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REPUBLIK ÖSTERREICH  
FEDERAL MINISTRY OF THE INTERIOR

## Conference Reader



### Conference on asylum related questions regarding Afghanistan

Vienna, 31.03/01.04.2011

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REPUBLIK ÖSTERREICH  
MINISTERIUM FÜR  
INNENANLEGEN



ICMPD

International Centre for  
Migration Policy Development



# **Conference Reader**



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**Vienna, 31.03/01.04.2011**

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## **Disclaimer**

The views expressed in the Conference Reader are those of the authors only and do not necessarily reflect those of the European Union, its Member States, the Austrian Federal Ministry of the Interior or those of ICMPD.

## Contents

<b>Part 1. Afghanistan: Background Information .....</b>	<b>5</b>
Historical Development of Afghanistan .....	7
The security situation in Afghanistan .....	19
Quantitative overview of asylum seekers from Afghanistan in European countries .....	25
<b>Part 2. Afghanistan: Refugee Protection .....</b>	<b>35</b>
Groups at risk - Employees of the government .....	37
Groups at risk - Afghan women .....	43
Groups at Risk of Persecution – Case Study Austria .....	49
UNHCR Eligibility Guidelines .....	61
<b>Part 3. Afghanistan: Subsidiary Protection .....</b>	<b>69</b>
Subsidiary Protection - Afghanistan .....	71
Hungarian State Practice in determining Subsidiary Protection applications of Afghan Asylum Seekers .....	75
Subsidiary Protection in Afghan asylum cases: The German practice .....	83
<b>Part 4. Afghanistan: Unaccompanied Minors .....</b>	<b>89</b>
Unaccompanied Asylum Seekers from Afghanistan at Risk ....	91
The child as an Asylum-Seeker - a UK judge's perspective ..	101
Unaccompanied minor asylum seekers from Afghanistan – the situation in Sweden .....	109
Separated, asylum-seeking children in European Union Member States .....	115
<b>Part 5. Afghanistan: Return .....</b>	<b>125</b>
Enforced Return and Assisted Voluntary Return to Afghanistan in Germany .....	127
Assisted Voluntary Return and Reintegration to Afghanistan	135

<b>Annex 1: Agenda Afghanistan Conference .....</b>	<b>141</b>
<b>Annex 2: Description of Panelists.....</b>	<b>147</b>

## Opening Speech

Good morning, Ladies and Gentlemen,

I am honoured to welcome you in the Federal Ministry of Interior.

First, let me say a few words about the organizational details of this conference. It is organized by the Country of Origin Information Unit of the Austrian Federal Asylum Office, the Staatendokumentation, and the International Center for Migration Policy Development. We are very delighted that so many experts on asylum issues accepted our invitation to attend this conference. I am convinced that it will be a very worthwhile meeting for all of us.

Let me now address the topic of the conference. Afghanistan has been the top country of origin of asylum seekers in the Western industrialized countries in 2009 and 2010. We expect that this trend will continue this year. Germany, Sweden, United Kingdom, Belgium, Austria, Netherlands, Denmark and Norway have been the main destinations. Between 1999 and 2009 there were approximately 35 000 asylum applications by Afghan citizens in Austria. Today about 7700 Afghans live in Austria - most of them in Vienna.

It has to be considered that the situation in Afghanistan is subject to ongoing change concerning security, aspects of subsidiary protection and so on. Hence, we have to react to these changes in a timely manner. This is our task and we all have gathered vast knowledge of Afghanistan in our specific type of work. Nonetheless, it is necessary to collect more accurate information on this important country of origin. Afghanistan is a particular challenge in this respect. It is essential for all of us to share and exchange information and experience. This conference is also for you an opportunity to establish or intensify ties to other experts and institutions in order to ensure the information flow even after the end of the conference.

The aim of the conference is to gather the knowledge and experience from a variety of professions that are involved in asylum affairs. It is also an opportunity to improve communication between a number of institutions from across Europe: Today country of origin information

experts, judges of asylum law, international organisations and migration experts from Austria, Germany, Switzerland, United Kingdom, Sweden, the Netherlands, Hungary, Norway and Finland meet to discuss the current situation in Afghanistan and its implications on national decision practices in European countries.

Upon all I hope this conference will provide a better understanding of Afghanistan for all of us. Thank you very much for showing your interest by attending this conference. I hope that you will find the scheduled presentations and discussions useful for your work.

I wish you a very interesting and inspiring conference and a nice stay in Vienna.

Thank you very much for your attention.

Mathias Vogl, Director-General Legal Affairs, Austrian Federal Ministry of Interior



## Preface

The Conference on asylum-related questions regarding Afghanistan set its goal on looking at one of the main countries of origin of asylum seekers in European countries – Afghanistan – from different perspectives:

Firstly, for decades, the history of Afghanistan has been dominated by armed conflicts and insecure political, economic, social and humanitarian situations within the country itself. Undoubtedly knowledge about Afghanistan is of great importance for the examination of asylum applications submitted by Afghan asylum seekers. Over the past few years, COI units in the main receiving countries have specialised in this particular country. During the Conference, COI experts from Austria, Finland, Germany, Norway and Switzerland shared their experiences based on extended research and fact-finding missions to Afghanistan.

Secondly, the courts develop case law by ruling on different aspects of asylum claims during the appeals procedure. The various interpretations of the situation in Afghanistan, as well as the different national protection mechanisms in place, were presented by refugee judges from Austria, Germany, Hungary, the Netherlands, Sweden and the UK during the course of the Conference.

Thirdly, over the years, international and national stakeholders have observed the situation in Afghanistan, as well as the situation of Afghan asylum seekers and refugees in countries of asylum. The results of this observation, the experience of their research, their practical experiences, conclusions and recommendations have additionally complemented the overall picture the Conference intended to offer.

I would like to extend my gratitude to all panelists who shared their experience and knowledge within the framework of this Conference, as well as for their input during the preparation of the event, which have contributed to the present publication. The publication is thus a collection of contributions from several experts who participated in the *Conference on asylum-related questions regarding Afghanistan*.

