



OPERATIONAL GUIDANCE NOTE

AFGHANISTAN

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1. Introduction

- 1.1 This document summarises the general, political and human rights situation in Afghanistan and provides information on the nature and handling of claims frequently received from Afghan nationals/residents. It must be read in conjunction with the COI Service Afghanistan Country of Origin Information Report of October 2005 and any COI Service Afghanistan Country of Origin Information Bulletins at:

http://www.homeoffice.gov.uk/rds/country_reports.html

- 1.2 This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the grant of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim
API on Humanitarian Protection
API on Discretionary Leave
API on the European Convention on Human Rights.

- 1.3 Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claim.

Source documents

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

2. Country Assessment

- 2.1** Since 1973 when Prime Minister Daud overthrew King Zahir Shah and established the country as a republic Afghanistan has been ruled by a number of different regimes. In 1978 the People's Democratic Party of Afghanistan tried to impose a Socialist State which led to armed resistance by conservative Islamic elements. In 1979 the Soviet Union invaded Afghanistan staying for 10 years until 1989, during which time a civil war with anti-Soviet mujahideen forces raged. Following the departure of Soviet troops the mujahideen groups struggled amongst themselves. The Pashtun Taliban emerged as the dominant power controlling most of the country by 1998, however they were opposed by the mujahideen commanders in the predominately Tajik and Uzbek United Front (previously the Northern Alliance).¹
- 2.2** In October 2001 the United States launched a military campaign against the Taliban regime when they refused to give up Al Qaeda leader Osama bin Laden following the terrorist attacks on US targets on 11 September 2001. The Taliban were quickly defeated, surrendering their spiritual home, Kandahar, in December 2001.² But not before thousands of Taliban and Al Qaeda members were able to flee to Pakistan.³ At the end of November 2001 representatives of various Afghan groups assembled in Bonn, Germany and as a result, on 22 December 2001 an Interim Authority was inaugurated, headed by Hamid Karzai and comprising 30 members (11 Pashtuns, 8 Tajiks, 5 Hazaras, 3 Uzbeks and 3 representatives of smaller tribal and religious groups).⁴
- 2.3** In January 2004 a new constitution was adopted at a special Constitutional Loya Jirga (grand council). Islam is accorded a central role in a constitutional democracy with a strong presidential system and a two-chamber national assembly, strong emphasis on parliamentary control of the executive and separation of powers among the judiciary, executive, and legislative branches. The constitution provides the framework for an independent judiciary, headed by a Supreme Court, and a legal framework that is consistent with the "beliefs and prescriptions" of Islam. It explicitly includes all minority groups in the definition of the nation. Dari and Pashto are official languages, and other languages are regarded as official in the area where the majority speaks them. The Constitution provides equal rights to men and women, and the right to practice minority religions, although human rights advocates were concerned that there were not adequate provisions to guarantee these and other rights in practice.⁵
- 2.4** Afghanistan's first direct presidential election was held on 9 October 2004. Although there were shortcomings in the process, these were not generally considered sufficient to have materially altered the outcome. The winner of the election was Hamid Karzai, with 55.4% of the vote, well ahead of his closest rival on 16.3%.⁶
- 2.5** The violence that had been expected to accompany the election did not materialise, but Spring 2005 saw an increase in violence. This was worst in the south of the country but other areas were also affected. Although much of this violence was attributed to the Taleban, it was also suspected that foreign fighters were increasingly involved, for example in June 2005 Al Qaeda was blamed for the bombing of a Kandahar mosque in which 20 people were killed.⁷
- 2.6** On 18 September 2005 Afghanistan held elections to the lower house of parliament – the 249 seat Wolesi Jirga, and for seats on 34 provincial councils. There was widespread violence in the run-up to polling day, mostly blamed on the Taleban, but the poll itself was

¹ FCO Country Profile Oct 2005

² COIS Afghanistan Country Report para. 4.1

³ COIS Afghanistan Country Report para. 4.2

⁴ COIS Afghanistan Country Report para. 4.3

⁵ COIS Afghanistan Country Report paras 2.3 – 2.4; 5.1 – 5.6

⁶ COIS Afghanistan Country Report paras 4.14 – 4.16

⁷ COIS Afghanistan Country Report paras 4.22 – 4.34

relatively peaceful. Early reports suggested that ballots cast at around 300 of the 26,000 polling stations were excluded from the count because of fraud, but officials said there was no systematic fraud and expected that the outcome would reflect the will of the people.⁸

- 2.7** The 34 provinces are the multi-member electoral constituencies, with one-person-one-vote and the candidates with the highest number of votes winning the seats in that constituency. The number of seats in each constituency varies, with 33 in Kabul. The rules provide that if any successful candidate dies or is disqualified before the first session of the Wolesi Jirga the seat automatically goes to the losing candidate with the highest number of votes. As a result, there are concerns that candidates who are believed to have received sufficient votes to gain a seat in the Wolesi Jirga are being targeted by those lower down the list, with one top-scoring candidate having been murdered and several others having survived attempts on their life.⁹
- 2.8** Afghanistan's legal system was all but destroyed by 23 years of conflict. The Bonn Agreement called for the establishment of a Judicial Commission to rebuild the domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions. The Afghan authorities, working with UNAMA, are taking steps to reform the judiciary and legal system and a Judicial Commission is working to address its rehabilitation. In Kabul, reconstruction of the state infrastructure has commenced.¹⁰
- 2.9** However, the justice system remains inadequate. There is poor access to the courts. Over half the population does not have access to judicial and legal services. In rural areas the legal system is ineffective and in some areas non-existent and the majority of disputes outside Kabul are dealt with by customary justice mechanisms. Where the court system does operate it is beset by lack of resources, systematic corruption, lack of political will to enforce the law, powerful patronage relationships and effective immunity from the law for individuals who are able to use their position to threaten, intimidate or otherwise influence proceedings. The results include lengthy pre-trial detentions that can exceed the potential sentence for the offence; violations of due process; lack of representation; systematic unfairness against women, children, minorities and others.¹¹
- 2.10** Afghanistan's security forces comprise the army and air force, police forces including national, border, highway and counter-narcotics, and the intelligence service. These forces are moving towards a more professional approach and the power of warlords and commanders has reduced. However, in many, possibly most areas, these figures remain powerful, often because commanders have been appointed to official positions in the police force in the very areas where they have their power bases. The government is seeking to address this but in many cases allegiances are to ethnic and local leaders rather than to the policies of the government and the security services are unable to control the warlords, local commanders, drug cultivation and trafficking, common criminality and human rights abuses. Therefore, the extent to which the public can rely on the protection of the police depends to a large extent on the loyalties of the particular police officers they approach for help. There are police who are loyal to the government and who will uphold the law to the extent that they are able, but they are often constrained by a lack of resources. Nonetheless, the UN noted that the Afghan police proved itself during the Presidential election process in 2004 when, despite limited resources, with the appropriate training, it provided the first line of defence against potential disruption of the election process.¹²
- 2.11** According to the report of the UN's independent expert on the situation of human rights in Afghanistan on 11 March 2005 "President Karzai and his Government ...are committed to advancing the promotion and protection of human rights in Afghanistan...." But he concludes by drawing attention to an array of continuing violations including: repressive

