



OPERATIONAL GUIDANCE NOTE

AFGHANISTAN

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1. Introduction

- 1.1** This document provides UKBA case-owners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Afghanistan including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Caseowners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and case-owners 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.homeoffice.gov.uk/rds/country_reports.html

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. Country assessment

- 2.1 Caseowners should refer to the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

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

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

<http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/afghanistan/>

Actors of protection

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

- 2.3.1 Three ministries have responsibility both in law and in practice for providing security in the country. The Afghan National Police (ANP), under the Ministry of the Interior (MOI), has primary responsibility for internal order but increasingly was engaged in fighting the insurgency. The Afghan National Army (ANA), under the Ministry of Defense, is responsible for external security. The National Directorate of Security (NDS) has responsibility for investigating cases of national security and also functions as an intelligence agency.¹ In August 2010, ISAF and the Government of Afghanistan established the Afghan Local Police (ALP) as a mechanism in the Ministry of Interior (MoI) to support unstable districts, to protect remote rural areas and deter infiltration of armed opposition groups and to create an environment for improved governance and development. ALP has no role in or powers of law enforcement (in spite of their name) and lack the authority to arrest although they are allowed to hold individuals temporarily.²

- 2.3.2 The United States surged an additional 30,000 troops to Afghanistan and supported the training of Afghan soldiers and police, now numbering 305,000. In July NATO transferred the lead security responsibility to Afghan forces in seven areas; this process will continue throughout 2014, when NATO will shift to a supporting role. Over the next year, continued growth of the Afghan Army, Air Force and Afghan

¹ [US Department of State 2011 Human Rights Report: Afghanistan, Section c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Role of the Police and Security Apparatus; May 2012](#)

² [UNAMA Afghanistan: Annual Report 2011: Protection of Civilians in Armed Conflict, February 2012, Afghan Local Police and Protection of Civilians, Overview and Structure of Afghan Local Police \(ALP\)](#)

National Police is planned, until they reach their combined authorised strength of 352,000.³

- 2.3.3** Police effectiveness in rural areas (over 90% of the country) is dependent on co-operation of local leaders, including religious figures.⁴ On 12 September [2011], Human Rights Watch published a report on the Afghan Local Police (ALP) which alleged that they had committed human rights violations. An August 2011 report by the United Nations Assistance Mission in Afghanistan documented concerns over the ALP's recruitment and vetting procedures.⁵ Amnesty International in its 2012 report has also commented "The National Directorate of Security (NDS), Afghanistan's intelligence service, continued to arbitrarily arrest and detain suspects, denying them access to a lawyer, their families, the courts or other external bodies. The NDS faced credible allegations of torturing detainees and operating secret detention facilities. NATO ceased transferring detainees to Afghan forces after a UN report, issued in October, documented the systematic use of torture by NDS officers"⁶. As regards violence against women, Afghan women have repeatedly reported that they have lost faith in the law enforcement and judicial institutions that they consider ineffective, incompetent, dysfunctional and corrupt.⁷
- 2.3.4** The Afghan police force responsible for Kabul has jumped from 5,000 officers to 18,000, and the Afghan army has established a new division with 7,000 soldiers to help protect the capital.⁸ However their ability to provide protection is limited as reflected in the fact that the Taliban have continued to successfully target both perceived opponents and civilians in Kabul in recent months. For example, on 29 October, insurgents rammed a car bomb into the side of an armoured bus shuttling US troops between NATO bases in Kabul killing 13 troops.⁹ On 6 December 2011, a suicide bomber struck a shrine packed with civilian worshippers in Kabul, killing at least 54 people.¹⁰
- 2.3.5** Protection in Afghanistan generally is compromised by high levels of corruption, ineffective governance, a climate of impunity, lack of official impetus for the transitional justice process, weak rule of law and widespread reliance on traditional dispute resolution mechanisms that do not comply with due process standards, all of which contribute to a deteriorating human rights situation in the country.¹¹ Official impunity and lack of accountability were pervasive, as were abuses of power by unofficial, traditional militias. There was limited independent, judicial, or external oversight of the NDS and ANP as institutions, and of crimes or misconduct committed

³ [William B. Caldwell, IV. and Derek S. Reveron, BEYOND THE TENTH YEAR IN AFGHANISTAN: SECURITY FORCE ASSISTANCE AND INTERNATIONAL SECURITY, September 2011 published by the Foreign Policy Research Institute](#)

⁴ [Afghanistan Country of Origin information Services Report October 2011, paragraph 10.05 \[from Jane's Security- Country Risk Assessment: Afghanistan, Security and Foreign Forces, updated on 21 April 2011- subscription only\]](#)

⁵ [UK Foreign & Commonwealth Office \(FCO\), The 2011 Foreign & Commonwealth Office Human Rights & Democracy Report: Countries of Concern: Afghanistan, 30/04/2012, Rule of Law.](#)

⁶ [Amnesty International, Annual Report 2012: Afghanistan ARBITRARY ARRESTS AND DETENTIONS, TORTURE AND OTHER ILL-TREATMENT.](#)

⁷ [UNAMA, Silence is violence: End the Abuse of Women in Afghanistan, 08/07/2009, Section II., Inadequate response from public authorities](#)

⁸ [e-Ariana: Afghan capital enjoys relative calm amid security crackdown 24 Oct 2010](#)

⁹ [The Guardian \(London\), Taliban car bomb attack kills US troops in Kabul: Deadliest insurgent blast in months leaves 13 dead, 30/10/2011](#)

¹⁰ [UN News Service, Security Council condemns 'heinous' attacks on Afghan civilians, 07/12/2011](#)

¹¹ [UNHCR Eligibility guidelines for assessing the international protection needs of Asylum-seekers from Afghanistan 17 December 2010](#)

by NDS and ANP officials, including torture and abuse.¹² The International Crisis Group reported that the Taliban and other insurgents had taken advantage of the corruption in the Afghan security agencies and infiltrated entire units of the police and army in central eastern provinces like Kabul.¹³

- 2.3.6** In May 2012, the Congressional Research Service noted that Bismillah Khan, the Interior Minister, was highly respected as Afghan National Army (ANA) chief of staff and has taken steps to try to improve the ANP, including through unannounced visits to stations around the country. He has also instituted salary increases and objective standards for promotions and assignments. U.S. commanders credit a November 2009 raise in police salaries (nearly doubled in high combat areas) and the streamlining and improvement of the payments system for the ANP with reducing the solicitation of bribes by the ANP. The raise also stimulated an eightfold increase in the number of Afghans seeking to be recruited.¹⁴
- 2.3.7** A concise picture of the human rights situation in the context of the ongoing Afghan conflict and an assessment of the conflict from a military –political point of view is provided by the following report¹⁵ : [Afghanistan: Human Rights and Security Situation](#); the following report from the US Department of Defence contains maps of insurgent areas of operation (p23), Afghanistan and Pakistan military operations (p33);and key border crossings(p33)¹⁶: [Report on Progress Toward Security and Stability in Afghanistan and United States Plan for Sustaining the Afghanistan National Security Forces](#) (published quarterly).
- 2.3.8** State protection outside of Kabul will only be accessible in exceptional cases. In Kabul the authorities, including the ISAF forces, are in general willing to offer protection to citizens. However, case owners must bear in mind that for the reasons above, their ability to provide effective protection is limited. It is important that case owners refer to the most up to date country information to ascertain whether in the circumstances prevailing at the time the decision is made, effective protection is available in Kabul for an individual applicant, taking full account of their personal circumstances.
- 2.3.9** Effective protection is not available, even in Kabul, for single women or female heads of household without a male support network.