Peter Widermann, Director General, ICMPD



## **Part 1. Afghanistan: Background Information**



## **Historical Development of Afghanistan**

*by Christoph Erismann, Country Analyst at the Federal Office for Migration, Switzerland*

The hetero-ethnic character of the country and its geographical features have had impact on the history of Afghanistan. Time and again there have been conflicts between the various tribes as well as between these tribes on one hand and the central government on the other. Since the 19<sup>th</sup> century Afghanistan has gained in strategical importance, which in turn has attracted the interest of foreign powers.

### **The Durrani Empire**

In the middle of the 18<sup>th</sup> century Ahmad-Shah founded in Kandahar what was later proclaimed to be the Kingdom of Afghanistan. His family clan, which belonged to the chief Pashtun tribal confederation called the Durrani, remained the ruling group of the state until the revolution in 1978. Around 1760, at the height of its power, the kingdom encompassed the whole of Kashmir, the Punjab, the Indus valley, Sindh and Baluchistan. Hence, it had access to the Indian Ocean. In 1773, after the death of Ahmad Shah Durrani, the capital was moved from Kandahar to Kabul, a city situated on the high plateau and inhabited by Tajiks. The following decades were marked by constant disputes within the king's family about the throne as well as by rivalry among the Durrani tribes themselves. To top it all there was a traditional hostility between the Durrani and the Ghilzai, the other tribal confederation of significance. The kingdom was thus unable to maintain the supremacy over the Islamic princes in the Sindh and in Baluchistan. In addition, by 1830 Kashmir and the territory of Punjab as far as Peshawar were lost in battles against the Sikhs. However, at the same time the kingdom was able to expand north- and westwards into territory not inhabited by the Pashtun and to conquer a number of Uzbek khanates between the Hindu Kush and the border river Amu-Darya. The old commercial city of Herat was also brought under its control in 1863.

## **The "Great Game"**

In the 19th century Afghanistan got caught in the middle of the conflict between Czarist Russia and Great Britain. Russia continued to advance toward the east and south due to its conquests in Central Asia., while Great Britain wanted to cement its authority in India and to protect its northern Indian border. Furthermore, Persia exerted pressure on the Durrani Empire from the west. In this power play between the Great Powers of Europe, called the "Great Game", Afghanistan was assigned the role of a buffer state. Despite three Anglo-Afghan wars Great Britain was always ready to support the independence of this country.

The first war, which lasted from 1839 – 1842, turned into a disaster for the British. They had tried in vain to put a prominent person loyal to them as king on the throne. After an uprising in Kabul the British had to pull out of Afghanistan and as a result suffered the greatest losses in their entire colonial history. In 1878 the British again marched into Afghanistan in order to hinder dreaded close relations between the country and Russia. However, the conditions for the British proved to be extremely difficult. In vast areas of the country a jihad against the invaders had been proclaimed. Abdur Rahman who had previously been dethroned was again recognized as king because a permanent British occupation proved to be too costly. In return, Abdur Rahman had to delegate all foreign relations to England. Afghanistan thus became a "closed country": Its borders were only open to English officials and to a few selected doctors and scientists. In 1878 Great Britain and Russia reached an agreement on the northern boundary of Afghanistan, an agreement which still is valid to this day. In 1893 the southern and eastern boundaries between British India and Afghanistan, which run through the middle of Pashtun settlement areas, were marked — the so-called "Durand-Line". However, since the partitioning of British India in 1947 Afghanistan has no longer recognized this present-day border to Pakistan. After the First World War the third Anglo-Afghan War broke out in 1919. In the course of these events Afghanistan gained independence from the British Empire.

## **The Difficult Path to Modernity**

Under Abdur Rahman who reigned until 1901 certain central state structures were strengthened. His modernization of military, police and tax matters primarily served the maintenance of his own power. He declared Islam to be the state religion and distinguished himself as "Guardian of the Sunni Faith". Among other things, he led a jihad against the Shi'ite Hazaras. He also subjugated the "nonbelievers" in Kafiristan (renamed Nuristan) who subsequently were forced to convert to Islam. Finally, Abdur Rahman initiated a resettlement program for Pashtuns from the south to the north, something his successors still continued in the 20th century.

After the third Anglo-Afghan War the reigning King Amanullah (a grandson of Abdur Rahman) began to open up the country to the east and the west – completely based on the model of the Turkish reformer Atatürk. New countries such as Germany became important cooperation partners. In 1923 Amanullah proclaimed a constitutional monarchy. He regarded his power legitimized by the will of the "Honourable Nation of Afghanistan". Amanullah's forced modernization policy, however, provoked resistance amongst the tribal leaders, the clergy and the rural population.

In 1928 Amanullah was overthrown. His successor, a Tajik of low birth, reversed all reforms and led a short but ruinous reign of terror in Kabul. General Nadir Khan, a relative of Amanullah, finally purged the usurper and took over power for himself. Four years later he was victim of a blood feud. He was succeeded in 1933 by his son Mohammed Zahir-Shah who was then only 19 years old but who reigned as king for 40 years.

During World War II Afghanistan followed a strict course of neutrality. Even after the war the government endeavoured to maintain a block-free policy. This brought the country foreign aid from the Soviet Union as well as the United States of America.

The years between 1953 and 1963 were shaped by Prime Minister Mohammed Daud, a cousin of the king. Under him the relationship to Pakistan deteriorated because of the "Pashtun Question".

Moreover, Afghanistan increasingly turned towards the Soviet Union in order to secure supplies. Among other things, army officers were

trained in the Soviet Union. Daud also advocated state influence on the economy and tried to develop the country using five-year plans.

There was a modernization of society, too: In 1959 the obligation to wear a hijab was lifted without much resistance.

In 1963 Daud abruptly resigned. After that relations with Pakistan normalized again.

In 1964 a new constitution was adopted. It still centered on the king. However, it included the creation of a two-chamber system (shura), too. It incorporated first signs of a parliamentary system based on the Western model. The constitution also acknowledged certain civil rights and provided a legal system in which the Sharia was embedded. However, the planned party law was never ratified by the king. Political parties thus remained formally illegal.

In 1965 and 1969 parliamentary elections took place. Both houses were dominated by representatives of the traditional establishment, especially religious dignitaries (the Mojadded-Family) and tribe leaders. The governments that were formed in the aftermath remained accessible only to a small circle in Kabul. Until 1973 five different Prime Ministers replaced one another in office.

