afghanistan , Covers 1/4/2011 to 29/-2/2012](#)

<sup>69</sup> [The Christian Post, Second Afghan Convert Faces Death Penalty under Apostasy Law, 29/03/2011.](#)

<sup>70</sup> [The Christian Post, Second Afghan Convert Faces Death Penalty under Apostasy Law, 29/03/2011.](#)

<sup>71</sup> [Assist News Service: Christianity grows in Afghanistan, Despite Islamists threats, 13/09/2012.](#)

country acknowledge that Christianity has found a special place not only among youth but also among other members of Afghani society. House churches are also growing rapidly. Christianity has spread not only among ordinary Afghans but also among Afghani elites and well-known figures. Mohabat News said Afghan Telex News Service published a report on the conversion of some members of the Afghani Parliament to Christianity. It read in part, "Evangelism and Christian propaganda is spreading in the country at a high level, but this is the first time that those who call themselves representatives of the Afghani people not only have become 'apostates,' but have joined Christian ministries to evangelize."<sup>72</sup>

**See also:** [Actors of protection](#) (section 2.2 above)

[Internal relocation](#) (section 2.3 above)

[Caselaw](#) (section 2.4 above)

**3.14.10 Conclusion.** Converts to Christianity from Islam are in general at real risk of persecution in Afghanistan: see in section 2.4 case of [NM \(Christian Converts\) Afghanistan CG \[2009\] UKAIT 00045](#). Given the Afghan state's position on apostasy, Christian converts will not be able to access sufficient protection anywhere in Afghanistan and internal relocation should not be relied upon. Christian converts should therefore be granted asylum unless, exceptionally, there is clear evidence why a particular individual would not be at risk.

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

### **3.15 Hindus and Sikhs**

**3.15.1** Hindus and Sikhs may seek asylum on the grounds that they face societal discrimination and harassment and that they cannot rely on the protection of the Afghan authorities.

**3.15.2 Religious Overview: see 3.13.2**

**3.15.3 Demography:** The US State Department in its International Religious Freedom 2012 Report for Afghanistan published 20 May 2013 states that "Reliable data on religious demography is difficult to obtain because an official nationwide census has not been conducted in decades. Leaders of minority religious communities estimate there are 350 Sikh families and 30 Hindu families."<sup>73</sup> The USSD Religious Freedom report for 2011, published July 2012, stated "According to self-estimates by these communities, there are approximately 2,000 Sikhs and 100 Hindu believers."<sup>74</sup> The Institute for War and Peace Reporting (IWPR) reported in July 2011 that "Given its proximity to India, Afghanistan historically had substantial Hindu and Sikh minorities, estimated at 20,000 before the factional civil war in 1992-96, followed by Taliban rule under which they were subject to discrimination rules. With most community members long gone, the total number of Hindus and Sikhs in

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<sup>72</sup> [Assist News Service: Christianity grows in Afghanistan, Despite Islamists threats, 13/09/2012.](#)

<sup>73</sup> [US Department of State International Religious Freedom Report, Afghanistan, 20/05/2013, Section 1: Religious Demography.](#)

<sup>74</sup> [US Department of State 2011 Report on International Religious Freedom Report Afghanistan, 30/07/2012, Section 1. Religious Demography..](#)

Afghanistan is now estimated at around 3,000”.<sup>75</sup> In the US International Religious Freedom Report for July to December 2010, published 13/09/2011<sup>76</sup> and in the 2010 report, published 17 November 2010<sup>77</sup> the number of Sikhs is quoted at 3,000 and Hindus at 100. The US 2009 International Religious Freedom report quotes figures of 4,900 Sikhs and 1,100 Hindus.<sup>78</sup>