⁸ BBC Afghan initial poll winners named; BBC Afghan Election Guide

⁹ IWPR Open season on winning candidates

¹⁰ COIS Afghanistan Country Report paras 5.32 – 5.41

¹¹ COIS Afghanistan Country Report paras 5.32 – 5.41

¹² COIS Afghanistan Country Report paras 5.65 – 5.74; 5.146 – 5.153

acts by factional commanders; arbitrary arrest and other violations by State security forces, including intelligence entities; unregulated activities of private security contractors; severe threats to human rights posed by the expanding illegal drug industry; sub-standard conditions in prisons; egregious violations of women's rights by the State and as related to an array of social practices; abuses linked to customary law decisions; violations of children's rights; inadequate attention to the disabled; land claims and other issues faced by returning refugees and IDPs; and arbitrary arrest, illegal detentions and abuses committed by the United States-led Coalition forces.¹³

- 2.12** These problems are not uniformly spread, although human rights are poor through most of the country. The situation in Kabul is better, mainly due to the concentration of International Security Assistance Force (ISAF) and Afghan security forces there.¹⁴ However, as the UN Independent Expert observed in September 2004 "As political tensions ebb and flow in different regions, the human rights situation worsens or improves. Consequently, any regional reporting will differ, not only according to place, but also to time and circumstances."¹⁵

3. Main Types of Claim

- 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 which may raise issues covered by the API 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 flight are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - 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 API on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether s/he qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is not designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)
- 3.5** Also, this guidance does not generally provide information on whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection or Discretionary Leave. (See API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2) and API on DL)
- 3.6** All APIs can be accessed via the IND website at:

¹³ UNHCR Report of Independent Expert

¹⁴ COIS Afghanistan Country Report paras 5.83 – 5.87

¹⁵ COIS Afghanistan Country Report para. 6.04

www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html

3.7 Pashtuns

- 3.7.1** An applicant may claim that their Pashtun ethnicity has been a factor which has led to their ill-treatment at the hands of members of other ethnic groups. Some applicants claim that their ill-treatment has been by someone in a position of power such as a local commander/governor, local police or intelligence officials, by someone with links to the Transitional Administration, or by political factions due to a perceived association with the Taliban.
- 3.7.2 *Treatment.*** Pashtuns (also called Pathans) are the largest single ethnic group constituting some 38% of the population. They are Sunni Muslims living mainly in the east and south of the country adjacent to Pakistan and have much in common in terms of culture, language and traditions with their fellow Pashtu-speakers in the Pashtun tribal population of Pakistan.¹⁶
- 3.7.3** Most Pashtuns are members of one of two main tribes, the Ghalji and the Durrani. The Ghalji are more numerous but the Durrani have long dominated – Hamid Karzai is Durrani. Outside the Pashtun-dominated south, tribal identity is less important than wider ethnic, sectarian, and regional affiliations on which many of the most powerful warlords' power is based. The tribal system continues to dominate in the south, and as a result power is less concentrated, with competing sub-tribes, conflicting claims to leadership, and small-scale militias.¹⁷
- 3.7.4** Pashtun leaders have held political power for much of Afghanistan's history. Many supported the Taliban regime and most Taliban fighters were Pashtuns. As a result, when Taliban rule ended in 2001, Pashtuns in the north of Afghanistan were the target of ethnic violence and continue to suffer harassment and insecurity. Pashtuns in Kabul have not faced the same level of targeting but do encounter some harassment and discrimination by police and intelligence officials.¹⁸
- 3.7.5 *Sufficiency of protection.*** A judicial and legal system with limited function exists in Afghanistan. In Kabul the police authorities are generally willing to enforce the law, although their ability to do so is limited by inadequate resources and dependent to some extent on the loyalties of individual officers. The International Security Assistance Force (ISAF) works alongside the Afghan Security Forces to maintain security in and around Kabul and as result the general security environment there is much better than in other areas.¹⁹
- 3.7.6** Afghan society is characterised by ethnic and tribal affiliation and traditional family and community structures constitute the main protection and survival mechanism.²⁰ However, although tribal protection for Pashtuns may be available in some areas, particularly where they are in the majority, tribal protection does not constitute sufficient protection for the purpose of finding an asylum claim unfounded.
- 3.7.7** Based on the existence of the limited judicial and legal system, the willingness of the police authorities to enforce the law, and the presence of ISAF, a sufficiency of protection is generally available in Kabul. However, each case must be considered on its merits – there

¹⁶ COIS Afghanistan Country Report paras 6.160 – 6.161

¹⁷ COIS Afghanistan Country Report para. 6.163

¹⁸ COIS Afghanistan Country Report para. 6.160 – 6.167

¹⁹ COIS Afghanistan Country Report paras 5.32 – 5.41; 5.65 – 5.74; 5.106 – 5.113; 5.146 – 5.153

²⁰ COIS Afghanistan Country Report para. 6.381

will be individual cases where sufficient protection will not be available. For example, in ZN ([2005] UKIAT 00096), the tribunal found that an Adjudicator was entitled to conclude that sufficient protection would not be available against a warlord who had already shown that he was capable of attacking persons associated with the claimant, and indeed the claimant's own house. Factors to take into account in deciding whether sufficient protection is available to an individual claimant will include whether they, or their would be persecutors, have influential connections in the current administration.

- 3.7.8** While Pashtuns in Kabul have not been systematically targeted to the same extent as those in the north of the country, they do face some harassment and discrimination by local police and intelligence officials. Where the claimants fear of ill-treatment/persecution is at the hands of the state authorities they cannot apply to these authorities for protection.
- 3.7.9** Sufficient protection is not available, even in Kabul, for single women or female heads of household without a male support network. For further information on the question of sufficiency of protection for women, see paragraphs 3.13.5 – 3.13.8.
- 3.7.10 *Internal relocation.*** The Constitution provides for freedom of movement within Afghanistan and many men and women travel relatively freely, although local customs and traditions may make it very difficult for women to travel without a male escort.²¹ This makes it practical for men and women with a male support network who have a well-founded but localised fear of persecution in one area of Afghanistan to relocate to other areas of the country where they would not be at risk. For example, Pashtun men or married women from the north of the country or from some parts of Herat who fear persecution in their home area may reasonably relocate to the south or east of the country where they do not constitute a minority and where there is no evidence that they would be at risk. Equally, it would not be unduly harsh to expect claimants in these categories who faced a generalised risk of persecution on account of their ethnicity to relocate to Kabul where the improved security situation reduces the likelihood that the claimant would have a well-founded fear of persecution and where they could rely on sufficient protection against generalised threats by non-state agents.
- 3.7.11** Unescorted internal travel for single women and female heads of household who do not have a male support network can be extremely difficult – discrimination and harassment are common – as would be establishing themselves in an area where they did not have such a support network.²² Sufficient protection is not available to them, even in Kabul, and it would therefore be unduly harsh to expect single women and female heads of household who have a well-founded fear of persecution in one part of Afghanistan, and who do not have a male support network, to relocate internally.
- 3.7.12 *Caselaw.***
- IAT Determinations: [2003] UKIAT 00057K (Afghanistan); [2003] UKIAT 00076AL (Afghanistan); and [2003] UKIAT 00088 S (Afghanistan)** all held that there is sufficiency of protection in Kabul.
- 3.7.13 *Conclusion.*** Whilst Pashtuns from the south or east of Afghanistan may face harassment or discrimination on account of their perceived links with the former Taliban regime they are unlikely to be able to establish that they face treatment amounting to persecution based solely on their ethnicity, therefore a grant of asylum or Humanitarian Protection is not likely to be appropriate.
- 3.7.14** In the north of Afghanistan and parts of Herat the situation for Pashtuns is improving, but Pashtuns from these areas may be able to demonstrate that in those areas they face a level of discrimination and harassment which in serious cases could amount to persecution. Sufficient protection is not currently available in these areas. Men, and women with a male

²¹ COIS Afghanistan Country Report paras 6.149 – 6.153

²² COIS Afghanistan Country Report paras 6.149 – 6.153

support network, do however have the option to relocate internally, either to the south or east of the country, where Pashtuns are not a minority, or to Kabul, where sufficient protection is generally available. In such cases a grant of asylum or Humanitarian Protection will not be appropriate.