At the same time a new elite was growing that was educated in the institutions of Kabul which were supported by foreign countries. This group positioned itself politically against the existing establishment, but it hardly found support in the population. Various leftist groups who differed from one another on social, regional or ethnic grounds arose on one hand and on the other, an Islamic movement developed.

The leading communist party was the Marxist-Leninist People's Democratic Party of Afghanistan (PDPA), which split in 1966 into the two factions "Khalq" (People) and "Parcham" (Flag), each named after the their newspapers.

The Islamists were concentrated in the theological faculty of the University of Kabul. There, several professors and activists of the Muslim Youth were united in a shura. In 1972 Burhanuddin Rabbani became president of the shura and Abdul Rasul Sayyaf became his deputy. Gulbuddin Hekmatyar became leader of the Muslim Youth in 1975. In 1976/77 the Islamists split into the Jamiat-i-Islami under the



leadership of the Tajik Rabbani and the Hezb-i-Islami under the Pashtun Hekmatyar.

### **The End of the Monarchy**

Due to poor management of the drought crisis in 1969-1971 the Afghan royalty fell under criticism. On June 17, 1973 the former Prime Minister Daud took over power with the help of leftist officers in a coup without bloodshed and proclaimed a republic. However, his regime assumed increasingly repressive traits. The constitution of 1977 combined a bizarre mix of socialism and nationalism. Daud was unable to fulfill the economic expectations he himself had envisioned. Soon his initial partnership with the PDPA turned into enmity. After the assassination of a high-ranking PDPA official in April 1978 the situation escalated: There were riots during the funeral. The regime arrested the leaders of the PDPA.

### **The "Saur Revolution"**

On April 27, 1978 the so-called "Saur-Revolution" (named after the Afghan month Saur) broke out. During this bloody coup led by leftist officers Daud was killed. The PDPA now took over power. At first a troika consisting of the president Nur Mohammed Taraki and his two vice-presidents Hafizullah Amin and Babrak Karmal ruled the renamed "Democratic Republic Afghanistan". This alliance of convenience between the radical Khalq faction which had strong backing from the officer's corps and the moderate Parcham faction whose adherents rather sat in the administration did not last long. Khalq proved to be dominant and tried with extreme force to push through a land reform, a new matrimony and family law and a literacy campaign. In July 1978 Amin (Khalq) succeeded in removing Karmal from office. In October 1979 Taraki was overthrown in a palace revolt and murdered soon after. Amin led an unprecedented reign of terror. In exile circles resistance began to grow. The U.S. secretly assured the Mujahedin in Pakistan of its support. After that, the Soviet invasion followed: On December 27, 1979 the Red Army marched into Kabul. Amin was assassinated and Babrak Karmal who was brought back from exile was appointed as new president.

## **The Soviet Occupation**

In February 1980 an uprising broke out in Kabul which spread throughout the country. Although the Soviet troops were able to make some progress in the guerrilla war that ensued, they were unable to take advantage of their success. In October 1982 the Soviets took a strategic break for reflection and started attempts to negotiate cease fires with the resistance. On the local level several ceasefire agreements were reached. As of March 1984 the tactic of "burnt earth" was applied again. This resulted in many major offensives with massive bombardments. The war claimed a total of 1.3 million deaths. In the end the Soviets tried - in vain - to cut the resistance groups off from their bases in the neighbouring countries. The control of the Red Army was confined to key positions such as cities and transport routes.

Approximately 80-90 percent of the territory of Afghanistan remained under the control of the Mujahedin. On the political front Moscow replaced the unfortunate President Karmal in May 1986 with the head of the Secret Service Najibullah. The latter attempted to steer a moderate course of reconciliation by emphasizing national and Islamic values. In January 1988 he called for a ceasefire of six months. In April 1988, after negotiations between the governments of Afghanistan, Pakistan, the U.S. and the USSR, the Geneva Agreement was signed, which endorsed the withdrawal of the Red Army until January 1989. The war had caused the largest flight movement worldwide since the Second World War. In autumn of 1979 already one million Afghans were living in both neighbouring countries of Iran and Pakistan. Until the beginning of the nineties the number of refugees swelled to over five million.

The numerous refugee camps became ideal recruiting centers for various Mujahedin groups. The unhindered supply with weapons and the propagating of the jihad boosted the militant Islamic forces in the entire region.

In Pakistan the army's secret service (ISI) coordinated the internal and foreign aid to the Mujahedin. The ISI formed seven parties out of more than eighty resistance groups, the so-called "Peshawar Seven", as a sign of the Afghan resistance. Six of the parties were led by Pashtuns and one, the Jamiat-i-Islami, by Tajiks. Pakistan did not want an united Afghan front in order to maintain better control. The ISI also preferred

members of the Ghilzai-Pashtun who held a more moderate stand on the question of the disputed Durand Line.

The majority of the Shi'ite resistance groups were under Iranian influence. Accordingly, an eight-party alliance, the "Tehran Eight", was set up in Tehran. In 1989 an unified Shi'ite party, the Hezb-e Wahdat was formed.

### **The Civil War**

Initially Najibullah was able to hold ground against the Mujahedin. He succeeded in drawing several hundred commanders with about 140,000 fighters to his side by giving them money and also by promising them complete autonomy in their areas. In 1991 the U.S. and Russia agreed on discontinuing all aid to the war parties in Afghanistan. Without Russian support Najibullah soon lost the loyalty of his warlords. At the beginning of 1992 the leader of the Uzbek militia Jumbesh Rashid Dostum switched sides. In April 1992 Kabul fell into the hands of the Mujahedin. Sebquattullah Mojaddedi held the office of interim president of the "Islamic Republic Afghanistan" for two months. Then Burhanuddin Rabbani, the political leader of the Tajik dominated Jamiat-i-Islami, claimed this post for himself. After the failed attempt to unify all the war factions in one government civil war broke out. In the battles that followed for the control of Kabul, the national capital was vastly destroyed. The conflicts claimed up to 80,000 civilian victims and set off a new wave of flight: In 1992 there were about two million inhabitants in Kabul, in 1996 there were barely 500,000. Although the loyalty of the various warlords ran along ethnic lines, the national identity was never seriously challenged. An "ethnization" of the masses did not take place.