**3.15.4** The Centre for Applied South Asian Studies (Casas) 2011 report “History and Current Position of Afghanistan’s Hindu and Sikh population quotes a UNHCR paper of June 2005 as estimating 600 Sikh and Hindu families (about 3,700 persons) living in Afghanistan with small but steady numbers returning, particularly from India. The majority lived in Kabul (185 families) , Jalalabad (160 families) and Kunduz (100 families) with others in Ghazni, Kandahar and Khost. Previously there had been as many as 200,000 Sikhs and Hindus living in Afghanistan. In considering the data the author of the report states “the only reliable observation that can be made about the current [2011] characteristics of Afghanistan’s Sikh and Hindi minority is that it is now only a small fraction of its former size, and that as numbers shrink, it’s remaining members are finding themselves ever more vulnerable to aggressive exploitation, against which they have no meaningful defence. Hence their exodus can only be expected to continue”.<sup>79</sup>

**3.15.5 Treatment:** Freedom of religion and the corollary right to manifest one’s religion in private or public are guaranteed by the Afghan Constitution. The Constitution contains, however, a repugnancy provision stating that no law can be contrary to Islam and defers to Shari’a law for matters not explicitly stipulated therein. According to some reports, members of the Hindu and Sikh communities continue to face societal discrimination, harassment and, in some cases, violence at the hands of members of other religious groups.<sup>80</sup> Freedom House in its 2013 Afghanistan report noted “Religious freedom has improved since the fall of the Taliban government in late 2001, but is still hampered by violence and harassment aimed at religious minorities and reformist Muslims, Hindus, Sikhs, and Shiite Muslims – particularly those from the Hazara ethnic group – have also faced official obstacles and discrimination by the Sunni Muslim majority”.<sup>81</sup> “Sikhs and Hindus continued to face discrimination, reporting unequal access to government jobs and harassment in their schools, as well as verbal and physical abuse in public places. In August a Sikh community leader publicly requested assistance to relocate Sikhs outside the country”.<sup>82</sup>

**3.15.6** Sikh and Hindu communities also experience problems with land confiscation by local authorities and commanders, as well as obtaining land for cremation.<sup>83</sup>

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<sup>75</sup> [Institute for War and Peace Reporting, Afghan Sikhs and Hindus Face Discrimination at School, 28 July 2011](#)

<sup>76</sup> [US Department of State, July to December 2010 Report on International Religious Freedom report Afghanistan, 13/09/2011 section I Religious Demography](#)

<sup>77</sup> [US Department of State, 2010 Report on International Religious Freedom report, Afghanistan, , 17/11/2010, Section 1: Religious Demography.](#)

<sup>78</sup> [US Department of State, 2009 Report on International Religious Freedom Afghanistan, 26/10/2009 Section i: Religious Demography.](#)

<sup>79</sup> [Centre for Applied South Asian Studies, The History and Current Position of Afghanistan’s Hindu and Sikh population: 2011, para 19.21; the COIR perspective.](#)

<sup>80</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan, 17/12/2010.III Eligibility for International Protection A Potential Risk Profiles, 5 Members of Minority Religious Groups and Persons perceived as contravening Shari’a Law c\) Minority Religious Groups.](#)

<sup>81</sup> [Freedom House, Freedom in the World 2013 Afghanistan, 16/03/2013., Political Rights and Civil Liberties.](#)

<sup>82</sup> [US State Department Country Report HR Practices 2012: Afghanistan, 19/04/2013: Section 6: Discrimination , Societal Abuses and Trafficking in Persons, National/Racial/Ethnic Minorities](#)

<sup>83</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan, 17/12/2010.III Eligibility for International Protection, A Potential Risk Profiles, 5 Members of minority religious groups and persons perceived as contravening Shari’s law c\) minority religious groups.](#)



Although Hindus and Sikhs had recourse to dispute resolution mechanisms such as the Special Land and Property Court, in practice the communities felt unprotected.<sup>84</sup>