Internal relocation

- 2.4** Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 3390 of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken

¹² [US Department of State 2011 Human Rights Report: Afghanistan, Section c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Role of the Police and Security Apparatus; May 2012](#)

¹³ [International Crisis Group, The Growing Danger in Kabul, 29/06/2011](#)

¹⁴ [Afghanistan: Post Taliban Governance, Security and U.S. Policy 03/05/12-Transition Pillar, Building Afghan Forces and Establishing Rule of Law, Afghan National Police \(ANP\).](#)

¹⁵ [Afghanistan: Human Rights and Security Situation](#)

¹⁶ [Report on Progress Toward Security and Stability in Afghanistan and United States Plan for Sustaining the Afghanistan National Security Forces](#)

into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

- 2.4.1** The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation; however, the government sometimes limited citizens' movement for security reasons. The government cooperated with the UN High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, and other persons of concern but was limited by lack of infrastructure and capacity. In-Country Movement: 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. The Taliban imposed nightly curfews on the local populace in regions where it exercised authority, mostly in the southeast. Social custom limited women's freedom of movement without male consent or a male chaperone.¹⁷
- 2.4.2** Given the wide geographic reach of some armed anti-Government groups, a viable internal relocation option may not be available to individuals at risk of being targeted by such groups. It is particularly important to note that the operational capacity of the Taliban (including the Haqqani network), the Hezb-e-Eslami (Gulbuddin) and other armed groups in the southern, south-eastern and eastern regions is not only evidenced by high-profile attacks, such as (complex) suicide bombings, but also through more permanent infiltration in some neighbourhoods and the regular distribution of threatening "night-letters".¹⁸
- 2.4.3** 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.¹⁹
- 2.4.4** For categories of individuals who fear harm as a result of harmful traditional practices and religious norms of a persecutory nature – such as women and children with specific profiles and LGBT individuals – and for whom an internal relocation to another part of the country may be relevant, the endorsement of such norms by large segments of society and powerful conservative elements in the public administration needs to be taken into account.²⁰
- 2.4.5** The traditional extended family and community structures of Afghan society continue to constitute the main protection and coping mechanism, particularly in rural areas where infrastructure is not as developed. Afghans rely on these structures and links for their safety and economic survival, including access to accommodation and an adequate level of subsistence. In certain circumstances, relocation to an area with a

¹⁷ [US Department of State 2011 Human Rights Report: Afghanistan, Section 2 b Freedom of Movement : May 2012](#)

¹⁸ [UNHCR Eligibility guidelines for assessing the international protection needs of Asylum-seekers from Afghanistan 17 December 2010](#)

¹⁹ [UNHCR Eligibility guidelines for assessing the international protection needs of Asylum-seekers from Afghanistan 17 December 2010](#)

²⁰ [UNHCR Eligibility guidelines for assessing the international protection needs of Asylum-seekers from Afghanistan 17 December 2010](#)

predominantly different ethnic/religious make-up may also not be possible due to latent or overt tensions between ethnic/religious groups.²¹

- 2.4.6** In practice, all returns are currently to Kabul. Careful consideration must be given to any other place of proposed internal relocation and how it will be accessed, taking account of the latest 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 host the displaced individuals; the availability of basic infrastructure and access to essential services, such as sanitation, health care and education; and their ability to sustain themselves, including livelihood opportunities. 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.
- 2.4.7** In the Country Guidance case of AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) (18 May 2012) (see section 2.5 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
- Para 224: *“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. 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: *“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;*
- 2.4.8** Unescorted internal travel for single women and female heads of household who do not have a male support network can be extremely difficult. Discrimination and harassment are common, as would be establishing themselves in an area where they did not have such a support network. Sufficient protection is not available to them, even in Kabul, and it would therefore generally be unduly harsh to expect single

²¹UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 17/12/2010,C. Internal Flight or Relocation Alternative,1.Individuals at Risk of Targeted Persecution

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)

2.5 Caselaw

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

The Tribunal's key findings were:

A. Law etc:

- (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 of 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) 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 \(IAC\)](#)

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. While forcible recruitment by the Taliban cannot be discounted as a risk, particularly in areas of high militant activity or militant control, evidence is required to show that it is a real risk for the particular child concerned and not a mere possibility. Where a child has close relatives in Afghanistan who have assisted him in leaving the country, any assertion that such family members are 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.

Note: GS (Article 15 (c): indiscriminate violence) Afghanistan CG [2009] UKAIT 00044 was replaced May 12 by AK.

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

An Afghan claimant who can demonstrate that he has genuinely converted to Christianity from Islam is likely to be able to show that he is at real risk of serious ill-treatment amounting to persecution or a breach of his Article 3 ECHR right on return to Afghanistan. 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:

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](#)

(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.

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

Afghanistan – country guidance as to whether as a class Afghan Sikhs and Hindus are entitled to international surrogate protection – Held: (1) there is no evidence to support the claim that the Afghan Sikh and Hindu minorities in Afghanistan are persecuted or treated in breach of their protected human rights under Article 3 of the European Convention by the State or that the degree of societal discrimination against them is such as to give rise to any such persecution or treatment of them as a class (2) following UNHCR guidance their status as Afghan Sikhs and Hindus is a factor to be taken into account in assessing individual claims on a case by case basis

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

62. Whilst it is right that training for the police, including human rights and gender awareness training is underway or to begin very shortly, the evidence does not yet show that in fact police services are available to women without discrimination. Such discrimination can, at present, include exposing them to actual physical violence at police stations.

63. It is plain that without a properly trained and accountable police and security service, without appropriate legislation, and without equality of access to the legal process, including non-discriminatory access to trained, independent, fair and impartial judges, none of which has as yet been achieved, women in Afghanistan must, in this way, be regarded at this point in history as exposed to serious discrimination within the legal system.

64. Further, the evidence also shows that women in Afghanistan are exposed to serious levels of societal discrimination which is condoned by the authorities or which the authorities do nothing to protect them from. Restrictions on freedom of movement, education, employment and generally in relation to participation in public life, for women and girls continue to be imposed by members of the population, in general by adult males, but also by some local officials, such as enforcement of particular dress codes. Whilst some women are enjoying greater levels of freedom to participate more fully in society than they did under what has been called the apartheid regime of the Taliban, these benefits are not available to all women. Even where some women find paid employment outside the home, they are able to do so only when they have the support of at least one adult male. Even in Kabul, women do not walk the streets alone. To do so would be to bring themselves into disrepute, lay themselves open to threats, accusation, assault including sexual assault, and even being charged with an offence or imprisoned 'for their own safety'. It is also the case that although some officials do take some steps to seek to prevent forced marriages of women or girl children, where the families in question persist, then the officials do not prevent the forced marriage from taking place.

65. In the light of all the evidence, we find that the discrimination experienced by women in Afghanistan does include discrimination in law, despite the constitution that has recently come into force, not least through a lack of protective legislation, and discrimination in access to an impartial, fair and independent police and judicial service. We further find that the discrimination also includes societal discrimination by members of the population, from which the authorities either cannot or will not provide protection. As it was put by the President in the case of ZH, the lack of state protection is inherent in the discrimination relied on.