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

3.8 Current or former Hizb-e-Islami members or sympathisers

3.8.1 Applicants may claim that their own or a family member's membership of or support for Hizb-e-Islami has resulted in them being at risk of ill-treatment by the Afghan authorities.

3.8.2 *Treatment.* Two factions arose following a split within Hizb-e-Islami in 1979 – Hizb-e-Islami (Hekmatyar) and Hizb-e-Islami (Khalis). The leader of Hizb-e-Islami (Hekmatyar) declared holy war on international troops in Afghanistan in December 2002 and was subsequently designated a terrorist by the US in February 2003. According to Human Rights Watch in March 2004, Hizb-e-Islami is one of the groups who have shown little willingness to abide by international humanitarian law or human rights standards. They have carried out abductions and attacks against civilians and humanitarian aid workers and detonated bombs in bazaars and other civilian areas.²³

3.8.3 Following the Constitutional Loya Jirga, President Karzai appointed a number of former Hizb-e-Islami (Hekmatyar) commanders and political figures to high-level posts such as governor and minister-advisor indicating that some former members of the party have now formed an alliance with the Transitional Administration.²⁴

3.8.4 The extent to which those associated with Hizb-e-Islami face difficulty with the Afghan authorities depends upon whether they are considered still to be in conflict with the authorities or other powerful figures in Afghanistan. A Danish fact-finding mission in 2004 found that there would be few problems for those who are no longer considered a threat,²⁵ although in the case of RS outlined below, there was found to be an ongoing real risk. There is no concrete evidence about what treatment current or former members would encounter if they were in fact facing difficulties with the authorities.

3.8.5 *Sufficiency of Protection.* A judicial and legal system with limited function exists in Afghanistan. In Kabul the police authorities are generally willing to enforce the law, although their ability to do so is limited by inadequate resources and dependent to some extent on the loyalties of individual officers. The International Security Assistance Force (ISAF) works alongside the Afghan Security Forces to maintain security in and around Kabul and as result the general security environment there is much better than in other areas.²⁶

3.8.6 Based on the existence of the limited judicial and legal system, the willingness of the police authorities to enforce the law and the presence of ISAF a sufficiency protection is generally available in Kabul. However, each case must be considered on its merits – there will be individual cases where sufficient protection will not be available. For example, in ZN ([2005] UKIAT 00096), the tribunal found that an Adjudicator was entitled to conclude that sufficient

²³ COIS Afghanistan Country Report paras 6.421 – 6.437

²⁴ COIS Afghanistan Country Report paras 6.421 – 6.437

²⁵ COIS Afghanistan Country Report paras 6.421 – 6.437

²⁶ COIS Afghanistan Country Report paras 5.32 – 5.41; 5.65 – 5.74; 5.106 – 5.113; 5.146 – 5.153

protection would not be available against a warlord who had already shown that he was capable of attacking persons associated with the claimant, and indeed the claimant's own house. Factors to take into account in deciding whether sufficient protection is available to an individual claimant will include whether they, or their would be persecutors, have influential connections in the current administration – e.g. a number of former Hizb-e-Islami supporters, including Hekmatyar's former right hand man, hold prominent positions in Hamid Karzai's government.²⁷

3.8.7 Sufficient protection is not available, even in Kabul, for single women or female heads of household without a male support network. For further information on the question of sufficiency of protection for women, see paragraphs 3.13.5 – 3.13.8.

3.8.8 *Internal Relocation.* The Constitution provides for freedom of movement within Afghanistan and many men and women travel relatively freely, although local customs and traditions may make it very difficult for women to travel without a male escort.²⁸ This makes it practical for men and women with a male support network who have a well-founded but localised fear of persecution at the hands of non-state agents in one area of Afghanistan to relocate to other areas of the country where they would not be at risk. It would not therefore be unduly harsh to expect low profile former Hizb-e-Islami supporters who are likely to be known only in their home area to relocate to another part of the country. Claimants with a higher profile would be more likely to be widely known and would therefore be less likely to be able to rely on internal relocation to avoid a real risk of persecution. Caseworkers will need to make a case by case judgement on where on the scale an individual claimant lies.

3.8.9 Unescorted internal travel for single women and female heads of household who do not have a male support network can be extremely difficult – discrimination and harrassment are common – as would be establishing themselves in an area where they did not have such a support network.²⁹ Sufficient protection is not available to them, even in Kabul, and it would therefore be unduly harsh to expect single women and female heads of household who have a well-founded fear of persecution in one part of Afghanistan, and who do not have a male support network, to relocate internally.

3.8.10 Where the claimants fear is of ill treatment or persecution by the state authorities, relocation to a different area of the country to escape this threat is not possible.

3.8.11 *Caselaw.*

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

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

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

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

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

3.8.12 *Conclusion.* The caselaw is not clear on whether there is a real risk of persecution for Hizb-e-Islami supporters. *RS* above was heard after, but promulgated before, *WK*.

²⁷ COIS Afghanistan Country Report paras 5.113; 5.116; 6.378 – 6.381

²⁸ COIS Afghanistan Country Report paras 6.149 – 6.153

²⁹ COIS Afghanistan Country Report paras 6.149 – 6.153

Therefore, caseworkers should base their decisions on the circumstances of the individual claimant and the balance of the current country information. This points to former members of either faction not having any difficulty with the current administration so long as it is clear that they are no longer associated with Hizb-e-Islami. It is therefore unlikely that former members will have a well-founded fear of persecution by the state and a grant of asylum or Humanitarian Protection will not be appropriate. Claims from current members of the Hekmatyar faction should be referred to a Senior Caseworker.

- 3.8.13** It may be that a claimant is able to establish a well-founded fear of treatment by non-state actors that might amount to persecution. Within Kabul, sufficient protection against such treatment will be available in most cases, but each claim must be decided on its merits (see above). Claimants from outside Kabul can reasonably relocate to Kabul unless there is evidence that their would be persecutors would be likely to pursue them there and there is evidence that they would fall into the small category of claimants who would not be able to rely on sufficient protection in Kabul. In the latter case, a grant of asylum may be appropriate.
- 3.8.14** Caseworkers should note that Hizb-e-Islami have been responsible for serious human rights abuses, some of which may amount to war crimes. If it is accepted that the claimant was an active operational member or combatant for the Hizb-e-Islami and has been involved in such actions caseworkers should consider whether to apply one of the Exclusion Clauses. Caseworkers should refer such cases to a Senior Caseworker in the first instance.