**3.15.7** At least two Sikhs served in government positions, including one as a senior economic advisor to President Karzai and one as a presidentially appointed member of the upper house of parliament. Sikh leaders complained that they lacked political representation, noting that most Afghans fail to distinguish between Hindus and Sikhs despite significant religious differences. They also continued to complain about a lack of guaranteed seats in parliament. There are schools for Sikh children in Ghazni, Helmand, and Kabul. There are no Sikh schools in Jalalabad, despite estimates that nearly one-quarter of the Sikh population lives there. The government provides limited funding for Sikh schools, including for teachers for the basic curriculum. A few Sikh children attend private international schools. Hindus do not have separate schools, but sometimes send their children to Sikh schools.<sup>85</sup>

**3.15.8** The US Commission on International Religious Freedom Annual Report 2012 notes “In January, media reported on the case of Baljit Singh, a 23 year-old Sikh. Detained in 2010 on charges of falsely claiming Afghan citizenship after the United Kingdom deported him, Singh was in detention for over 19 months until being released on February 1. Singh alleged that during his detention, fellow prisoners and prison guards beat him on multiple occasions, insulted him, and forced him to remove his turban. Singh also alleged that he was deceived into converting to Islam while in prison; officials recorded and later broadcast his conversion on Tolo television. Officials from the attorney general’s office disputed the claims of mistreatment and told media that non-Muslim prisoners routinely converted to Islam in the belief they would receive more lenient treatment. Singh was granted asylum and returned to the United Kingdom in July”.<sup>86</sup> The Guardian newspaper of 3 July 2012 reported “Singh said he was being harassed for his religion and pressured to convert. He was verbally and physically abused in prison. One inmate threw boiling water over him, Singh said, pulling out a picture of his bandaged face shortly after the assault. He was also ordered to sleep in a corner of an outdoor courtyard, next to the toilet, he said. Men had to step over him on their way to relieve themselves, and as they did so, some kicked the turban that marked him out as a Sikh. Singh said the conversion angered the country’s already beleaguered Sikh community, which has dwindled from thousands of families to just a few hundred over 30 years of war and persecution.”<sup>87</sup>

**See also:**    **Actors of protection** (section 2.2 above)  
                  **Internal relocation** (section 2.3 above)  
                  **Caselaw** (section 2.4 above)

**3.15.9 Conclusion.** Data on religious demography is not reliable as the Afghan Government does not collect such information. Given the disparity of data in public sources, all that can be said with certainty is that the Sikh / Hindu community has significantly reduced from its peak in the pre Taliban era. In view of the importance in Afghanistan of the extended family and community structure, caseworkers need to consider whether adequate support for their needs is likely to be available to an

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<sup>84</sup> [US Department of State, International Religious Freedom Report 2012: Afghanistan 20/05/2013 Sections I – Religious Demography & II Status of Government Respect for Religious Freedom Legal/Policy framework.](#)

<sup>85</sup> [US Department of State; International Religious Freedom Report Afghanistan 20/05/2013, Section II Status of Government Respect for Religious Freedom: Legal/Policy Framework & Government Practices.](#)

<sup>86</sup> [US Department of State; International Religious Freedom Report Afghanistan 20/05/2013, Section II Status of Government Respect for Religious Freedom: Government Practices.](#)

<sup>87</sup> [The Guardian: Sikh man deported to Afghanistan returned to UK, 03/07/2012](#)



individual returnee.

**3.15.10** Whilst there is no evidence that Sikhs or Hindus are at real risk of persecution at the hands of the Afghan authorities solely because of their ethnicity, nor are there indicators of a Government able to provide effective protection to the Sikh/Hindu community. Sikhs and Hindus can be subject to societal harassment and discrimination. Where an applicant claims that they have suffered harassment and discrimination in the past, then careful consideration should be given as to whether their situation meets the threshold for granting protection.

**3.15.11** If a Sikh or Hindu man or married woman does establish that they would on return face a localised risk amounting to persecution, it might be possible for them to avoid such treatment by internal relocation to an area where well-established and close knit Sikh and Hindu communities remain. Where internal relocation would avoid persecution and would be reasonable, a grant of asylum will not be appropriate. However see note 3.15.9 above.