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Afghanistan. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies

for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

- 3.4** All Asylum Instructions can be accessed via the on 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/>

3.5 Credibility

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

3.6 General security situation

- 3.6.1** Some applicants may claim that they are at risk of serious harm as a result of the poor security situation in Afghanistan.
- 3.6.2 Treatment.** Human Rights Watch reported that the armed conflict further escalated in 2011. The Afghan NGO Security Office (ANSO) noted that opposition attacks increased to 40 a day in the first six months of the year, up 119 percent since 2009 and 42 percent since 2010²². Dr Antonio Giustozzi, an Afghan country expert, stated that as of summer 2011, the Afghan conflict was continuing to expand geographically and to intensify in terms of violence. With just one province out of 34 unaffected by violence (Panjshir), 2011 saw an intensification of violence in eastern, western and north-western Afghanistan.²³ The UN Secretary General reported that as of the end of August 2011 the average monthly number of incidents for 2011 was 2,108, up 39 per cent compared with the same period in 2010 and that armed clashes and improvised explosive devices continued to constitute the majority of incidents.²⁴ For more specific security information by region, see the UNOCHA Protection Clusters.²⁵
- 3.6.3** The Afghan NGO safety Office (ANSO) report for Q1 2012 notes that attack volumes by anti government forces have decreased 43% in comparison to Q1 2011 providing the first reliable indicator that the conflict may be entering a period of regression.²⁶ The ANSO report further noted that “despite this, one must still consider them an ascendant power, as they themselves clearly do, and a key question remains as to

²² [Human Rights Watch, World Report 2012, 22/01/2012](#)

²³ [Norwegian Country of Origin Information Centre \(LANDINFO\), Afghanistan: Human Rights and Security Situation: Report by Dr. Antonio Giustozzi, 09/09/2011 2. Short Military – Political assessment of the conflict as of summer 2011.](#)

²⁴ [United Nations, Report of the Secretary-General on the situation in Afghanistan and its implications for international peace and security, \(para 3\) 21/09/2011,](#)

²⁵ [UNOCHA, Afghanistan Protection Clusters](#)

²⁶ [AGHAN NGO Safety Office, Quarterly Data Report Q. 1 2012 1st Jan-31st Mar 2012, Summary & Assessment](#)

whether this lack of activity is a deliberate act and if so, why. As last year was characterised by Armed Opposition Groups (AOG) doing more earlier; this year has begun with them doing less later".²⁷ It should be noted that the Centre for Strategic and International Studies (CSIS) considers that "It is the quality of the security incident and its strategic effect – not the number of incidents – that is the key factor".²⁸ Moreover it reports that "like virtually every official metric used in reporting on the Afghan War, no effort is made to fully define what "security incidents" are counted and the level of uncertainty involved. This is critical because it is not clear whether "security incidents" include all incidents in Afghanistan, or those involving US, ISAF, and government targets. It is also unclear whether a sufficient collection capability exists to count insurgent attacks on local Afghan targets or in support of efforts to influence and control the population".²⁹ CSIS provides the following assessment of the insurgency:

- Despite the undeniable progress of ANSF-ISAF operations, the insurgency is highly adaptable with a significant regenerative capacity, and retains the capability to emplace substantial numbers of improvised explosive devices (IEDs) and conduct high-profile attacks. Furthermore, insurgent operations are not limited to direct attacks on ANSF and ISAF personnel, and the security statistics cited above are not sufficient to measure the balance of insurgent versus Afghan Government influence. The insurgency continues to exert its influence in Afghanistan through alternate methods, including kidnappings, intimidation tactics, and robust assassination efforts, as well as messaging at mosques and leveraging the network of familial, tribal, and ideological sympathizers to exert their influence in areas controlled by the ANSF and ISAF. The insurgency will likely expand its soft power efforts as a result of its reduced operational capability and in order to conserve diminishing resources.³⁰

3.6.4 The widespread use by Anti-Government Elements (AGEs) of improvised explosive devices (IEDs) was the single largest cause of civilian deaths and injuries in Afghanistan in 2011. Between 1 January and 31 December 2011, UNAMA (United Nations Assistance Mission in Afghanistan) recorded 967 civilian deaths and 1,586 injuries from IEDs constituting 32 percent of the total number of civilian casualties in 2011.³¹ The Mine Action Coordination Centre for Afghanistan (MACCA) reported at year's end that land mines and unexploded ordnance killed or injured an average of 31 persons each month. In addition to these casualties from traditional antitank and antipersonnel mines, there were 18,692 civilian casualties from improvised explosive devices (IEDs) during the year. At year's end, land mines and unexploded ordnance imperilled 1,930 communities, which represent less than 2 percent of total communities. The majority of remaining mine hazard areas include a relatively low number of arbitrarily-placed mines dispersed over a large area, but nonetheless still deny full use of the land to communities. The MOE and Afghan NGOs conducted educational programs and mine awareness campaigns throughout the country.³²

²⁷ [AGHAN NGO Safety Office , Quarterly Data Report Q. 1 2012, 1st Jan-31st Mar 2012](#), Summary & Assessment.

²⁸ [Centre for Strategic and International Studies, Measures of "Progress" in Afghanistan in the Spring of 2012", 09/05/2012](#), The dangers in a US/ISAF emphasis on war fighting and kinetics.

²⁹ [Centre for Strategic and International Studies, Measures of "Progress" in Afghanistan in the Spring of 2012", 09/05/2012](#), The dangers in a US/ISAF emphasis on war fighting and kinetics.

³⁰ [Centre for Strategic and International Studies, Measures of "Progress" in Afghanistan in the Spring of 2012", 09/05/2012](#), Providing the full range of metrics necessary to show progress in the war.

³¹ [UNAMA, Afghanistan: Annual Report 2011: Protection of Civilians in Armed Conflict, February 2012, Anti-Government Elements and Protection of Civilians, IED Attacks](#)

³² [US Department of State 2011 Human Rights Report: Afghanistan, 24/05/2012, Section1G – Use of Excessive Force and Other Abuses in Internal Conflicts](#)

- 3.6.5** The number of civilians killed by suicide attacks increased dramatically in 2011 compared to 2010. 431 civilians were killed, an increase of 81 percent from 2010. For example, in Kunduz province, civilian deaths from suicide attacks increased from 83 in 2010 to 145 in 2011. The shifting tactics of Anti-Government Elements included targeted killings of civilians aimed at terrorizing the civilian population and weakening the Government's presence in particular locations. The campaign of targeted killings against civilian government officials and workers that emerged in 2010 continued in 2011 with no sign of decreasing. UNAMA documented 495 targeted killings of civilians, an increase of three percent from 2010. Targeted killings decreased in the south, central and northeast regions but increased greatly in other parts of the country. The main targets across the country continued to be individuals working for, or perceived to be supportive of the Government of Afghanistan.³³ On June 9, Taliban-linked insurgents killed nine persons in an attack on a wedding party at the Nangarhar compound of a district governor. Two civilians were killed and two wounded in a suicide attack on the governor's compound in Parwan on June 21. Another suicide attack on the Kapisa governor's office killed eight persons and wounded four in mid-June. In an attack that some observers thought may have missed its mark, 25 persons, including children, pregnant women, medical workers, and an entire family of seven, were killed on June 25 in Logar Province, when a truck bomb exploded at the entrance to a maternity hospital, destroying the facility, which drew patients from isolated villages for prenatal and obstetrics care. No insurgent group claimed responsibility for the attack, which may have been intended for the district governor's office and police station next door.³⁴
- 3.6.6** In 2011, 410 civilian deaths were attributed to Pro-Government Forces, a decrease of four percent compared with 2010; aerial attacks remained the tactic that caused the most civilian deaths by Pro- Government Forces. As the year [2011] progressed, the conflict gathered intensity outside those southern provinces where fighting has historically been concentrated and worsened in several provinces in the south eastern and eastern regions. In the last half of 2011, although Kandahar and Helmand remained the provinces with the highest number of civilian deaths with 290 civilians killed; this number is a 39 percent decrease compared to the same period in 2010. In contrast, the south eastern provinces of Khost, Paktika and Ghazni and eastern provinces of Kunar and Nangarhar saw a combined total of 446 deaths, a 34 percent increase compared with the same period in 2010.³⁵
- 3.6.7** Although targeted killings by AGEs decreased in the southern, central and north eastern regions in 2011, country-wide such killings rose by six percent, with huge increases in the western region (255 percent), the south eastern region (114 percent) and the eastern region (107 percent). This shift was particularly evident in the second half of the year. Between July and December 2011, civilian deaths in the central region jumped from 128 to 230, an 80 percent increase from the previous year.³⁶
- 3.6.8** This rise was prominent in Kabul province, where civilian deaths increased from 23 in the last half of 2010 to 71 in 2011. 67 of the 71 civilian deaths in Kabul during this