### **The Rise of the Taliban**

In the northern and western areas various regional rulers succeeded in establishing de facto state-like structures. However, such structures were lacking in the south due to the inner-tribal strife of the Pashtun. As of autumn 1994 the Taliban began to fill up this power vacuum. With Pakistani support they were able to spread quickly. At the end of September 1996 the Taliban marched into Kabul and subsequently proclaimed the "Islamic Emirate of Afghanistan" which was officially recognized by Pakistan, Saudi Arabia and the United Arab Emirates.

Startled by the Taliban, the quarrelling warlords united to form the "United Islamic Front for the Salvation of Afghanistan", the so-called "Northern Alliance". Nevertheless, the conquests of the Taliban continued. In August 1998 they captured the last remaining city in the north, Mazar-e-Sharif. There, the "holy warriors" attacked the Shi'ite Hazaras directly and killed at least 5,000 Hazarian civilians. In mid-September 1998 the Taliban also conquered the heartland of the Hazara in central Afghanistan. The last remaining war opponent of the Taliban was Ahmed Shah Massud. With Badakhshan and the Panchir Valley the military commander of the Jamiat-i-Islami only controlled approximately ten percent of the country.

The Taliban spread their version of Islam that was based on Pashtun values throughout Afghanistan. It was a mix of archaic conceptions of tribal rights and of the Sharia. The Taliban strived for a theocracy based on the model of early Islam. On this spiritual basis the Buddha statues in Bamyán were destroyed in March 2001. Moreover, the international terror organization Al Qaida was accorded hospitality.

### **9/11 and the Aftermath**

The attacks in New York and Washington on September 11, 2001 were a turning point in Afghanistan. The U.S. demanded the surrender of bin Laden and began to form an international alliance. Besides the NATO member countries and Russia, Pakistan and Saudi Arabia - until then Taliban allies - also joined this "Coalition against Terrorism". On October 7, 2001 the U.S. Air Force began to bomb Taliban positions in the military operation called "Operation Enduring Freedom". At the same time, the Northern Alliance advanced on the ground against the Taliban. The resistance of the Taliban soon collapsed: On November 8, 2001 Mazar-i-Sharif was captured. Four days later the Taliban pulled out of Kabul. Kunduz was abandoned on November 25, 2001. While these events were unfolding, the "Northern Alliance" also carried out massive acts of retaliation. Kandahar, the last bastion of the Taliban, was captured on December 2001. Most of the Taliban's senior leaders fled to Pakistan and were able to reorganize themselves there without interruption.

With the Taliban gone, an international conference took place at the beginning of December 2001 at Petersberg near Bonn (Bonn Conference) to negotiate the future of Afghanistan. Hamid Karzai was

designated interim president. For the protection of the new government the International Security Assistance Force (ISAF) was established and given a UN mandate. Subsequently, the Petersburg resolutions were formally implemented: In June 2002 a Loya Jirga confirmed Karzai as interim president. Another Loya Jirga passed the new constitution in January 2004. It defined Afghanistan as an "Islamic Republic" in which all constitutional provisions must comply with Islam. At the same time though, the constitution postulated democratic fundamental rights such as gender equality. In October 2004 Karzai won the presidential elections. These were followed by parliamentary elections in September 2005 as well as the empowerment of the two-chamber parliament in December 2005. However, the newly-created state structures have proven to be weak; under the Karzai government informal power structures have been nurtured through nepotism and favouritism. The main profiteers of this development have been the former war lords who joined the new order in 2001. Thus, the narcotics industry (which accounts for a substantial proportion of Afghanistan's gross national product), corruption and crime have continued to flourish.

In 2005, both the political situation and the security situation began to deteriorate, whereupon the Taliban reappeared. They started their guerrilla war against the Afghan government and foreign troops in spring 2006. The Taliban were joined by other insurgent groups such as the Haqqani network and the Hezb-i Islami fraction of Gulbuddin Hekmatyar. All these groups have safe retreat areas in Pakistan. The insurgents have brought reconstruction efforts in the Pashtun areas of southern and south-eastern Afghanistan practically to a standstill. The ISAF forces have become increasingly involved in an unpopular war; in the years after 2006 the number of civilian casualties has continued to rise, reaching an all-time high of 2,400 deaths in 2010.

### **Final Game?**

In December 2009 the U.S. president, Barak Obama, announced a change of policy which met with approval at the International Conference on Afghanistan in London in January 2010. The aim of the Petersburg Agreement to create a modern Afghanistan with a central state modelled on a Western-style government, was abandoned. Instead, 30,000 additional U.S. soldiers were to be sent to Afghanistan

to help stabilise the security situation. Following that, security responsibilities were to be handed over successively to the Afghan government by 2014. This process would be accompanied by a gradual withdrawal of western troops, starting in July 2011. In addition, Taliban insurgents willing to opt out would be offered incentives to reintegrate into mainstream life.

As a consequence of the change of policy, the coalition forces carried out two large-scale offensives in Helmand and Kandahar in 2010, pushing back the Taliban from both strongholds. The insurgents, for their part, moved to other provinces, having meanwhile also infiltrated regions in the north and west of the country. There they continued to exert their destabilising policies.

Moreover, since 2009 the political situation in Afghanistan had deteriorated even further: the presidential and parliamentary elections in August 2009 took place amidst a climate of violence and intimidation and Karzai secured his re-election by means of deception. Although his legitimacy thus became questionable, he was able to continue using his office as president to strengthen his own power base. He subsequently adopted a course of reconciliation towards the Taliban. In summer 2010 he fired the head of the secret service Amrullah Saleh (a Tadjik associated with Masud) and his interior minister Hanif Atmar, both of whom had been critical of Pakistan and Karzai's possible peace talks with the Taliban. The dismissals enhanced the latent ethnic tensions amongst the political actors, in particular reinforcing the suspicions of various minority leaders towards the Pashtun political elite.

The parliamentary elections of September 2010 took place amongst such an unfavourable political climate. They were characterised by widespread violence and massive fraud, degenerating into a farce. Voter turnout was extremely low because deep disappointment over the prevalent system and developments in the country has spread amongst the population. The government had not succeeded in reforming the economic situation and rectifying the social plight of the population in long term. Following the elections, conflict over questions of authority broke out between the executive (Karzai), parliament and the judiciary. The conflict has led to a constitutional crisis that has yet to be resolved.