**3.15.12** Single Sikh and Hindu women and female heads of household without a male support network cannot reasonably relocate within Afghanistan. Therefore, if they would face ill-treatment which amounts to persecution they should be granted asylum unless there are clear case-specific reasons not to do so.

**3.15.13** The Upper Tribunal in the Reported case of [DSG & Others \(Afghan Sikhs: departure from CG\) Afghanistan \[2013\] UKUT 00148 \(IAC\)](#) found:

1. A judge may depart from existing country guidance in the circumstances described in Practice Direction 12.2 and 12.4 and the UT (IAC) Guidance Note 2011, no. 2, paragraphs 11 and 12.
2. The evidence before the judge in the present case justified his departure from the country guidance in [SL & Others \(Afghanistan\) CG \(Returning Sikhs and Hindus\) \[2005\] UKIAT 00137](#).

However In [SG \(Iraq\) \[2012\] EWCA Civ 940](#), the Court of Appeal made it clear, at paragraph 47, that decision makers and tribunal judges are required to take country guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, are adduced, justifying their not doing so. To do otherwise will amount to an error of law. Consequently following the promulgation of DSG, where the appellant was found to have suffered persecution in the past in Afghanistan, caseworkers will need to consider, within the context of the individual claim, the support available from the diminished Sikh / Hindu population within Afghanistan.

### **3.16 Prison conditions**

**3.16.1** Applicants 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.

**3.16.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

**3.16.3 Consideration.** Prisons, juvenile rehabilitation centres, and detention facilities were overseen by different organizations. The General Directorate of Prisons and Detention Centres (GDPDC), as part of the Ministry of Interior (MOI), has responsibility for all civilian-run prisons—both male and female. The Ministry of Justice's (MOJ) Juvenile Rehabilitation Directorate (JRD) is responsible for all juvenile rehabilitation centres and civilian detention centres. The ANP, under the MOI and the NDS, also run short-term detention facilities at the provincial and district level, usually colocated with their headquarters facility. The Ministry of Defence runs the Afghan National Detention Facilities at Parwan ---. There were 34 provincial prisons under GDPDC control, 187 active MOJ detention facilities, and 30 juvenile rehabilitation centres. The total number of active detention facilities reportedly fluctuated from month to month. Overall, the MOI lacked sufficient detention facilities. No official information was available on the number the National Directorate of Security (NDS) held or the number of facilities the NDS operated.<sup>88</sup> A BBC News Article of 25 March 2012 stated that “ The US has handed over to Afghanistan the only prison [Bagram] still under American control, now renamed the Afghan National Detention Facility at Parwan.”<sup>89</sup>

**3.16.4** On 5 February 2013, the head of the Central Prison Directorate signed 99 operational prison directives aimed at guaranteeing the sound administration and management of prisons.<sup>90</sup> The Afghanistan Independent Human Rights Commission (AIHRC) and other observers continued to report that inadequate food and water, poor sanitation facilities, insufficient blankets, and infectious diseases were common in the country's prisons.<sup>91</sup> Some observers found the food and water to be sufficient throughout the GDPDC. The GDPDC had a nationwide program to feed prisoners but was on an extremely limited budget. Many prisoners' families provided food supplements and other necessary items.<sup>92</sup>

**3.16.5** NGOs reported cases of prison officials raping female inmates. Authorities generally did not have the infrastructure capacity to separate pretrial and post-trial inmates. Women were not imprisoned with men. Authorities generally did not have the infrastructure capacity to separate juveniles based on the nature of the charges against them. There were widespread reports that government officials, security forces, detention centre authorities, and police committed abuses. NGOs reported that security forces continued to use excessive force, including torturing and beating civilians. In a March 2012 report, the AIHRC cited evidence of torture at nine NDS facilities and several ANP facilities, such as beating with sticks, electric cables, pipes, and rubber hoses; suspension; electric shock; threatened sexual abuse; twisting of genitals; forced prolonged standing; burning with cigarettes; and biting by interrogators. The AIHRC also reported detainees being held at secret NDS locations to which they were not granted access. AIHRC monitors received several reports of NDS officials acting to conceal evidence of torture and mistreatment from monitoring organizations, including transferring detainees to unknown places before monitoring visits.<sup>93</sup> Under the auspices of the Prison Working Group, which UNAMA