³³ [UNAMA, Afghanistan: Annual Report 2011: Protection of Civilians in Armed Conflict, February 2012, Anti-Government Elements and Protection of Civilians, Targeted & Unlawfully killing civilians, Suicide Attacks](#)

³⁴ [US Department of State 2011 Human Rights Report: Afghanistan, Section1G – Use of Excessive Force and Other Abuses in Internal Conflicts; May 2012](#)

³⁵ [UNAMA, Afghanistan: Annual Report 2011: Protection of Civilians in Armed Conflict, February 2012 Pro-Government Forces and Protection of Civilians, Aerial Attacks and Executive Summary, Geographic Shift in the Conflict.](#)

³⁶ [UNAMA, Afghanistan: Annual Report 2011: Protection of Civilians in Armed Conflict, February 2012; Geographic shift in the conflict.](#)

period occurred as a result of six suicide attacks.³⁷ The ICG report of 27 June 2011 however stated:

” Although the number of attacks on Kabul has recently declined, insurgent networks have been able to reinforce their gains in provinces and districts close to the city, launching smaller attacks on soft targets. Outmanned and outgunned by the thousands of foreign and Afghan security forces in and around Kabul, Taliban attacks inside the capital are not aimed at controlling it physically but to capture it psychologically. Once that objective is achieved, the political and financial cost of doing business for foreign forces and diplomatic missions located in Kabul will be too high to sustain for the long haul.”³⁸

3.6.9 In 2011, the Taliban issued more than 57 public statements. Several of these statements addressed issues related to the protection of civilians. Along with specific provisions of the *Layha* ³⁸ (Taliban Code of Conduct which outlines rules of engagement for all Taliban fighters) these statements were the clearest articulation of the Taliban’s publicly stated comments on minimizing civilian casualties. In addition, in many incidents that led to loss of civilian life, the Taliban, contrary to the definition of “civilian” under international humanitarian law labelled civilians as “lawful” or “legitimate” targets; the killing and targeting of civilians amounts to a war crime under international humanitarian law.³⁹

3.6.10 The United Nations estimated that at the end of September 2011, there were some 450,000 conflict-induced internally displaced persons (IDPs) in Afghanistan. Continued conflict between the Government, NATO/ISAF and anti-Government elements resulted in the estimated displacement of some 162,000 people between January and October 2011, a 51 per cent increase over the same period last year. A key challenge has been the spread of dry conditions and drought across much of the northern and western regions of Afghanistan, including to places of origin of IDPs. This has resulted in further vulnerabilities and displacements.⁴⁰ In November 2011 IRIN reported that resettlement challenges in Afghanistan have discouraged refugees living in neighbouring countries from going home, with 60,000 returning in the past 10 months against 100,000 during the same period in 2010.⁴¹ The Norwegian Country of Origin Information Centre reported that the average number of returnees per day for the period 1 January to 15 June 2011 fell by 61 per cent compared with the same period in 2010; from 426 to 166 per day and that it is natural to see this in connection with increased insecurity.⁴²

3.6.11 Peace talks between the Afghan government and the Taliban and other insurgent groups continued, despite the 20 September assassination of former President Burhanuddin Rabbani, ostensibly in charge of the talks, by two men pretending to be Taleban representatives. The UN Security Council de-linked the Taliban from al-

³⁷ [UNAMA, Afghanistan: Annual Report 2011: Protection of Civilians in Armed Conflict, February 2012](#) : Geographic shift in the conflict.

³⁸ The *Layha* or Code of Conduct of 30 May 2010 is divided into 14 sections; section 7 focuses on “internal issues” including chains of command, the formation of fighting groups, advice on attacking the enemy, rule on suicide attacks, and dispute resolution (Articles 40-58); section 11 on “Issues Concerning the People” focuses on “Protecting the Common People (Articles 62-66).

³⁹ [UNAMA, Afghanistan: Annual Report 2011: Protection of Civilians in Armed Conflict, February 2012](#): Taliban Public statements on civilian casualties.

⁴⁰ [United Nations, Report of the Secretary-General on the situation in Afghanistan and its implications for international peace and security, 13/12/2011, para 47](#)

⁴¹ [IRIN, Number of Returnees Down, 09/11/2011](#)

⁴² [Norwegian Country of Origin Information Centre \(LANDINFO\), Afghanistan: Security Report November 2010 – June 2011: Part 1, 20/09/2011](#) , 2.4 Returning from neighbouring areas: Pakistan and Iran

Qa'ida in June, removing it from one UN sanctions list.⁴³ The UK Foreign Secretary stated in a written statement to the UK Parliament that "At the NATO Chicago Summit on 20-21 May [2011], the international community demonstrated its enduring support to Afghanistan beyond the end of security transition. Plans were discussed for future funding of the ANSF and NATO's post-2014 role was agreed" This sent a clear message to the Afghan people that we will not abandon them, and a clear message to the insurgency that they cannot wait us out.⁴⁴

3.6.12 See also:

[Actors of protection](#)
[Internal relocation](#)
[Caselaw](#)

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

3.6.14 UNHCR in their Eligibility Guidelines for Assessing the international needs of asylum seekers, dated December 2010 considered that the worsening security environment and increasing number of civilian casualties was such that the situation in Helmand, Kandahar, Kunar, and parts of Ghazni and Khost provinces could be characterized as one of generalized violence.⁴⁵ However, whilst there is indiscriminate violence in some parts of Afghanistan, it is not currently at such a level in Afghanistan *generally* or a material part of it, that substantial grounds exist for believing that any civilian would, solely by being present there, face a real risk of serious harm. Given the complexity and fluidity of the situation, asylum applications by Afghans claiming to flee generalized violence in parts of Afghanistan should each be assessed carefully, in light of the current country information specific to the profile of the applicant.

3.6.15 In the Country Guidance case of [AK \(Article 15\(c\)\) Afghanistan CG \[2012\] UKUT 163 \(IAC\) \(18 May 2012\)](#) the court found

- (Para 217) " we do not think bearing in mind their known populations the current evidence indicates that there is any province where the level of violence reaches the Article 15c threshold.
- Para 219: As regards Kabul ---- the argument for any engagement of the Article 15c threshold, if based primarily on civilian deaths, is even weaker---".

3.6.16 To establish a claim under Article 15c of the Qualification Directive it will therefore be necessary for a claimant to establish that particular factors place him or her at real risk of serious harm from the levels of indiscriminate violence that do exist, and that internal relocation to a place where there is not a real risk of serious harm is not reasonable. Case owners must consider carefully whether the existence of such factors mean that the harm they fear is not in fact indiscriminate, but targeted, if not at them personally, at a Refugee Convention defined population to which they belong, in which case a grant of asylum is likely to be more appropriate.