As the history of Afghanistan shows, this country has not succeeded in establishing a stable governmental system.

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## **The security situation in Afghanistan**

*by Barbo Helling, Senior Advisor/Regional Advisor at the Country of Origin Information Centre, Norway*

### **Sources on the security situation in Afghanistan**

Until October 2008 UNHCR made explicit assessments on the security situation for civilians in all districts of Afghanistan. UNHCR presented the parameters that were the basis for their assessments, but not how the information was obtained or what sources the assessment was based on.

In July 2009 UNHCR informed that they were not in a position to provide such security assessments anymore, partly because of the volatility of the security situation.

From July 2009 The Norwegian Country of Origin Information Centre (Landinfo) received several requests from the Immigration authorities concerning the security situation.

To be able to respond these requests Landinfo in April 2010 asked UNHCR to share information on sources and data-collection methods concerning the security situation of civilians in Afghanistan. Landinfo received a reply from UNHCR in December 2010, however, UNHCR did not give concrete information about their use of sources referring partly to the security of the personnel involved.

According to Landinfo's knowledge there are no sources inside or outside Afghanistan that systematically collect updated information on the security situation for Afghan civilians on district level. Different sources report on the security situation, but for other groups than the civilian population (international forces, aid workers, etc.).

### **Why is it difficult to get information on the security situation?**

There are several reasons why it is difficult to get reliable information on the security situation in Afghanistan:

- In some areas of the country, there are no reliable sources that collect and update information related to the security situation.

- Due to the shifting dynamics of the conflicts and power struggles at the local level there are uncertainties about the information collected.
- Parties involved in the conflict, often for strategic reasons, give incorrect information on matters relating to the security of civilians.
- The infrastructure in general limits the access to updated information.
- Lack of concepts and definitions for reporting on security incidents - sources can not be compared to each other.
- Different sources can not immediately be compared with each other, possibly only with itself over time. Most sources register what they refer to as security-related events ("security incidents" or "severe incidents").
- The sources don't communicate how they define the concept "security", such as who is involved in the events, severity, etc.
- The number of registered security incidents and loss of life (both civilian and military, aid workers) do not necessarily reflect the actual situation in various areas. The absence of incidents does not necessarily mean that an area is safe for civilians; it might be a consequence of the fact that insurgent groups have control in the area. In areas where the Taliban has control and there is little presence of international and Afghan forces, there may be few attacks and acts of war.
- Number of events is affected by factors such as season, religious holidays, special events (elections, visits by prominent individuals / politicians, international presence).
- Some information collected is classified, i.a. NATO/ISAF intelligence, and hence not available through open sources.

## **What affects the security of Afghans?**

According to UNAMA, 2,777 civilian were killed due to the conflict in 2010, an increase of 15 per cent compared to 2009. The overall rise in civilian deaths in 2010 can be explained by the increased use of IEDs and targeted assassinations by insurgents groups, which is responsible for 75 percent of the civilian killings. In addition, there are intensified military operations affecting the security of civilians, particularly in southern Afghanistan.

Several actors have influence on the security of civilians:

- *Insurgent groups*
- *Regional warlords and militia commanders*
- *Criminal groups, many of them involved in Afghanistan's narcotics and weapon trade*
- *Afghan/international military forces*

Insurgent groups consist of Taliban and forces allied with the Taliban movement, i.a. the Haqqani-network. There are also insurgents groups operating more independently from the Taliban, such as Hezb-e Islami.

The attacks carried out by the insurgent groups intend to hit the international military presence, in addition to the Afghan government and their security forces. Civilians are accidental victims (wrong place at the wrong time)

The counter-insurgency forces consist of Afghan security forces and international forces which are 130 000 soldiers from more than 45 countries.

## **Fact-finding mission to Kabul – November 2010**

In the beginning of November 2010 Landinfo visited Kabul on a FFM. A key topic for the mission was the security situation in the country. Landinfo wanted to collect information on the security situation, but bearing in mind the limitations described above.

### **Key findings:**

- *The security situation deteriorated during 2010 in major parts of Afghanistan*

All sources that Landinfo met in Kabul described a worsening security situation in the past year, and the situation was particularly bad in the southern and south-eastern areas.

- *Insurgent groups are present and operate in areas where they previously had little presence (north and west)*

Some sources claimed that the insurgency in the north, at least to some extent, emerged in the Pashtun areas. Insurgent groups are now present in areas which are populated by other ethnic groups, like Tadjik and Uzbeks. The pattern of the conflict in the north (and to some extent in the west) is complicated and covers many different elements: ethnic rivalry, conflict over access to land and political power.

- *Insurgents have shadow governors in the vast majority of the provinces*

Reliable sources claimed that the Taliban has appointed shadow governors in most of the country's 34 provinces.

- *Variations in how the insurgent groups operate locally*

Some areas which are in control by the Taliban have established courts, people must pay taxes to the Taliban and they have checkpoints on the roads. In some areas the insurgents try to control the population by terror and fear, while in other areas they try to get local support by "winning hearts and minds". There are differences in the attitude they have to girl's schools, the length of men's beard and electronic media.

- *Kabul city and Hazarajat are exceptions to the overall negative development*

In areas populated exclusively by Hazaras, the security situation seems to be relatively stable. There is limited presence of insurgent groups in these areas, and the groups have limited capacity to influence on the situation of civilians. After February 2010 it was a significant decrease in the number of security-related incidents in Kabul city.

- *Road safety across the country is a concern*

Concern on the safety of roads applies to both the main roads and smaller roads. Insurgent groups stop and control road users, particularly in the evening and nights. Roadside bombs (IED) and risk of ending up in crossfire means that traffic along the roads involves a risk.

- *Government control is limited to major cities and provincial capitals*

Several sources claimed that the government's control is limited to major cities and provincial capitals. The further away from the provincial capitals, the more limited is the presence of the government and consequently, the government's control.

- *Afghans are losing faith in the state-building process*

Several sources argued that the contract between the government and the population is broken. Fewer and fewer have the confidence that the state-building project will deliver development in local communities, or that international and Afghan security forces are able to take care of their security.

- *Crime and abuse from local power-holders*

Crime and abuse from local power-holders affect the daily lives of a large proportion of Afghanistan's population. The safety of civilians is affected by local power-holders and conflicts between them.