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<sup>88</sup> [US State Department Country Report HR Practices 2012: Afghanistan, 19/04/2013; Prisons and Detention Centre Conditions](#)

<sup>89</sup> [BBC News 25 March 2013: US army hands over Bagram prison](#)

<sup>90</sup> [General Assembly Security Council; The situation in Afghanistan and its implication for international peace and security: Report of the Secretary-General: 05/03/2013](#)

<sup>91</sup> [US State Department Country Report HR Practices 2012: Afghanistan, 19/04/2013; Prisons and Detention Centre Conditions](#)

<sup>92</sup> [US State Department Country Report HR Practices 2012: Afghanistan, 19/04/2013; Prisons and Detention Centre Conditions](#)

<sup>93</sup> [US State Department Country Report HR Practices 2012: Afghanistan, 19/04/2013; Prisons and Detention Centre Conditions](#)

helps to support, the ministries of the interior and public health developed a memorandum of understanding transferring responsibility for health delivery in prisons to the latter so as to better ensure the required level of expertise in the delivery of health care to inmates.<sup>94</sup>

**3.16.6** UNAMA visited 89 detention facilities in 30 provinces between October 2011 and October 2012 to observe treatment of conflict-related detainees and the Government's compliance with due process obligations under Afghan and international human rights law. During these visits, UNAMA interviewed 635 pre-trial detainees and convicted prisoners including 105 children detained by the ANP, NDS, ANA or ALP for national security crimes or crimes related to the armed conflict. The NDS and the Mol cooperated with UNAMA and provided access to almost all detention facilities and detainees. UNAMA found sufficiently credible and reliable evidence that more than half of 635 detainees interviewed (326 detainees) experienced torture and ill-treatment in numerous facilities---. Where torture occurred, it generally took the form of abusive interrogation techniques in which NDS, ANP, ALP or ANA officials deliberately inflicted severe pain and suffering on detainees during interrogations aimed mainly at obtaining a confession or information. UNAMA also received credible reports of the alleged disappearance of 81 individuals who reportedly had been taken into ANP custody in Kandahar province from September 2011 to October 2012 and whose status remains unknown.<sup>95</sup>

**3.16.7** From October 2011 to October 2012 and in response to UNAMA's October 2011 report, the Government of Afghanistan instituted a range of measures aimed at addressing torture and ill-treatment in Afghan detention facilities. The NDS and the Mol continued to provide UNAMA and international and national organizations with access to most facilities, stating they investigated allegations of torture and ill-treatment, implemented training programmes on prevention of detainee ill-treatment and issued policy directives to their officials throughout Afghanistan which stated that torture of detainees is a violation of Afghan law. In 2012, NDS also created a sub-directorate of human rights charged with investigating allegations of torture and ill-treatment that reports directly to the Director of NDS. While NDS and ANP acknowledged problems in their facilities, they stopped short of recognizing that their officials were responsible for torture. In response to the report the Afghan Government noted that it "does not completely rule out abuse and ill-treatment by detention centre staff due to lack of capacity and sound training in these institutions, the level of alleged torture reflected in this report is exaggerated."<sup>96</sup> UNAMA concluded that "The Government's efforts to address torture ,although significant. have not resulted in a marked improvement and reduction in the use of torture. This raises concerns at a time when the Government is taking over almost full responsibility for conflict related detainees from international military forces. The findings in the report highlight that torture cannot be addressed by training, inspections and directives alone but requires sound accountability measures to stop and prevent its use." Afghanistan is a State party to the Convention against Torture but has not yet become party to its Optional Protocol (OPCAT).<sup>97</sup>