3.9 Former People's Democratic Party of Afghanistan supporters

- 3.9.1** Former members of the PDPA may claim that they face persecution by the Afghan state because of the oppressive regime that they supported or were a part of. They may also claim fear of persecution by warlords or other political factions with whom they came into conflict during the time that the PDPA was in power.
- 3.9.2 *Treatment.*** The PDPA was the Soviet backed communist party which ruled Afghanistan from 1978 to 1992. The PDPA was founded in 1965 and split in to two factions in 1967: Khalq (The People), led by Nur Mohammed Taraki and Hafizullah Amin and Parcham (The Banner), led by Babrak Kamal. Khalq was more rural-based, mostly comprising members of the Pashtun tribes. Parcham was more urban oriented and was dominated by Dari speakers. In 1977, the two factions reunited under Soviet pressure. In 1988 the name of the party was changed to Watan (Homeland) Party. The PDPA based government collapsed in 1992 when, following the Peshawar Accords, Mujaheddin troops entered Kabul and the last President of a 'communist' government in Afghanistan, Mohammed Najibullah (previously head of the secret service Khad) had to seek refuge in a UN-building in Kabul where he stayed until he was killed by Taliban troops entering Kabul in September 1996.³⁰
- 3.9.3** The PDPA government attempted to suppress opposition to social and agrarian reform through repressive tactics including the "disappearance" and summary execution of thousands of people. The government's repressive measures sparked uprisings throughout the country, which were crushed, and drove refugees and armed opponents of the government across the borders into Pakistan and Iran. In their efforts to crush the Mujahideen, the Afghan government and Soviet forces engaged in massive human rights violations, including widespread torture and executions.³¹
- 3.9.4** Many former PDPA members as well as former officials of the Khad (the intelligence service) are working in the Government, including the security apparatus. A congress of the PDPA in late 2003 led to the creation of Hezb-e-Mutahid-e-Mili (National United Party) with 600 members and other former PDPA officials have founded several other new parties. Many former PDPA members and officials of the Communist Government, particularly those who

³⁰ COIS Afghanistan Country Report Annex B

³¹ Amnesty International Making Human Rights the Agenda

enjoy the protection of and have strong links to currently influential factions and individuals, are safe from exposure resulting from their political and professional past.³²

- 3.9.5** However, risk of persecution may persist for some members of the PDPA. The exposure to risk depends on the individual's personal circumstances, family background, professional profile, links, and whether he was associated with the human rights violations of the Communist regime in Afghanistan between 1979 and 1992. Categories that may be at greater risk if they do not enjoy factional protection from Islamic political parties or tribes or influential personalities include high ranking members of PDPA, irrespective of faction but only if they are known and have a public profile, for example high ranking members of Central and Provincial Committees and their families or high ranking members of social organisations such as the Democratic Youth Organization and the Democratic Women's Organization. Also people who openly promote the following parties led by former leaders of PDPA, particularly in rural areas: Hezb-e-Mutahid-e-Mili; De Afghanistan De Solay Ghorzang Gond (Peace Movement Party of Afghanistan); Hezb-e-Mili Afghanistan (National Party of Afghanistan); Hezb-e-Wahdat-e-Mili Afghanistan (National Solidarity Party of Afghanistan).³³
- 3.9.6** The International Crisis Group (ICG) also expressed the opinion that former high ranking PDPA members would be able to live in Afghanistan so long as they did not pursue a communist agenda, although a former PDPA central committee member they referred to did need considerable protection. The ICG thought that some former PDPA members could not safely return to Afghanistan but that a number of former members were selected by President Karzai to work for the government, and that many ministries could not exist without their skills. This appears to reflect a pragmatic approach recognising that many of these people were only trying to make a living and had no strong political interests.³⁴
- 3.9.7** *Sufficiency of protection.* A judicial and legal system with limited function exists in Afghanistan. In Kabul the police authorities are generally willing to enforce the law, although their ability to do so is limited by inadequate resources and dependent to some extent on the loyalties of individual officers. The International Security Assistance Force (ISAF) works alongside the Afghan Security Forces to maintain security in and around Kabul and as result the general security environment there is much better than in other areas.³⁵
- 3.9.8** Based on the existence of the limited judicial and legal system, the willingness of the police authorities to enforce the law and the presence of ISAF a sufficiency protection by non-state agents is generally available in Kabul. However, each case must be considered on its merits – there will be individual cases where sufficient protection will not be available. For example, in ZN ([2005] UKIAT 00096), the tribunal found that an Adjudicator was entitled to conclude that sufficient protection would not be available against a warlord who had already shown that he was capable of attacking persons associated with the claimant, and indeed the claimant's own house. Factors to take into account in deciding whether sufficient protection is available to an individual claimant will include whether they, or their would be persecutors, have influential connections in the current administration – several high ranking former communists are well placed in the administration.
- 3.9.9** Where a claimant's well-founded fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection and the question of sufficiency of protection does not arise.
- 3.9.10** *Internal Relocation.* The Constitution provides for freedom of movement within Afghanistan and many men and women travel relatively freely, although local customs and traditions may make it very difficult for women to travel without a male escort.³⁶ This makes

³² COIS Afghanistan Country Report para. 6.336

³³ COIS Afghanistan Country Report para. 6.336

³⁴ COIS Afghanistan Country Report paras 6.328 – 6.337

³⁵ COIS Afghanistan Country Report paras 5.32 – 5.41; 5.65 – 5.74; 5.106 – 5.113; 5.146 – 5.153

³⁶ COIS Afghanistan Country Report paras 6.149 – 6.153

it practical for men and women with a male support network who have a well-founded but localised fear of persecution in one area of Afghanistan to relocate to other areas of the country where they would not be at risk. It would not therefore be unduly harsh to expect low profile members/supporters of the PDPA, who are likely to be known only in their home area, to relocate to another part of the country. However, some nationally known high profile former PDPA members could be recognisable throughout Afghanistan and in such cases would therefore be less likely to be able to rely on internal relocation to avoid a real risk of persecution.