- *The humanitarian situation is difficult in parts of the country because of the conflict*

The humanitarian situation in parts of the country is very difficult, especially in areas where the security situation is most severe. This is particularly true in rural areas of the south and east.



# **Quantitative overview of asylum seekers from Afghanistan in European countries**

*by Martin Wagner, International Centre for Migration police Development (ICMPD)*

## **Introduction**

Afghanistan has been among the top countries of origin of asylum seekers in European countries since the late 1980s, reflecting decades of conflict and high levels of displacement both within the country and across international borders.

European countries thus have long standing experience with asylum claims from Afghan nationals and have developed an increasingly differentiated decision practice reflecting, amongst others, the increasing efforts put into country of origin research on Afghanistan and increasingly better information regarding the situation in different areas of Afghanistan. Country of origin research has in particular been advanced by increased cooperation between major receiving countries and on the European level. Joint fact finding missions of different EU countries are quite common and may well contribute to a more harmonized approach in decision making. However, despite efforts to harmonize asylum systems and practices within the European Union, decision records show that asylum decision practices still differ widely, evidenced, amongst others, by uneven recognition rates and the use of different types of protection instruments from which Afghan nationals benefit.

Differences in asylum outcomes reflect persistent differences in national practices with regard to asylum applications lodged by Afghan nationals. It is against this background, that the Austrian Ministry of the Interior commissioned ICMPD to organize a conference on Afghan asylum seekers in Vienna on 31.1/1.4.2011. The conference is intended to serve as a platform for COI experts, refugee judges and representatives of International Organisations for exchange of information on national practices regarding asylum applications by Afghan nationals.

Its long history of armed conflict and the consequent insecure political, economical, social and humanitarian situation made Afghanistan the leading country of origin of refugees during the past three decades. In total, up to 6.4 million refugees out of an estimated population of 28 million in 2009 have left Afghanistan to seek international protection.<sup>1</sup> The bulk of Afghanistan's refugee population, however, remained in the region. In addition, large numbers of Afghans remain displaced within Afghanistan itself. Thus, an estimate by UNHCR and the Afghanistan Provincial Department of Refugees and Repatriation puts the total number of internally displaced persons at 330,298 at the end of October 2010.<sup>2</sup> The number of international refugees stood at close to 2.9 million in the end of 2009. Most of them remained in the region: of the 2.9 million refugees in 2009, Pakistan hosted approximately 1.7 million or almost 60%, while Iran was home to approximately one million refugees or more than 34%.<sup>3</sup> In Europe, Afghan asylum seekers present one of the top countries of origin seeking international protection.

This contribution intends to provide an overview of the quantitative asylum influx of Afghan asylum seekers to European countries and a comparison of the recognition rates in European receiving countries. As such it intends to offer background information to the European state's practice in the research on country of origin information and decision making in Afghan asylum cases from a quantitative perspective.

### **Afghan asylum applications in European countries**

Asylum related migration from Afghanistan to European countries has a long tradition. In the last 20 years high numbers of asylum applications from Afghan asylum seekers were registered in European countries (EU 27 plus Switzerland, Norway, Liechtenstein and Iceland) particularly in 1990 and the highest influx in 2001, when 50,964 applications from Afghan asylum seekers were registered. Since 2001 the numbers have considerably decreased to a low 7,482 applications in 2005. Since then, numbers have been on the rise again and have reached similar levels as in the late 1990s in 2008/2009.

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<sup>1</sup> UNHCR, 2009, Global Trends, p 8.

<sup>2</sup> UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, UNHCR, 17 December 2010, p 6 FN 21.

<sup>3</sup> UNHCR, 2009 Global Trends, p 7.



During these 20 years 334,673 Afghanis sought protection in European countries. Germany has been the main receiving country and has

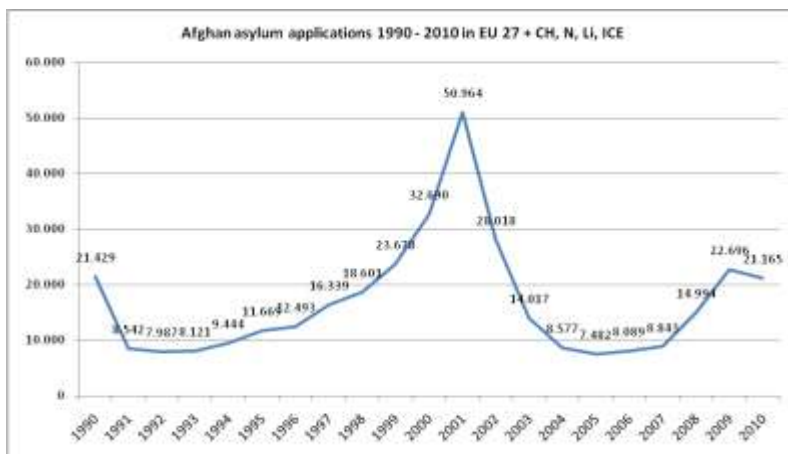


Chart 1: Afghan asylum applications from 1990 to 2010 in EU 27 + CH, N, LI, ICE. For the numbers from 1990 – 2009 the chart is based on UNHCR data base. The numbers for 2010 were taken from the Eurostat database.

received 25% of all applications (or 82,367 applications). The second highest number applied in the United Kingdom (15%), followed by the Netherlands (13%), Austria (11%), Denmark (8%) and Hungary (4%). These countries together received 75% of Afghan asylum applications in the past two decades.<sup>4</sup> In 2010, the highest share of asylum applications from Afghanistan were lodge in Germany, with Sweden, coming on the second place, followed by the United Kingdom, Austria, Belgium, the Netherlands and Denmark. Sweden which was not among the top receiving countries of Afghan asylum seekers in the past has started to receive larger numbers of asylum applications from Afghan nationals only relatively recently and asylum applications exceeded a 1,000 for the first time in 2009. Compared to the previous year 2009, numbers decreased most significantly in Norway from the 3,871 in 2009 to 979 in 2010. Conversely numbers increased most significantly in Germany from 3,302 in 2009 to 5,782 in 2010.

<sup>4</sup> The numbers from 1990 – 2009 are based on the UNHCR data base. The numbers for 2010 were taken from the Eurostat database.