3.7 Fear of the Taliban or other anti-government groups

⁴³ Amnesty International, [Annual Report 2012](#): Afghanistan 24/05/2012 Background

⁴⁴ [UK Foreign & Commonwealth Office, Afghanistan Monthly Progress Report April 2012, 24/04/2012](#)

⁴⁵ [UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 17/12/2010, I. Introduction](#)

3.7.1 Treatment. The latest UNHCR Eligibility Guidelines note that “There is a systematic and sustained campaign by armed anti-Government groups to target civilians associated with, or perceived as supporting, the Afghan Government or the international community, particularly in areas where such groups are active”. Local inhabitants are also reportedly coerced into supporting anti-Government groups through threats or the use of force. These intimidation tactics are compounded by the reduced public confidence in the capacity of the Afghan Government and international forces to maintain security and provide basic services.⁴⁶ The U.S. Department of Defence quoted the Taliban leader, Mullah Omar, as providing guidance to his fighters to “capture or kill Afghans who support or work for the coalition or Afghan government.”⁴⁷ The latest report of the UN High Commissioner for Human Rights, published in January 2011 noted that “the Taliban expanded and strengthened its campaign of intimidation against a wider and larger group of civilians who worked for, or were perceived by the Taliban to be supportive of the Government of Afghanistan and international military forces.”⁴⁸

3.7.2 The US Department of Defence stated in its report from October 2011, that:

“...although security continues to improve, the insurgency’s safe havens in Pakistan, as well as the limited capacity of the Afghan Government, remain the biggest risks to the process of turning security gains into a durable, stable Afghanistan. The insurgency remains resilient, benefiting from safe havens inside Pakistan, with a notable operational capacity, as reflected in isolated high-profile attacks and elevated violence levels in eastern Afghanistan”.⁴⁹

The report further notes that the growth and development of the ANSF continue to face challenges, including attrition above target levels in the ANA and some elements of the ANP, leadership deficits, and capability limitations in the areas of staff planning, management, logistics, and procurement and that the influence of criminal patronage networks on the ANSF also continues to pose a threat to stability and the Transition process.⁵⁰

3.7.3 As in the previous reporting period, insurgents continued to conduct a campaign of intimidation, including through the targeted assassination of high ranking Government officials, members of the security forces and influential local political and religious leaders. There were 54 incidents in July and 72 in August, killing 89 and 93 individuals, respectively. The following four high-level persons from southern Afghanistan were killed in July: Ahmad Wali Karzai, Head of Kandahar Provincial Council; Hikmatullah Hikmat, Head of Kandahar Ulema Shura; Jan Muhammad Khan, Senior Adviser to the President; and Ghulam Haydar Hamidi, Mayor of Kandahar. News of the assassinations reverberated across the country, raising concerns for the political stability of the south, given the influence exerted by those killed and their ties to the Government in Kabul.⁵¹

⁴⁶ [UNHCR Eligibility guidelines for assessing the international protection needs of Asylum-seekers from Afghanistan 17 December 2010](#), section III, A, 1 individuals associated with, or perceived as supportive of, the government and the international community, including the ISAF.

⁴⁷ [US Department of Defense, Report on Progress Toward Security and Stability in Afghanistan, 23/11/10](#) section 3.1

⁴⁸ [Report of the United Nations High Commissioner for Human Rights \(OHCHR\) on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of Human rights, 19/01/2011](#), para11.

⁴⁹ [U.S. Department of Defence, Report on Progress Toward Security and Stability in Afghanistan, October 2011](#), Executive Summary.

⁵⁰ [U.S. Department of Defense, Report on Progress Toward Security and Stability in Afghanistan, October 2011](#), SECTION 2 – AFGHAN NATIONAL SECURITY FORCES GROWTH, DEVELOPMENT, AND OPERATIONS.

⁵¹ UN General Assembly, The situation in Afghanistan and its implications for international peace and security: Report of the Secretary-General, 21/09/2011, paragraph 5.

3.7.4 The December 2011 UN Secretary-General report notes that:

“Insurgent intimidation through the targeted assassination of high-ranking government officials, members of the security forces and influential local political and religious leaders continued, with the number of assassinations comparable to that of 2010. The focus shifted from the southern to the south-eastern and eastern regions, which together accounted for over 65 per cent of total assassinations”.⁵²

The report also highlighted that the protection of civilians remained a major concern throughout the country. From late August to the end of November, UNAMA documented 795 civilian deaths and 1,083 civilian injuries; although the number of civilians injured decreased by 19 per cent, compared to the same three-month period in 2010, the total number of civilian deaths increased by 5 per cent during the reporting period. Anti-Government elements caused 1,432 civilian casualties (609 civilian deaths and 823 civilian injuries), representing 77 per cent of all civilian deaths for the reporting period, an increase of 7 per cent compared to the number of civilians killed by anti-Government elements during the same period in 2010. Pro-Government forces caused 203 civilian casualties (83 deaths and 120 injuries, or 10 per cent of the total number of civilian deaths during the reporting period). This represents a decrease of 25 per cent of civilian deaths attributed to pro-Government forces, in comparison to the same period in 2010; 13 per cent of civilian deaths could not be attributed to any party to the conflict. The majority of civilian deaths were attributed to the continued use of improvised explosive devices and targeted killings by anti-Government elements.⁵³

3.7.5 Insurgents are aware of ISAF's intent to Transition responsibility for security to the ANSF by the end of 2014; however, implementation of the Transition process has not generated a coordinated or unified nationwide action from the insurgency, as it lacks the cohesion necessary to coordinate attacks across Afghanistan. Although isolated attacks are likely throughout the Transition process, the ANSF has demonstrated sufficient capacity to respond effectively to such attacks in transitioning areas and limit their strategic impact.⁵⁴

3.7.6 Anecdotal evidence suggests that insurgent recruitment of underage soldiers has been rising. There were numerous credible reports that the Taliban and other insurgent forces recruited children younger than 18, in some cases as suicide bombers and in other cases to assist with their work. For example, in Uruzgan the Taliban reportedly used children to dig hiding places for IEDs [Improvised Explosive Device]. NDS [National Directorate of Security] officials held several children in the juvenile detention facility in Helmand on insurgency-related charges. Although most of the children were 15 or 16 years old, reports from Ghazni province indicated that insurgents recruited children as young as 12, particularly if they already owned motorbikes and weapons. NGOs and UN agencies reported that the Taliban tricked, promised money to children, or forced them to become suicide bombers. Reports of recruitment and use of children have been received from all regions, and particularly from the south, south-east and eastern regions, but the security environment and the lack of human resources dedicated to monitoring and verifying cases has limited reporting on these trends of abuse. Internally Displaced People (IDP) and isolated

⁵² [UN General Assembly, The situation in Afghanistan and its implications for international peace and security: Report of the Secretary-General, 13/12/2011](#), paragraph 13.

⁵³ [UN General Assembly, The situation in Afghanistan and its implications for international peace and security: Report of the Secretary-General, 13/12/2011](#), paragraphs 27 and 28.

⁵⁴ US department of Defence, [Report on Progress Toward Security and Stability in Afghanistan October 2011](#)

populations in conflict-affected areas in particular are at risk of child recruitment into non-state armed groups, including the Taliban, Haqqani network, Hezb-i-Islami and Jamat Sunat al-Dawa Salafia. Documented cases show that children are also used as suicide bombers by the Taliban. Some children who have attempted suicide attacks have been heavily indoctrinated, frequently in foreign countries. Some reports suggest that, in the latest incidents of children used in bombings, they may not have been aware of what they were carrying, and explosives were set off remotely without their knowledge.⁵⁵

3.7.7 See also:

[Actors of protection](#)
[Internal relocation](#)
[Caselaw](#)

3.7.8 **Conclusion.** The risk from anti-government groups and forced recruitment into the Taliban will be highest in areas where armed anti-government groups are operating or have control. It is important that case owners refer to the most up to date country information and take into consideration the nature of the threat and how far it would extend.

3.7.9 Consideration should be given to whether it would be reasonable to expect the applicant to relocate and that this assessment will need to be based on the facts of the individual case. In the CG case of [AK \(Article 15\(c\)\) Afghanistan CG \[2012\] UKUT 163 \(IAC\) \(18 May 2012\)](#) the Upper Tribunal found [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.

3.7.10 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.

3.8 Converts to Christianity

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

3.8.2 **Treatment.** Conversion from Islam is considered apostasy and is punishable by death according to several interpretations of Shari'a law. A person who has converted from Islam has three days to recant his/her conversion or otherwise face death by stoning, be deprived of all property and possessions, and have their marriage declared invalid. Although, in recent years the death penalty for conversion from Islam has reportedly not been carried out, arrests for conversion to Christianity have recently been reported. The arrests were reportedly made after calls by Members of Parliament for the arrest and execution of alleged Christian converts following a television broadcast of footage showing their baptism in May 2010.