- 3.9.11** Where the claimants fear is of ill treatment or persecution by the state authorities, relocation to a different area of the country to escape this threat is not possible.
- 3.9.12 *Conclusion.*** It is unlikely that low ranking former PDPA members and supporters will be able to establish that they have a well-founded fear of persecution in the area where they are known. However, even where they are able to do so, in cases where the fear is of non-state actors, this is likely to be a localised problem and it would not be unduly harsh to expect them to relocate, either to Kabul, where in most cases there would be sufficient protection, or elsewhere in the country where they would not be known. Such cases would not therefore qualify for asylum or Humanitarian Protection.
- 3.9.13** High-ranking former PDPA members may be able to establish that they have a well-founded fear of persecution, although those who have been living in Afghanistan since 1992 will need to demonstrate why they have come to the attention of their persecutors at the present time. Where a well-founded fear of persecution is established, but it is a localised risk, it would not in most cases be unduly harsh to expect the claimant to relocate within Afghanistan. Within Kabul, sufficient protection against such treatment will be available in most cases, but each claim must be decided on its merits (see above). Claimants from outside Kabul can reasonably relocate to Kabul unless there is evidence that their would- be persecutors would be likely to pursue them there AND there is evidence that they would fall into the small category of claimants who would not be able to rely on sufficient protection in Kabul. In the latter case, a grant of asylum may be appropriate. However, it is important to consider whether the activities which have placed the claimant in such a position will also have rendered him liable to exclusion under the Refugee Convention.
- 3.9.14** Different considerations apply to women claimants but such claims are unlikely to arise in this category.
- 3.9.15** Caseworkers should note that the PDPA have in the past been responsible for serious human rights abuses, some of which may amount to war crimes. If it is accepted that the claimant was involved in such abuses then caseworkers should consider whether to apply one of the Exclusion Clauses. Caseworkers should refer such cases to a Senior Caseworker in the first instance.
- 3.10 Former KhAD agents**
- 3.10.1** Applicants may claim to fear persecution by the Afghan authorities and/or local commanders or other groups due to their (or a family member's) previous involvement in KhAD.
- 3.10.2 *Treatment.*** The Khadimat-e Atal'at-e Dowlati (KhAD) which operated from 1980 until 1992 was the security service of the highly repressive communist regime. Although renamed Wazarat-e Amani-iat-e Dowlati (WAD) in 1986 it continued to be generally known as KhAD. The work of the organisation and the methods it used means that all NCO's and officers employed by KhAD and WAD were involved in serious human rights violations against real or perceived opponents of the communist regime. The Country Report indicates that some former KhAD agents may face risks similar to those that may be faced by some former high-ranking PDPA members. The level of risk will depend on a number of considerations

including their profile in KhAD, the extent to which they have been involved in human rights violations and their political and tribal links.³⁷

- 3.10.3** Not all former KhAD operatives face risk from the current government or others within the country. For example some estimates suggest that around half of the current Afghanistan intelligence services are former KhAD officers, recruited due to a lack of qualified personnel from other sources, e.g. the director in the 7th department of the present intelligence service had earlier served the same position in the KHAD.³⁸
- 3.10.4 *Sufficiency of protection.*** A judicial and legal system with limited function exists in Afghanistan. In Kabul the police authorities are generally willing to enforce the law, although their ability to do so is limited by inadequate resources and dependent to some extent on the loyalties of individual officers. The International Security Assistance Force (ISAF) works alongside the Afghan Security Forces to maintain security in and around Kabul and as result the general security environment there is much better than in other areas.³⁹
- 3.10.5** Based on the existence of the limited judicial and legal system, the willingness of the police authorities to enforce the law and the presence of ISAF a sufficiency protection is generally available in Kabul. However, each case must be considered on its merits – there will be individual cases where sufficient protection will not be available. For example, in ZN ([2005] UKIAT 00096), the tribunal found that an Adjudicator was entitled to conclude that sufficient protection would not be available against a warlord who had already shown that he was capable of attacking persons associated with the claimant, and indeed the claimant's own house. Factors to take into account in deciding whether sufficient protection is available to an individual claimant will include whether they, or their would be persecutors, have influential connections in the current administration.
- 3.10.6** Where a claimant's well-founded fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection and the question of sufficiency of protection does not arise.
- 3.10.7 *Internal relocation.*** The Constitution provides for freedom of movement within Afghanistan and many men and women travel relatively freely, although local customs and traditions may make it very difficult for women to travel without a male escort.⁴⁰ This makes it practical for men and women with a male support network who have a well-founded but localised fear of persecution in one area of Afghanistan to relocate to other areas of the country where they would not be at risk. It would not therefore be unduly harsh to expect low profile former KhAD agents who are likely to be known only in their home area to relocate to another part of the country. However, there may be some former KhAD agents who, due to their involvement in widespread human rights violations, could not reasonably relocate to an area where their former activities would not be known.
- 3.10.8** Where the claimants fear is of ill treatment or persecution by the state authorities, relocation to a different area of the country to escape this threat is not possible.
- 3.10.9 *Conclusion.*** The level of risk will depend on a claimant's profile in KhAD, the extent to which they have been involved in human rights violations and their political and tribal links. It is possible that even low ranking former KhAD agents and supporters will be able to establish that they have a well-founded fear of persecution in the area where they are known. However, even where they are able to do so, this is likely to be a localised problem and it would not be unduly harsh to expect them to relocate, either to Kabul, where there is sufficient protection, or elsewhere in the country where they would not be known. Such cases would not therefore qualify for asylum or Humanitarian Protection.

³⁷ COIS Afghanistan Country Report paras 6.316 – 6.327

³⁸ COIS Afghanistan Country Report paras 6.316 – 6.327

³⁹ COIS Afghanistan Country Report paras 5.32 – 5.41; 5.65 – 5.74; 5.106 – 5.113; 5.146 – 5.153

⁴⁰ COIS Afghanistan Country Report paras 6.149 – 6.153

- 3.10.10** High-ranking former KhAD agents, or those whose activities would have caused them to be widely known throughout Afghanistan are more likely to be able to establish that they have a well-founded fear of persecution although those who have been living in Afghanistan since 1992 will need to demonstrate why they have come to the attention of their persecutors at the present time.
- 3.10.11** Where a well-founded fear of persecution is established, but it is a localised risk, it would not be unduly harsh to expect the claimant to relocate within Afghanistan, either to Kabul if they have connections with the current administration and sufficient protection would therefore be available, or to parts of the country where they are not known. But former KhAD agents who enjoyed a national profile and who do not have connections in the current administration will not be able to rely on sufficient protection and could not reasonably be expected to relocate elsewhere in Afghanistan. In these circumstances, it is very likely that the activities in which the claimant was engaged would engage one of the exclusion clauses in the Refugee Convention. It is therefore unlikely that any claim based on being a KhAD agent would result in a grant of asylum or Humanitarian Protection.
- 3.10.12** Caseworkers should note that KhAD have been responsible for serious human rights abuses, some of which may amount to war crimes. If it is accepted that the claimant was an active operational member of KhAD and has been involved in such actions, then caseworkers should consider whether to apply one of the Exclusion Clauses. Caseworkers should refer such cases to a Senior Caseworker in the first instance.
- 3.10.13** Different considerations apply to women but such claims are unlikely to arise in this category.