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<sup>94</sup> [UN Security Council; The situation in Afghanistan and its implication for international peace and security; Report of the Secretary-General; 05/03/2013 para 42.](#)

<sup>95</sup> [UN Assistance Mission in Afghanistan, , "Treatment of conflict – related detainees in Afghanistan custody- one year one" January 2013, Executive Summary, pages 1-5](#)

<sup>96</sup> [UN Assistance Mission in Afghanistan, "Treatment of conflict – related detainees in Afghanistan custody- one year one" January 2013, Executive Summary pages 5-6](#)

<sup>97</sup> [UN Assistance Mission in Afghanistan, "Treatment of conflict – related detainees in Afghanistan custody- one year one" January 2013, Executive Summary, pages 8-9.](#)

**3.16.8** On 22 January 2013, the President established a fact-finding delegation to investigate concerns raised. On 11 February 2013, the delegation announced that it had found the existence of torture and ill-treatment of detainees at the time of arrest and investigation by police and national security officials in almost 48 per cent of detainees interviewed, while two thirds had had no access to a defence lawyer. On 16 February 2013, the President issued a decree for the implementation of the delegation's 11 recommendations pertaining to the prevention of torture and ill-treatment in detention centres.<sup>98</sup>

**3.16.9** The FCO 2012 report on Human Rights and Democracy, published 15 April 2013, notes as regards Afghanistan that "The UK implemented training and mentoring programmes, provided essential technical equipment to mitigate the risk of mistreatment, and encouraged further human rights reform and compliance with international standards within the NDS in 2012. Examples include training in how to manage a detention centre, human rights-compliant control and restraint training and a human rights course for detention officers in Kabul. We supported training by the UK's National Policing Improvement Agency for NDS investigators in interview skills and in using evidence. Training and professional development of NDS investigators to reduce reliance on confessions as a means of securing prosecutions began in April and will continue into 2013".<sup>99</sup> " In March 2013, the FCO reported that it was "disappointed that despite the considerable training and mentoring support provided by the UK and the rest of the International Community UNAMA found only a slight improvement in some areas since October 2011 and was critical of the standard of human rights compliance in Afghan detention facilities."<sup>100</sup>

**3.16.10 Conclusion:** The Afghan Government has committed to the UN Convention Against Torture. Work is ongoing to change attitudes to human rights and effect improvements and the Afghan Government needs to establish effective monitoring and control mechanisms to tackle torture and abuse in detention and prison facilities. Overall 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 the high incidence of torture, are likely to reach the Article 3 threshold.

**3.16.11** Where caseworkers believe that an individual is likely to face imprisonment on return to Afghanistan consideration must be given as to whether the applicant's actions merit exclusion by virtue of Article 1F of the Refugee Convention. Where the caseworker considers that this may be the case they should contact a senior caseworker for further guidance.

**3.16.12** Where individual applicants are able to demonstrate a real risk of imprisonment on return to Afghanistan and exclusion is not justified, a grant of Humanitarian Protection is likely to be appropriate.

#### **4. Minors claiming in their own right**

**4.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where the Secretary of State is satisfied that safe and adequate

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<sup>98</sup> [UN Security Council; The situation in Afghanistan and its implication for international peace and security; Report of the Secretary-General; 05/03/2013 paragraph 27](#)

<sup>99</sup> [UK FCO Human Rights and Democracy; Countries of Concern: Afghanistan; 15 April 2013](#)

<sup>100</sup> [UK Foreign and Commonwealth Office, Country updates: Afghanistan, 31 March 2013](#)

reception arrangements are in place in the country to which the child is to be returned.