⁵⁵ [Afghanistan Country of Origin information Services Report October 2011](#), 26.64 and 26.66

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.”⁵⁶

3.8.3 The few Afghan Christians, converts from Islam or their children, have long been forced to conceal their faith and are unable to worship openly. The situation for Christians deteriorated further in the past year, after a May 2010 broadcast by Noorin TV showed Afghans being baptized. This broadcast set off a firestorm of criticism from the conservative religious establishment, and President Karzai then stated that his ministries would track down converts. Reportedly, 20 individuals were arrested. All were released soon after, except Said Musa. Musa was detained in a Kabul prison for six months before being quietly released due to U.S. and international pressure. Musa was reported to have fled the country with his family. According to a “senior prosecutor involved in the case, speaking on condition of anonymity”, Said Musa was “released only after agreeing to return to Islam”.⁵⁷ After the May television broadcast, the Afghan government also suspended the operations of two Christian relief groups on charges of proselytizing. Both groups rejected these assertions and reportedly have been allowed to continue their work in the country. Shoaib Assadullah was arrested in late October 2010 and was imprisoned in Mazar-i-Sharif for six months, after being accused of giving a Bible to a friend.⁵⁸ The Christian Post also 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.⁵⁹ According to the same article, he has faced “physical abuse and death threats from fellow prisoners and guards”.⁶⁰

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

3.8.5 Conclusion. Converts to Christianity from Islam are in general at real risk of persecution in Afghanistan (see in section 2.5 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.

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

3.9 Hindus and Sikhs

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

⁵⁶ [UNHCR Eligibility guidelines for assessing the international protection needs of Asylum-seekers from Afghanistan 17 December 2010](#)

⁵⁷ [The New York Times, Afghan Officials Say Jailed Convert Is Free, 24/02/2011.](#)

⁵⁸ [Afghanistan Country of Origin information Services Report October 2011](#), 21.35

⁵⁹ [The Christian Post, Second Afghan Convert Faces Death Penalty under Apostasy Law, 29/03/2011.](#)

⁶⁰ [The Christian Post, Second Afghan Convert Faces Death Penalty under Apostasy Law, 29/03/2011.](#)

- 3.9.2 Treatment.** Reliable data on religious demography is not available, but there are an estimated 2,200 Sikhs and Hindus remaining in Afghanistan. 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 did nothing to improve conditions.
- 3.9.3** An article by the Institute for War and Peace Reporting (IWPR) on 28 July 2011 reported “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 Taleban rule under which they were subject to discrimination rules. With most community members long gone, the total number of Hindus and Sikhs in Afghanistan is now estimated at around 3,000.”⁶¹ The USCIRF 2011 Report stated however, that: “As in the case of Shi’a Muslims, the situation of Afghanistan’s small communities of Hindus and Sikhs has improved since the fall of the Taliban. Hindus and Sikhs are allowed to practice their faith and have places of public worship. USCIRF staff was [sic] able to visit a Hindu temple in Kabul, located on a major road and next to a mosque. However, Hindu leaders have complained about difficulties in finding locations to erect funeral pyres, and Hindus and Sikhs are effectively barred from most government jobs and face societal hostility and harassment.”⁶²
- 3.9.4** The USSD IRF Report 2010, published on 13 September 2011, explicitly states that “Non-Muslim minority groups, particularly Christian, Hindu, and Sikh groups, were targets of discrimination and persecution”.⁶³ It further noted that:
- “The Hindu population, which is less distinguishable than the Sikh population (whose men wear a distinctive headdress), faced less harassment, although both groups reported being harassed by neighbours in their communities. The Sikh and Hindu communities, although allowed to practice their religion publicly, reportedly continued to face discrimination, including intimidation. Although Hindus and Sikhs had recourse to dispute resolution mechanisms such as the Special Land and Property Court, in practice the communities felt unprotected”.⁶⁴
- 3.9.5** Many in the Sikh and Hindu communities did not send their children to public school because of reported abuse and harassment by other students. In previous years, Hindus and Sikhs sent their children to private Hindu and Sikh schools, but those schools have closed since the community's deteriorating economic circumstances have made private schooling unaffordable for most families. There is one school for Sikh children in Ghazni; one in Helmand; and since March, one in Kabul that only teaches Dari and Pashto. There is one school in Nangarhar provided by the government for the Sikh community. A few Sikh children attended private international schools. There were no Christian schools in the country. No Hindu children attended school in Kabul during the reporting period. The government took limited steps to protect and reintegrate these children into the classroom environment.⁶⁵

⁶¹ Afghan Sikhs and Hindus Face Discrimination at School, 28 July 2011 <http://iwpr.net/node/53044>

⁶² [Annual Report of the United States Commission on International Religious Freedom, covering the period from 1 April 2010 – 31 March 2011, published May 2011](#)

⁶³ U.S. Department of State, July-December: 2010 International Religious Freedom Report, 13/09/2011.

⁶⁴ U.S. Department of State, July-December: 2010 International Religious Freedom Report, 13/09/2011, Section III. Status of Societal Actions Affecting Enjoyment of Religious Freedom.

⁶⁵ U.S. Department of State, July-December: 2010 International Religious Freedom Report, 13/09/2011, Section III. Status of Societal Actions Affecting Enjoyment of Religious Freedom.

3.9.6 The Foreign and Commonwealth Office (FCO) noted in a letter dated 17 March 2008 that less than one per cent of the population of Kabul were Sikh, Hindu or Christian. The Hindu community there, although tolerated, were unable to practise their religion freely and faced forms of intimidation from both the public and the authorities. Some were reluctant to send their children to school for fear of mistreatment. The FCO further noted that the Sikh community in Kabul also faced forms of intimidation and were reluctant to send their children to school. However, generally they are tolerated and some own and run successful businesses. The Guru Dwara in Karte Parwan, Kabul, is a fully functioning temple.⁶⁶

3.9.7 [Actors of protection](#)
[Internal relocation](#)
[Caselaw](#)

3.9.8 Conclusion. Sikhs or Hindus are not generally at real risk of persecution at the hands of the Afghan authorities solely because they are Sikhs or Hindus. Nor, generally, is societal harassment and discrimination against Sikhs and Hindus at such a level that it would constitute persecution. However, each case must be considered on its merits.

3.9.9 If a Sikh or Hindu man or married woman does establish that they would on return face a localised risk amounting to persecution, it should generally be possible for them to avoid such treatment by internal relocation, for example to Kabul where there are well-established and close knit Sikh and Hindu communities. Each case must be considered on its merits but where internal relocation would avoid persecution and would be reasonable, a grant of asylum will not be appropriate.