3.11 Hindus and Sikhs

- 3.11.1** Hindus and Sikhs may claim that they face societal discrimination and harassment and that they cannot rely on the protection of the Afghan state authorities.
- 3.11.2 *Treatment.*** In June 2005 UNHCR estimated that there were around 3700 Sikh and Hindu families still living in Afghanistan, the numbers increasing slowly but steadily as people returned from abroad, mainly India. The greatest concentrations are in Kabul (c. 185 families) Jalalabad (c. 160 families), Kunduz (100 families). Others live in Ghazni, Kandahar and Khost. UNHCR estimated that previously up to 200,000 Sikhs and Hindus lived in Afghanistan.⁴¹
- 3.11.3** The US State Department reported in September 2004 that there was a major improvement in religious freedom following the fall of the Taliban. Sikh and Hindu representatives at the Emergency Loya Jirga in June 2002 reported that they were no longer repressed and felt free to practice their religions. The Government encouraged Sikhs, Hindus, and other minorities to return, and there was a small but steady flow of returnees during the year.⁴²
- 3.11.4** Such difficulties as Sikhs and Hindus do encounter do not appear to be at the hands of the Afghan authorities but as a result of societal discrimination. There were reports that in 2003, 3 Sikhs who had been forcibly returned to Kabul after being refused asylum in the UK were singled out for abuse in a Kabul marketplace. Later the same year, a grenade was reportedly thrown into a Sikh temple and a prominent Sikh leader in Kabul received anonymous telephone threats warning him not to favour a secular government when he represented the community at the constitutional loya jirga. And in September 2004 UNHCR reported that the Sikh and Hindu communities had complained of harassment, intimidation and abuse in public places, and had had tomatoes and potatoes thrown at them.⁴³

⁴¹ COIS Afghanistan Country Report para. 6.123

⁴² COIS Afghanistan Country Report para. 6.112

⁴³ COIS Afghanistan Country Report paras 6.110 – 6.125

- 3.11.5** There have also been reports in 2004 that Sikhs and Hindus had been denied access to their traditional cremation ground by local residents. The Kabul authorities had allocated them an alternative cremation site although this had not actually been handed over at the time of the report. The government had also provided guards for five or six unused Sikh gurdwaras in Kabul, and had provided transport for worshippers to get to their temple.⁴⁴
- 3.11.6** There have also been some reports of discrimination at a local level. For example, in Helmand it has been reported that Hindus were discriminated against in the provision of land to rebuild shops that had been demolished and that landlords were pressurised by the governor to evict Hindus from their houses. And in Kabul there have been reports that returning Hindus are unable to repossess their houses from powerful commanders and are discriminated against in the provision of education for their children.⁴⁵
- 3.11.7 *Sufficiency of Protection.*** A judicial and legal system with limited function exists in Afghanistan. In Kabul the police authorities are generally willing to enforce the law, although their ability to do so is limited by inadequate resources and dependent to some extent on the loyalties of individual officers. The International Security Assistance Force (ISAF) works alongside the Afghan Security Forces to maintain security in and around Kabul and as result the general security environment there is much better than in other areas.⁴⁶ The government of Afghanistan has encouraged the return of Sikhs and Hindus and shows signs that it is trying to address their concerns including in Kabul providing guards for a number of unused Sikh gurdwaras and transport for worshippers.⁴⁷
- 3.11.8** Sufficient protection may normally be considered to be available for men and married women who demonstrate a generalised risk of opportunistic targeting on account of their religion. However, each case must be considered on its merits – there will be individual cases where sufficient protection will not be available. Where there is credible evidence that the claimant will be targeted personally and persistently, for example as part of a vendetta by a powerful warlord, sufficient protection cannot be relied upon for any individual unless they have powerful connections. For example, in ZN ([2005] UKIAT 00096), the tribunal found that an Adjudicator was entitled to conclude that sufficient protection would not be available against a warlord who had already shown that he was capable of attacking persons associated with the claimant, and indeed the claimant's own house. There is no evidence that Sikhs and Hindus have been the subject of such concerted attention, but sufficiency of protection should in these circumstances be considered on a case by case basis.⁴⁸
- 3.11.9** Sufficient protection is not available, even in Kabul, for single women or female heads of household without a male support network. For further information on the question of sufficiency of protection for women, see paragraphs 3.14.5 – 3.14.9.
- 3.11.10 *Internal Relocation.*** The Constitution provides for freedom of movement within Afghanistan and many men and women travel relatively freely, although local customs and traditions may make it very difficult for women to travel without a male escort.⁴⁹ This makes it practical for men and women with a male support network who have a well-founded but localised fear of persecution in one area of Afghanistan to relocate to other areas of the country where they would not be at risk. It would not therefore be unduly harsh to expect Sikhs and Hindus who had a well-founded fear of persecution in their home area on account of their religion to relocate to Kabul where at worst only low-level discrimination and harassment occur, there are well-established and close-knit Sikh and Hindu communities, and where they could rely on sufficient protection against generalised threats

⁴⁴ COIS Afghanistan Country Report paras 6.110 – 6.125

⁴⁵ COIS Afghanistan Country Report paras 6.110 – 6.125

⁴⁶ COIS Afghanistan Country Report paras 5.32 – 5.41; 5.65 – 5.74; 5.106 – 5.113; 5.146 – 5.153

⁴⁷ COIS Afghanistan Country Report paras 6.110 – 6.125

⁴⁸ COIS Afghanistan Country Report paras 5.113; 5.116

⁴⁹ COIS Afghanistan Country Report paras 6.149 – 6.153

by non-state agents.

3.11.11 Unescorted internal travel for single women and female heads of household who do not have a male support network can be extremely difficult – discrimination and harassment are common – as would be establishing themselves in an area where they did not have such a support network.⁵⁰ Sufficient protection is not available to them, even in Kabul, and it would therefore be unduly harsh to expect single women and female heads of household who have a well-founded fear of persecution in one part of Afghanistan, and who do not have a male support network, to relocate internally.

3.11.12 Caselaw

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

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

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

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

3.12 Converts to Christianity

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

3.12.2 Treatment. Although Article 2 of the 2004 Constitution states that the followers of other religions are free to exercise their faith and perform their religious rites within the limits of the provisions of law, the boundaries of the law are open to interpretation. The Constitution makes no specific provision for converts and guarantees of religious freedom generally would appear to be subject to the Constitutional catch-all that "no law can be contrary to the beliefs and provisions of the sacred religion of Islam."⁵¹

3.12.3 The Islamic punishment for leaving the Islamic faith, for another religion or none, is death,

⁵⁰ COIS Afghanistan Country Report paras 6.149 – 6.153

⁵¹ COIS Afghanistan Country Report paras 6.126 – 6.132

and this remains a theoretical possibility in Afghanistan. There are however no recently reported cases of the formal justice system handing down the death penalty for apostasy, possibly because converts will tend to keep a very low profile, as indeed do Christians generally in Afghanistan, whether converts from Islam or not.⁵²

- 3.12.4** The country information contains a great deal of speculation about the level of societal discrimination which apostates would face, but no recent information about or evidence of such ill-treatment, probably because conversion within Afghanistan is rare and converts tend to keep a low profile. What evidence there is tends to point to proselytising being the greater risk than conversion in itself.⁵³
- 3.12.5 *Sufficiency of Protection.*** A judicial and legal system with limited function exists in Afghanistan. In Kabul the police authorities are generally willing to enforce the law, although their ability to do so is limited by inadequate resources and dependent to some extent on the loyalties of individual officers. The International Security Assistance Force (ISAF) works alongside the Afghan Security Forces to maintain security in and around Kabul and as result the general security environment there is much better than in other areas.⁵⁴
- 3.12.6** Where the treatment feared is at the hands of the state, the question of sufficiency of protection does not arise. However, even where the claimants fear is of societal or non-state persecution, given Islamic law on apostasy and the conservative Islamic nature of the Afghan judiciary, apostates may reasonably be unwilling due to the state's position on apostasy to seek the protection of the Afghan authorities. Therefore, in either case, sufficient protection should not be considered to be available for apostates in Afghanistan.
- 3.12.7 *Internal Relocation.*** The Constitution provides for freedom of movement within Afghanistan and many men and women travel relatively freely, although local customs and traditions may make it very difficult for women to travel without a male escort.⁵⁵ This makes it reasonable for men and women with a male support network who have a well-founded but localised fear of persecution in one area of Afghanistan to relocate to other areas of the country where they would not be at risk.
- 3.12.8** 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.⁵⁶ Sufficient protection is not available to them, even in Kabul, and it would therefore be unduly harsh to expect single women and female heads of household who have a well-founded fear of persecution in one part of Afghanistan, and who do not have a male support network, to relocate internally.
- 3.12.9** Where the treatment feared would be at the hands of the state, internal relocation is not an option. In relation to non-state actors, from the limited country information available societal antipathy to apostasy is assumed to be widespread, and hence internal relocation will not be reasonable.