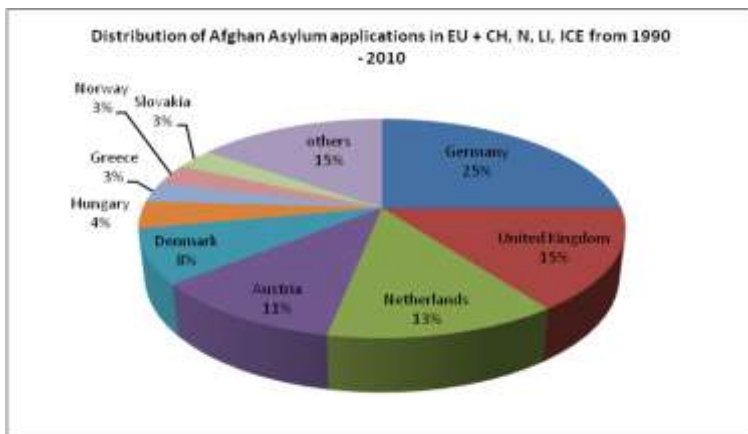


Chart 2: Distribution of Afghan Asylum applications in the EU 27 plus CH, N, LI, ICE from 1990 – 2010;

While seven countries received more than a thousand applications

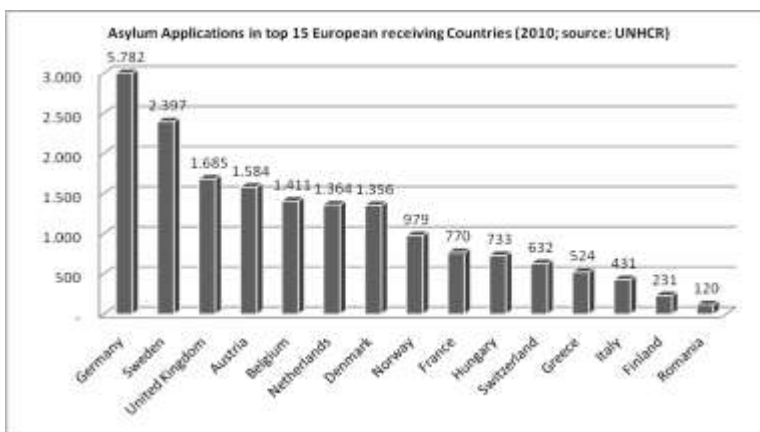


Chart 3: Asylum Applications in top 15 European countries in 2010. Source: UNHCR data base

from Afghan asylum seekers and together accounted for three quarters of asylum application in 2010, asylum applications from Afghanistan are widely spread over European countries. Approximately 80% of

Afghan asylum applicants in 2009 were submitted by male applicants. The biggest group of applicants is between 18 and 34 years while (unaccompanied and accompanied) minors from Afghanistan together made up close to 40% of all Afghan asylum applications in the EU-27.<sup>5</sup>

### Protection status granted to Afghan asylum applicants in European countries in 2009

Similar to other countries of origin, the recognition rate of Afghan asylum seekers differs greatly between different European countries.

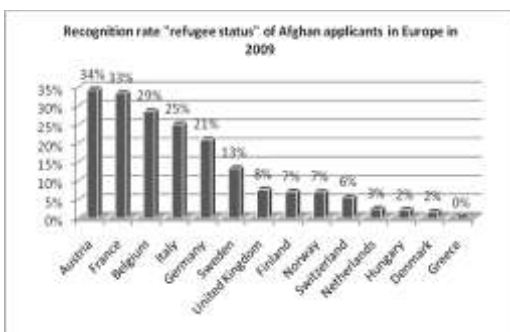


Chart 4: Recognition rate "refugee status" of Afghan asylum applicants in Europe in 2009; Source: Own presentation based on UNHCR, Annex to the 2009 Global Trends (excel table 12) download at <http://www.unhcr.org/pqges/49c3646c4d6.html> (access 01.03.2011)

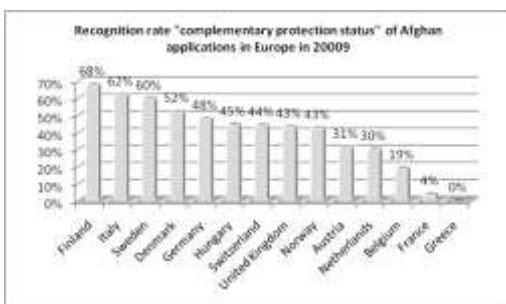


Chart 5: Recognition rate "complementary protection status" of Afghan asylum applicants in Europe in 2009; Source: Own presentation based on UNHCR, Annex to the 2009 Global Trends (excel table 12) download at <http://www.unhcr.org/pqges/49c3646c4d6.html> (access 01.03.2011).

The differences are remarkable both in respect to granting of refugee status as well as in respect to other forms of international protection.<sup>6</sup>

<sup>5</sup> Albertinelli Anthony, Eurostat, Statistics in focus 27/2010, p 5, 6.

<sup>6</sup> In the following referred to as "complementary protection" including subsidiary protection (in the meaning of the Qualification Directive, Council Directive 2004/83/EC) as well as other forms of protection that European countries grant to asylum seekers.

The refugee status recognition rate in Afghan asylum cases is particularly high in Austria and France. Both countries granted in 2009 in more than 30% of the cases refugee status (in first and second instance). Belgium, Italy and Germany had a recognition rate between 20 and 30%. On the other side, countries like the Netherlands, Hungary, and Denmark show low recognition rates with less than 5% and Greece with 0% (see chart 4).

In a majority of cases European countries rather granted other forms of protection to Afghan asylum seekers than the refugee status. Very high rates of granting of some form of complementary protection are granted in Finland (68%), Italy (62%) and Sweden (60%). Another six countries granted complementary protection in 40% – 50% of the cases decided in 2009. While France had high recognition rates regarding refugee protection only 4% of the Afghan applicants were granted another form of protection (see chart 5).