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

3.10 Women

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

3.10.2 Treatment. Since 2001, the Government has taken important measures towards the improvement of the situation of women in the country. These include steps taken to ensure women's political participation, the implementation of international standards for the protection of women's rights into national legislation, and the establishment of the Ministry for Women's Affairs.⁶⁷ Although the situation of women marginally improved during the year, international gender experts considered Afghanistan a very dangerous country for women. Gains in women's rights and advances in terms of socio-economic indicators remained tenuous at best.⁶⁸ Action Aid reported in September 2011 that 66 per cent of women said they feel safer now than they did 10

⁶⁶ [Afghanistan Country of Origin information Services Report October 2011](#), 21.23

⁶⁷ [UNHCR Eligibility guidelines for assessing the international protection needs of Asylum-seekers from Afghanistan 17 December 2010](#)

⁶⁸ [US Department of State, Country Report on Human Rights Practices 2011: Afghanistan, May 2012, Section 6 Discrimination, Societal Abuses, and Trafficking in Persons, Women.](#)

years ago and 72 per cent believe their lives are better now than they were 10 years ago. However nearly four in ten think Afghanistan will become a worse place if international troops leave. Of those who fear a return of the Taliban, one in five cited their daughter's education as the main concern.⁶⁹

- 3.10.3** Sexual and gender-based violence against women in Afghanistan is endemic. Women perceived as not conforming to the gender roles ascribed to them by society, tradition and law may be subject to sexual and gender-based violence, including "honour killings", rape, abduction, forced abortion and domestic violence.⁷⁰ In some areas women have had their formal rights to education and employments restored and are able to participate in public life. However, women continue to face pervasive human rights violations and remain largely uninformed about their rights under the law⁷¹, particularly in areas under the effective control of the Taliban and Hezb-i-Eslami (Gulbuddin). The 2009 Elimination of Violence against Women Law criminalises several harmful traditional practices, including the buying and selling of women for marriage, offering women for dispute resolution, and child and forced marriages, but law enforcement authorities in some provinces appear to be unable or unwilling to apply the Law.⁷² However, a November 2011 UNAMA/OHCHR report examining the implementation of the 2009 Law stressed that "the low numbers of complaints and cases prosecuted make it clear that the Government has not yet applied the law to the vast majority of cases of violence against women".⁷³
- 3.10.4** Harmful traditional practices occur to varying degrees in both rural and urban communities throughout the country, and among all ethnic groups. Such practices include child and forced marriages, the giving away of girls to settle disputes, exchange marriages, forced isolation in the home and honour killings.⁷⁴ Discrimination is particularly acute in rural areas and villages. Despite the constitutionally protected right to travel freely, many women were forbidden to leave the home except in the company of a male relative. Such cultural prohibitions meant that many women could not work outside the home, and often could not receive access to education, health care, police protection, and other social services.⁷⁵ In 2012, Human Rights Watch reported that "attacks and threats against women continue, frequently focusing on women in public life, school girls, and the staff of girl's schools".⁷⁶ The report further stated that "87 per cent of women face at least one form of physical, sexual, or psychological violence or forced marriage in their lifetimes".⁷⁷ According to a study by the Thomson-Reuters Foundation, Afghanistan is the "world's most dangerous country for women" due to "widespread violence, dismal health care, and poverty".⁷⁸
- 3.10.5** Women may be detained on the grounds of perceived "morality crimes," such as "running away" from home (including in situations of domestic violence), being

⁶⁹ [Action Aid, 10 years on: women's stories from Afghanistan, 30/09/2011](#)

⁷⁰ [UNHCR Eligibility guidelines for assessing the international protection needs of Asylum-seekers from Afghanistan 17 December 2010](#)

⁷¹ [Afghanistan Country of Origin information Services Report October 2011: Section 25](#)

⁷² [UNHCR Eligibility guidelines for assessing the international protection needs of Asylum-seekers from Afghanistan 17 December 2010](#)

⁷³ [UNAMA/OHCHR, A Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan, November 2011](#), 1. Executive Summary

⁷⁴ [UNHCR Eligibility guidelines for assessing the international protection needs of Asylum-seekers from Afghanistan 17 December 2010](#)

⁷⁵ [Afghanistan Country of Origin information Services Report October 2011](#) section 25

⁷⁶ [Human Rights Watch, World Report 2012: Afghanistan, 22/01/2012](#), Violence and Discrimination against Women and Girls.

⁷⁷ [Human Rights Watch, World Report 2012: Afghanistan, 22/01/2012](#), Violence and Discrimination against Women and Girls.

⁷⁸ [Radio Free Europe/Radio Liberty, Afghanistan: 'Most Dangerous' Country For Women, 15/06/2011](#).

improperly unaccompanied or refusing marriage. Women and girls who run away can also be prosecuted under "intention" to commit zina (sexual intercourse outside of marriage) charges. Since adultery and "morality crimes" may elicit honour killings, detention of women accused of such acts has been, in some instances, justified by the authorities as a protective measure.⁷⁹ In 2012, Human Rights Watch estimated that half of the approximately 700 women and girls in jail and prison facing charges for "moral crimes".⁸⁰ NGOs that ran women's shelters in Kabul reported an increase in referrals from police, possibly reflecting improved ANP training and awareness. Women's access to shelters also increased due to international efforts to open three new shelters and expansion to more remote provinces. However, space at the 19 formal and informal shelters across the country was limited. 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 morals crime.⁸¹

3.10.6 Victims of sexual and gender based violence are often deterred from reporting such matters because of fear of stigmatisation and reprisals, including by their own community and family. There is also a lack of access to effective forms of justice and remedies for victims. This has resulted in sexual violence remaining largely unaddressed by either law enforcement or society. In some cases, women and girls escaping domestic violence are encouraged to return or are forcibly returned to their families by law enforcement authorities rather than being afforded protection. Effective prosecution of violent sexual crimes, including rape, is also undermined in some areas by the impunity enjoyed by perpetrators.⁸²

3.10.7 See also:

[Actors of protection](#)
[Internal relocation](#)
[Caselaw](#)

3.10.8 Conclusion. Since the fall of the Taliban the position of women in Afghanistan has improved, but from a very low baseline. Sexual and gender-based violence against women is endemic. Women cannot currently rely on protection from the Afghan authorities and it would be 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.

3.11 Prison conditions

3.11.1 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.

⁷⁹ [UNHCR Eligibility guidelines for assessing the international protection needs of Asylum-seekers from Afghanistan 17 December 2010](#)

⁸⁰ [Human Rights Watch, World Report 2012: Afghanistan, 22/01/2012](#), Violence and Discrimination against Women and Girls.

⁸¹ [US Department of State, Country Report on Human Rights Practices 2011: Afghanistan, May 2012, Section 6 Discrimination, Societal Abuses, and Trafficking in Persons, Women.](#)

⁸² [UNHCR Eligibility guidelines for assessing the international protection needs of Asylum-seekers from Afghanistan 17 December 2010](#)

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

3.11.3 Treatment. There are prisons in 34 provinces of Afghanistan administered by the Ministry of Justice, and 30 active rehabilitation centres for juveniles. Prison conditions in most facilities remain below minimum international standards. There are reports of over-crowding, inadequate food and water, poor sanitation facilities, and where available, infirmaries are under-equipped. Contagious and mentally ill prisoners are reportedly rarely separated from the general prison population, whilst children of women prisoners live with their mothers, particularly where they have no other family. There is no gender segregation. There are also reports that Government officials, local prison authorities, police chiefs, and tribal leaders practiced torture and abuses including, but not limited to, beating by stick, scorching bar, or iron bar; flogging by cable; battering by rod; electric shock; deprivation of sleep, water, and food, abusive language, sexual humiliation and rape.⁸³

3.11.4 In 10 October 2011, the UN Assistance Mission in Afghanistan (UNAMA) published a report containing allegations of widespread torture and mistreatment of those detained by Afghan security forces. UNAMA found evidence that 46% of detainees interviewed who had been in NDS detention had experienced torture; 35% of ANP detainees interviewed had been mistreated.⁸⁴ In January 2012, Human Rights Watch reported that the torture and abuse of detainees in Afghan jails in 2011 was so widespread that it led the ISAF to temporarily suspend the transfer of prisoners in eight provinces.⁸⁵

3.11.5 NDS and the MOI [Ministry of Interior] cooperated with coalition forces and the international community to address concerns, improve training, and review facilities. The government granted the International Security Assistance Forces access to the facilities named in the UNAMA report for the purposes of monitoring the treatment of detainees and undertook to train detention officials in human rights standards.⁸⁶ British mentors from HM Prison Service have provided training and mentoring to prison officers in the Afghan Central Prison Directorate and the National Directorate of Security (NDS) to improve respect for the human rights detainees. The UK funded the construction of a provincial prison in Lashkar Gah that conforms to international standards. International funding has been secured to build a dedicated rehabilitation centre alongside the main prison, and completion is expected in late summer 2012.⁸⁷