3.12.10 *Caselaw*

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

- 3.12.11 *Conclusion.*** There is little information on the actual treatment of apostates in Afghanistan

⁵² COIS Afghanistan Country Report paras 6.126 – 6.132

⁵³ COIS Afghanistan Country Report paras 6.126 – 6.132

⁵⁴ COIS Afghanistan Country Report paras 5.32 – 5.41; 5.65 – 5.74; 5.106 – 5.113; 5.146 – 5.153

⁵⁵ COIS Afghanistan Country Report paras 6.149 – 6.153

⁵⁶ COIS Afghanistan Country Report paras 6.149 – 6.153

because it is understood that those who do convert maintain a low profile. As noted in the case of AR [2005] UKIAT 00035 there is no evidence that the current Afghan administration has or intends to apply the death penalty for apostasy; nor is there any evidence that societal discrimination for apostasy reaches the high level required for Article 3 to be breached. It is therefore unlikely that an applicant will be able to establish treatment that might warrant a grant of asylum or Humanitarian Protection.

3.12.12 In the unlikely event that an individual claimant is able to establish a well-founded fear of treatment amounting to persecution, they would not be able to rely on the protection of the Afghan authorities. Internal relocation will not be a reasonable option. Therefore, where there is a real risk a grant of asylum would be appropriate.

3.13 Women

3.13.1 Women may claim to face domestic violence at the hands of their husbands or families. They may also claim to have faced intimidation or violence because they are perceived to have breached social norms or taken part in politics or other public life.

3.13.2 *Treatment.* The lives of women and girls have improved since the fall of the Taliban. They have access to education and no longer face Taliban imposed restrictions on access to health care. The Afghan government has initiated programmes to encourage public participation. 25% of seats in the Wolesi Jirga are reserved for women. The improvements are particularly noticeable in urban areas.⁵⁷

3.13.3 However, the reach of the Afghan government is limited. In many areas, local customs and local commanders still dominate. Violence against women is pervasive. Women and girls are abducted, raped, forced into early marriages against their will in settlement of debts or feuds, subject to domestic violence, and liable to be murdered in a so-called honour killing if they try to escape these circumstances. This has resulted in increasing numbers of suicides, often by self-immolation.⁵⁸

3.13.4 Women and girls are particularly affected by the overall lack of security, which effectively limits their freedom to travel to school, work, hospital. For a majority of women these are in any case hypothetical restrictions because they are forbidden by male members of their family, or by local tribal and religious leaders, from working outside their homes or going to school. In June 2005 UNHCR identified as at particular risk women without male or community support, women's rights activists, women who have married non-muslims or without the family's consent, and 'westernised' women.⁵⁹

3.13.5 *Sufficiency of Protection.* A judicial and legal system with limited function exists in Afghanistan. In Kabul the police authorities are generally willing to enforce the law, although their ability to do so is limited by inadequate resources and dependent to some extent on the loyalties of individual officers. The International Security Assistance Force (ISAF) works alongside the Afghan Security Forces to maintain security in and around Kabul and as result the general security environment there is much better than in other areas.⁶⁰

3.13.6 Despite the new constitution guaranteeing equality for women, this has not yet been implemented effectively. Women are denied access to justice by their ignorance of their rights, the social stigma that attaches to them as victims, by the ineffectiveness of the investigative and judicial systems, and by the inability of the authorities to exert effective control over powerful warlords.⁶¹

⁵⁷ COIS Afghanistan Country Report paras 6.196 – 6.283

⁵⁸ COIS Afghanistan Country Report paras 6.196 – 6.283

⁵⁹ COIS Afghanistan Country Report paras 6.196 – 6.283

⁶⁰ COIS Afghanistan Country Report paras 5.32 – 5.41; 5.65 – 5.74; 5.106 – 5.113; 5.146 – 5.153

⁶¹ COIS Afghanistan Country Report paras 6.196 – 6.203

- 3.13.7** The balance of the evidence points to an improving situation, especially in Kabul, but as Amnesty International noted in October 2004 “Efforts are underway to train police recruits to be aware of gender issues, but AI found that such training has been brief and perfunctory so far. AI has also received testimonies about bribery and corruption among police and of failure to follow up on cases involving violence against women. There are virtually no effective safeguards to protect women in custody.”⁶²
- 3.13.8** As was found in the case of NS (see below), sufficient protection is not therefore available to claimants who establish a well-founded fear of persecution for reason of being members of the particular social group of women in Afghanistan.
- 3.13.9 *Internal Relocation.*** The Constitution provides for freedom of movement within Afghanistan and many men and women travel relatively freely, although local customs and traditions may make it very difficult for women to travel without a male escort.⁶³ This makes it practical for men and women with a male support network who have a well-founded but localised fear of persecution in one area of Afghanistan to relocate to other areas of the country where they would not be at risk.
- 3.13.10** Unescorted internal travel for single women and female heads of household who do not have a male support network is difficult – discrimination and harassment are common – as would be establishing themselves in an area where they did not have such a support network.⁶⁴ Sufficient protection is not available to them, even in Kabul, and it would therefore be unduly harsh to expect single women and female heads of household who have a well-founded fear of persecution in one part of Afghanistan, and who do not have a male support network, to relocate internally.

3.13.11 *Caselaw.*

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

- 3.13.12 *Conclusion.*** Since the fall of the Taliban the position of women in Afghanistan has improved, but this is from a very low baseline. Discrimination is still rife and domestic and societal violence common. Lone women and female heads of households are generally unable to seek protection from the authorities and it would be unduly harsh to expect them to relocate internally. Recent caselaw has established that women in Afghanistan are a particular social group in terms of the refugee convention therefore a grant of asylum will be appropriate to claimants in these categories who are able to demonstrate a well-founded fear of treatment amounting to persecution. In considering the credibility of such cases, caseworkers will however wish to explore the means by which women in these circumstances travelled to the UK.
- 3.13.13** The availability of a male support network will impact upon the decision whether women face a real risk of treatment that might amount to persecution, but where they are able to establish that they do, asylum should be granted; the existence of a male support network does not constitute sufficient protection for the purposes of deciding the asylum claim.

3.14 *Prison conditions*

- 3.14.1** 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

⁶² COIS Afghanistan Country Report paras 6.196 – 6.203

⁶³ COIS Afghanistan Country Report paras 6.149 – 6.153

⁶⁴ COIS Afghanistan Country Report paras 6.149 – 6.153

are so poor as to amount to torture or inhuman treatment or punishment.