- 4.2** At present there is insufficient information to be satisfied that there are adequate alternative reception, support and care arrangements in place for minors with no family in Afghanistan. Those who cannot be returned should be considered for leave as a Unaccompanied Asylum Seeking Children (UASC).
- 4.3** Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of UASC as soon as possible after the claim for asylum is made, while ensuring that those endeavours do not jeopardise the child's and/or their family's safety. Information on the infrastructure within Afghanistan which may potentially be utilised to assist in endeavouring to trace the families of UASC, can be obtained from the . Afghanistan country of origin report.
- 4.4** Caseworkers should refer to the Asylum Instruction: [Processing an Asylum Application from a Child](#), for further information on assessing the availability of safe and adequate reception arrangements, UASC Leave and family tracing. Additional information on family tracing can be obtained from the [interim guidance](#) on Court of Appeal judgment in [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#).

## **5. Medical treatment**

- 5.1** Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Caseworkers should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COI Service (COIS).
- 5.2** The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of [N \(FC\) v SSHD \[2005\] UKHL31](#), it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.
- 5.3** That standard continues to be followed in the Upper Tribunal (UT) where, in the case of [GS and EO \(Article 3 – health cases\) India \[2012\] UKUT 00397\(IAC\)](#) the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, the absence of resources through civil war or similar human agency.
- 5.4** The improvement or stabilisation in an applicant's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3



ECHR. All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.

- 5.5** Where a caseworker considers that the circumstances of the individual applicant and the situation in the country would make 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. Caseworkers must refer to the Asylum Instruction on [Discretionary Leave](#) for the appropriate period of leave to grant.

## **6. Returns**

- 6.1** There is no policy which precludes the enforced return to Afghanistan of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 6.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.
- 6.3** Any medical conditions put forward by the person as a reason not to remove them and which have not previously been considered, must be fully investigated against the background of the latest available country of origin information and the specific facts of the case. A decision should then be made as to whether removal remains the correct course of action, in accordance with [chapter 53.8 of the Enforcement Instructions and Guidance](#).
- 6.4** The preferred option for repatriating those Afghan asylum applicants who having exhausted the independent appeal process, are found not to need international protection is assisted voluntary return. This policy is in line with the Tripartite Memorandum of Understanding on Voluntary Return, between the UK, the UNHCR and the Afghan Transitional Administration. However, as agreed with the Afghan authorities, from April 2003 those not choosing voluntary return and found to be without protection or humanitarian needs have been liable to be considered for enforcement action although those individuals or groups identified as vulnerable are excluded from the programme of enforced returns. All Afghans returned by charter operation from the UK are given immediate post arrival assistance including temporary accommodation and onward transportation if required, and offered access to a reintegration programme which includes vocational training and business support options.
- 6.5** The court in [AK \(Article 15\(c\)\) Afghanistan CG \[2012\] UKUT 163 \(IAC\) \(18 May 2012\)](#) found [para 224] that “ we do not think that the situation of UK returnees to Kabul (even limiting this category to persons whose home area is not Kabul) and IDPs in Kabul are wholly the same. --- there are return and reintegration packages available [see paragraph 84 of KA]. It would be unwise to exaggerate the importance of such packages: they are chiefly designed to cushion against immediate travails on return. That said, by assisting with skills training and inquiries related to employment opportunities, they clearly do help position returnees advantageously as compared to IDPs marooned in squatter settlements in outlying

areas. (UK returnees who previously lived in Kabul would ordinarily have the additional advantage of knowing the city and having family and or social networks there.”

- 6.6** Afghan nationals may return from the UK voluntarily to any region of Afghanistan at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 6.7** The AVR scheme is implemented on behalf of UKBA by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Afghanistan. The AVR programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Afghan nationals wishing to avail themselves of this opportunity for assisted return to Afghanistan should be put in contact with Refugee Action Details can be found on Refugee Action’s web site at: [www.choices-avr.org.uk](http://www.choices-avr.org.uk).

**Country Specific Litigation Team  
Operational Policy & Rules Unit  
Operational Systems Transformation.  
Home Office  
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