3.11.6 Conclusion. Prison conditions in Afghanistan are severe and taking into account the levels of overcrowding, poor sanitation, prevalence of disease and absence of

⁸³ [UNHCR Eligibility guidelines for assessing the international protection needs of Asylum-seekers from Afghanistan 17 December 2010](#)

⁸⁴ [UNAMA, Treatment of Conflict Related Detainees in Afghan Custody, October 2011 Section I : Torture and Abuse of Detainees by NDS and ANP, Section III., A. Overview, Section IV. Torture and Cruel, Inhuman or Degrading Treatment by the Afghan National Police, and Section VII. Due Process Violations and Arbitrary Detention.](#)

⁸⁵ [Human Rights Watch, World Report 2012, 22/01/2012 Detainees Transfers](#)

⁸⁶ [US Department of State 2011 Human Rights Report: Afghanistan, Section c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Prison and Detention Center Conditions; 24/05/12](#)

⁸⁷ [UK Foreign & Commonwealth Office \(FCO\), The 2011 Foreign & Commonwealth Office Human Rights & Democracy Report: Countries of Concern: Afghanistan, 30/04/2012 Prisons & Detention Issues.](#)

medical facilities, lack of food and the incidence of torture, are likely to reach the Article 3 threshold.

3.11.7 Where case owners believe that an individual is likely to face imprisonment on return to Afghanistan they should also consider whether the applicant's actions merit exclusion by virtue of Article 1F of the Refugee Convention. Where case owners consider that this may be the case they should contact a senior caseworker for further guidance.

3.11.8 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. Discretionary Leave

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

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

4.3 Minors claiming in their own right

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

4.4 Medical treatment

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

4.4.2 UNHCR's previous Eligibility Guidelines [July 2009] stated that in terms of access to healthcare, Afghanistan's poor healthcare system has a very strong urban bias in the existing infrastructure. Overall, there are only 210 health facilities with beds to hospitalize patients. With the exception of four provinces, the current ratio of doctors per patient stands at one doctor per 10,000 patients. Many Afghan women are reluctant to be, or may be prevented from being, treated by male health workers. At

the same time, due to the reduction of available health facilities, women in rural areas are obliged to walk much longer distances to access health care, and frequently will not do so because they do not have a male relative ready to accompany them, or because of fear of insurgents. Women from rural areas face a very high risk of dying during childbirth. In these areas, clinical personnel average fewer than six doctors, seven nurses and four midwives for every 100,000 women. In Panjshir province, for example, there are seventeen health centres. Each employs only one female doctor and one midwife to serve 30,000 to 60,000 people.⁸⁸

- 4.4.3** The 2009 UNHCR Eligibility Guidelines also stated that whilst important progress in healthcare has been made through the Government's expansion of the basic package of health services, health infrastructure in Afghanistan is reported to be damaged and poorly maintained, lacking trained and skilled workers and medical supplies. Some observers claim that the health services are not able to meet the basic health needs of a majority of the population. The United Nations reports that the basic package of health services now covers 82 per cent of the population. There are 900 clinics and approximately 40 percent of the population has access to healthcare. According to the Ministry of Public Health, over 600,000 persons lack basic healthcare services due to attacks on healthcare facilities and health workers – a figure that has doubled since 2007. The overall quality of health services in Afghanistan has however been improved. According to Fahim, 'the infant mortality rate has reduced by 26 percent and now 80,000 fewer infants are dying each year compared to during Taleban [Taliban] rule.'⁸⁹
- 4.4.4** Although the International Office of Migration (IOM) notes that there are only three Pharmaceutical companies in Afghanistan: Aria, Afghan American and Kemiagar which have very limited production, all kinds of medicines are becoming more widely available in the country, with a prevalence of imports from Pakistan, India and Iran.⁹⁰
- 4.4.5** The health infrastructure in Afghanistan damaged or destroyed by years of conflict, is gradually being re-established by the Afghan Government with the help of the international community. The health services inherited at the end of 2001 were limited in capacity and coverage, and while the Ministry of Health has shown leadership the health status of the Afghan people is still among the worst in the world. The majority of the population lacks access to safe drinking water and sanitary facilities. Disease, malnutrition and poverty are rife and an estimated 6.5 million people remain dependant on food aid...⁹¹
- 4.4.6** The World Bank, the United States Agency for International Development and the European Community are helping the Afghan Ministry of Health, through NGOs [Non-Governmental Organisations], to provide a basic healthcare service to the entire population. The package consists of services for maternal and newborn health; child health and immunisation; nutrition; communicable disease; mental health; disability; and the supply of essential drugs. The Ministry of Health has established a Child and Adolescent Health Department and a Department of Women and Reproductive Health to tackle high infant and maternal mortality rates. In addition:
- 83% of the population now has access to medical facilities, compared to 9% in 2004 (NATO, June 2007)

⁸⁸ [UNHCR, UNHCR ELIGIBILITY GUIDELINES FOR ASSESSING THE INTERNATIONAL PROTECTION NEEDS OF ASYLUM-SEEKERS FROM AFGHANISTAN, July 2009](#)

⁸⁹ [UNHCR, UNHCR ELIGIBILITY GUIDELINES FOR ASSESSING THE INTERNATIONAL PROTECTION NEEDS OF ASYLUM-SEEKERS FROM AFGHANISTAN, July 2009](#)

⁹⁰ [IOM Country Sheet: Afghanistan, 13/11/09;](#)

⁹¹ [UK Foreign and Commonwealth Office \(FCO\) Afghanistan Country Profile 8/06/11](#)

- 76% of children under the age of five have been immunised against childhood diseases (NATO, June 2007)
- More than 4000 medical facilities have been opened since 2004 (NATO, June 2007).⁹²

4.4.7 In its 2012 report Amnesty International has commented on targeted attacks, including against doctors “Targeted attacks on aid workers and government workers, particularly doctors, deprived millions of people of health care, especially in areas most affected by the conflict and those controlled by the Taliban and other armed groups. Notwithstanding improvements to maternal and child mortality ratios in certain areas of the country, conditions overall for pregnant women and young children remained dire.”⁹³

4.4.8 Conclusion: The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

5.1 There is no policy which precludes the enforced return to Afghanistan of failed asylum seekers who have no legal basis of stay in the United Kingdom.

5.2 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should be considered in line with the Immigration Rules.

5.3 The preferred option for repatriating those Afghan asylum applicants who having exhausted the independent appeal process, are found not to need international protection is assisted voluntary return. This policy is in line with the Tripartite Memorandum of Understanding on Voluntary Return, between the UK, the UNHCR and the Afghan Transitional Administration. However, as agreed with the Afghan authorities, from April 2003 those not choosing voluntary return and found to be without protection or humanitarian needs have been liable to be considered for enforcement action although those individuals or groups identified as vulnerable are excluded from the programme of enforced returns. We recognise that the Government of Afghanistan is still in the process of rebuilding the country and we do not wish to destabilise that process with a rapid influx of large numbers of people. All Afghans returning from the UK are offered access to a training and employment package and care is taken to return people gradually to those areas with adequate security and infrastructure where we are satisfied they will have sufficient support.

5.4 Afghan nationals may return voluntarily to any region of Afghanistan at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary

⁹² [UK Foreign and Commonwealth Office \(FCO\) Afghanistan Country Profile 8/06/11](#)

⁹³ [Amnesty International 2012 report Afghanistan:](#)

departure procedure, arranged through the UK Border Agency, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.

- 5.5** The AVR scheme is implemented on behalf of the UK Border Agency 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 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.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx

Country Specific Litigation Team
Immigration Group
UK Border Agency
June 2012