3.14.2 Consideration. The US State Department Report 2004 (USSD), published on 28 February 2005, recorded that prison conditions remained poor, and there were reportedly many other secret or informal detention centres in the country. Prisoners lived in overcrowded, unsanitary conditions in collective cells and were not sheltered adequately from severe winter conditions. Prisoners reportedly were beaten, tortured, or denied adequate food. The Justice Ministry's assumption of prison management from the Interior Ministry in March 2003 improved conditions marginally. The humanitarian NGO 'Emergency' reported in January [2004] that infectious diseases were common among prisoners.⁶⁵

3.14.3 A further report by the UN independent expert on Human Rights dated 11 March 2005 noted following a visit to Pol-e Charkhi prison that, despite some improvements, conditions continued to be sub-standard including overcrowding, rudimentary medical facilities, dangerously limited medical supplies and inadequate sanitation. The conditions in Pol-e Charkhi were considered to be much better than those in other parts of the country. In Logar, the prison comprised a metal container buried in the ground and a cramped basement. Several prisoners were kept constantly shackled – a common practice throughout Afghanistan. The government has committed to improve prison conditions but little progress has been made and in any case, many informal prisons around the country are run by warlords and local commanders and exist outside the control of the State and beyond the reach of the law.⁶⁶

3.14.4 Conclusion. Prison conditions in Afghanistan are severe and taking into account the levels of overcrowding, poor sanitation, prevalence of disease and absence of medical facilities, lack of food and incidence of torture, are likely to reach the Article 3 threshold. Therefore, a grant of asylum or Humanitarian Protection will be appropriate where an individual claimant is able to demonstrate a real risk of imprisonment on return to Afghanistan – asylum where the real risk of imprisonment is for a Refugee Convention reason, Humanitarian Protection where it is not.

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 API on Discretionary Leave)

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 not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave)

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.

4.3.2 Afghanistan is a signatory to the Convention on the Rights of the Child. In practice, however, social attitudes and the lack of functioning judicial institutions mean that child rights are poorly protected in many parts of Afghanistan.⁶⁷ Child abuse is endemic throughout the country. Abuses ranged from general neglect, physical abuses, abandonment, and confinement to

⁶⁵ COIS Afghanistan Country Report para. 5.163

⁶⁶ COIS Afghanistan Country Report paras 5.154 – 5.168

⁶⁷ COIS Afghanistan Country Report para. 6.284

work in order to pay off families' debts. Child trafficking is widespread. During 2004 it was reported that police were investigating 85 cases of children reportedly kidnapped and killed for their organs.⁶⁸

- 4.3.3** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted DL for a period of three years months or until their 18th birthday, whichever is the shorter period.

4.4 Medical treatment

- 4.4.1** Claimants may claim they cannot return to Afghanistan due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** The health sector in Afghanistan is in a very poor state. The health infrastructure has been damaged or destroyed by years of conflict. Professional health workers have fled the country. Epidemic-prone diseases, malnutrition and poverty have increased demands on the limited remaining healthcare providers. The situation is exacerbated by poor hygiene and sanitation, high vulnerability to natural disasters, and cultural sensitivities, which restrict access for women and girls.⁶⁹
- 4.4.3** Average life expectancy is 42 years, 1 in 6 babies dies during or shortly after birth, 1 in 4 children dies before reaching the age of 5, 15,000 women die each year from pregnancy related causes, there is only 1 doctor for every 50,000 of the population, only 12% of the population have adequate sanitation and 23% have clean drinking water.⁷⁰
- 4.4.4** However there have been some positive developments. Since April 2002, 72 hospitals, clinics and women's healthcare centres have been rebuilt. 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. The World Bank, the United States Agency for International Development and the European Community are helping the Afghan Ministry of Health, through NGOs, to provide a basic healthcare service [BPHS] to the entire population. The package consists of services for maternal and newborn health; child health and immunisation; nutrition; communicable disease; mental health; disability; and supply of essential drugs.⁷¹
- 4.4.5** Immunisation is having a real impact. Since 2002 UN agencies have administered 12 million immunisations against polio and 16 million vaccinations against measles, saving an estimated 30,000 lives. Cholera and diarrhoeal diseases are being tackled through health education, water chlorination and the construction of wells throughout the country. A programme to vaccinate 4 million girls and women aged 15-45 against tetanus by 2005 is now underway (UNICEF).⁷²
- 4.4.6** The approach of the Afghan government has been to concentrate on providing a universally available package of comprehensive basic health care provision to serve the whole population rather than specialist care for a few. According to the UN, in March 2004 this healthcare package was available to 40% of the population.⁷³
- 4.4.7 Conclusion.** In general, treatment is not available for serious diseases or chronic medical conditions. Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment

⁶⁸ COIS Afghanistan Country Report para. 6.285

⁶⁹ COIS Afghanistan Country Report para. 5.180

⁷⁰ COIS Afghanistan Country Report para. 5.181

⁷¹ COIS Afghanistan Country Report para. 5.182

⁷² COIS Afghanistan Country Report para. 5.182

⁷³ COIS Afghanistan Country Report para. 5.183

making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim.
- 5.2** In June 2005 UNHCR stressed the importance of traditional community and family structures in providing support mechanisms, that the availability of support to an individual is therefore limited to the area where those links exist, and that return elsewhere may expose returnees to insurmountable difficulties.⁷⁴
- 5.3** UNHCR identified a number of categories of would be returnees who may therefore face particular difficulties on return. These include unaccompanied females; single parents with small children and without a breadwinner; unaccompanied elderly people; unaccompanied children; victims of serious trauma (including rape); physically disabled persons; mentally disabled persons; persons with medical illness (contagious, long-term or short-term).⁷⁵
- 5.4** In each case asylum and human rights claims made by people in the above categories must be decided on the basis of the circumstances of the particular individual and the risk to that individual, using the latest available country information and the relevant guidance contained in this OGN and the IDIs. The fact that an individual is included in a category defined by UNHCR is not in itself decisive.
- 5.5** The preferred option for repatriating those Afghan asylum applicants who having exhausted the independent appeal process are found not to need international protection is assisted voluntary return. This policy is in line with the Tripartite Memorandum of Understanding on Voluntary Return between the UK, the United Nations High Commissioner for Refugees (UNHCR) and the Afghan Transitional Administration. However, as agreed with the Afghan authorities, from April 2003 those not choosing voluntary return and found to be without protection or humanitarian needs have been liable to be considered for enforcement action although those individuals or groups identified as vulnerable are excluded from the programme of enforced returns. We recognise that the Government of Afghanistan is still in the process of rebuilding the country and we do not wish to destabilise that process with a rapid influx of large numbers of people. All Afghans returning from the UK are offered access to a training and employment package and care is taken to return people gradually to those areas with adequate security and infrastructure where we are satisfied they will have sufficient support.
- 5.6** Afghan nationals may return voluntarily to any region of Afghanistan at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Afghanistan. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Afghan nationals wishing to avail themselves of this opportunity for assisted return to Afghanistan should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org

6. Additional references

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⁷⁴ COIS Afghanistan Country Report paras 6.381 – 6.383

⁷⁵ COIS Afghanistan Country Report paras 6.381 – 6.383

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