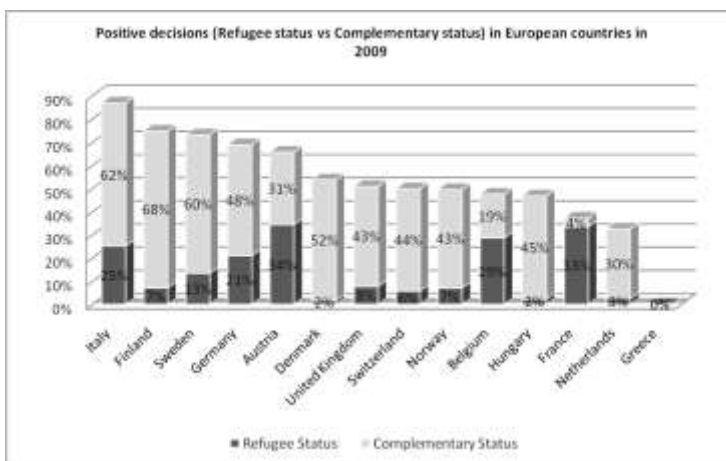


Chart 6: Recognition rate “refugee status” compared to “complementary protection status” of Afghan asylum applicants in Europe in 2009; Source: Own presentation based on UNHCR, Annex to the 2009 Global Trends (excel table 12) download at <http://www.unhcr.org/pages/49c3646c4d6.html> (access 01.03.2011).

If compared the overall positive decisions in Afghan asylum cases (see chart 6) many countries grant some form of protection in more than 50% of the cases. On top are Italy, Finland and Sweden with more than 70% of positive decisions. France and the Netherlands on the other

hand only granted some form of protection in less than 40% of the decisions.

The two countries with the highest percentage of positive decisions, Italy and Finland are not found under the top receiving countries for Afghan asylum seekers in 2010 (see chart 3 above).

### Unaccompanied minor asylum seekers from Afghanistan

According to Eurostat 12,210 applicants in 2009 were unaccompanied minors. Afghanistan was the main country of origin of unaccompanied minors with 4,600 children seeking protection in the EU. Unaccompanied minors from Afghanistan thus represented 38% of all unaccompanied minors in the EU in this year.<sup>7</sup> Within the EU 27, the majority of unaccompanied minors in 2009 sought protection in the United Kingdom and Sweden. These two countries thus received approximately 50% of applications from unaccompanied minors in the EU in 2009. The highest numbers in 2009 nevertheless were registered by Norway.

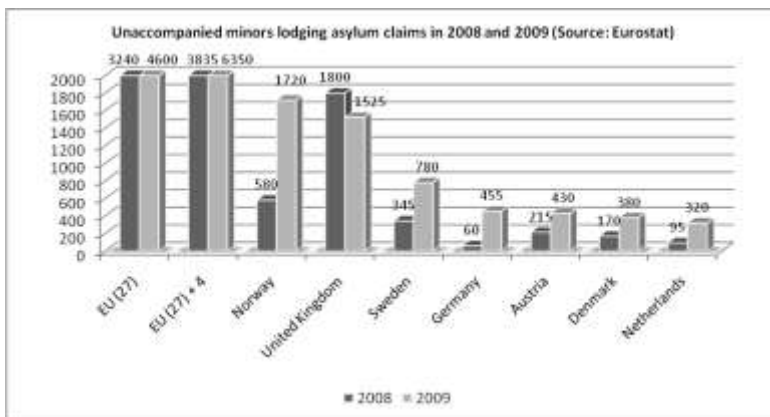


Chart 7: Unaccompanied minors from Afghanistan in 2008 and 2009; Source: Eurostat data base.

Compared to 2008 the applications from unaccompanied minors from Afghanistan increased in 2009. Within the EU-27 plus Norway, Switzerland, Iceland and Liechtenstein, the numbers increased from

<sup>7</sup> Albertinelli Anthony, Eurostat, Statistics in focus 27/2010, p 1.

3,835 in 2008 to 6,350 in 2009. With 1,720 applications in 2009 the numbers of unaccompanied minors tripled in Norway and doubled in Sweden compared to 2008. The biggest (relative) increase of applications was registered in Germany where the numbers increased by 7 times. Compared to Norway or the UK the overall number of unaccompanied minors from Afghanistan (455 applications were recorded in 2009) is nevertheless relatively low in Germany .

Out of the 4,600 unaccompanied minors from Afghanistan registered in the EU-27 in 2009, 365 children aged between 0 – 13 years, 1,690 applicants aged 14-15 years and 2,010 aged 16 – 17 years.<sup>8</sup> Unaccompanied minors represented 23% of the overall applications from Afghanistan within the EU-27. Significant higher percentages were registered in Sweden (46% of applicants from Afghanistan were unaccompanied minors), the United Kingdom (44%), Denmark (36%) and the Netherlands (25%).

Total recognition rates of applications from Afghan unaccompanied minors are considerably higher than recognition rates of applications from adult Afghan asylum seekers. According to UNHCR data the recognition rate is particularly high in Finland (100%), Norway (99%) and Sweden (90%). Lower rates were reported from Germany (77%), the UK (73%) and Switzerland (53%).<sup>9</sup>

## Summary

- Afghanistan remains one of the top countries of origin applying for international protection in European countries;
- A well defined vector of applicants to Germany, Sweden (recently), UK, Austria, Belgium, the Netherlands and Denmark may be noted;
- The majority of Afghan applicants is male in the age of 18 – 34;
- A high percentage of Afghan asylum seekers are unaccompanied minors;
- High differences in the recognition rate can be noted, which not always correspond to the number of applications from Afghan asylum seekers: e.g. 87% in Italy compared to 0% in Greece,

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<sup>8</sup> Albertinelli Anthony, Eurostat, Statistics in focus 27/2010, p 6.

<sup>9</sup> UNHCR Statistical Yearbook 2009, p 42.

although the number of asylum application is almost the same. Similarly Germany and Finland reported almost the same recognition rate, although the number of applications is not comparable (in Germany 25 times higher than in Finland);

- Out of 14 receiving countries, only France, Belgium and Austria grant more refugee status than subsidiary protection.





## **Part 2. Afghanistan: Refugee Protection**



## **Groups at risk - Employees of the government**

*by Martin Schmidt, Country of Origin Information Unit, Austria*

### **Targeted Killings**

*“Local and central Government officials of all levels, and their family members, are at increased risk of being targeted in areas where armed anti-Government groups operate or control.”<sup>10</sup>*

#### **UNHCR Eligibility Guidelines For Assessing The International Protection Needs Of Asylum-Seekers From Afghanistan**

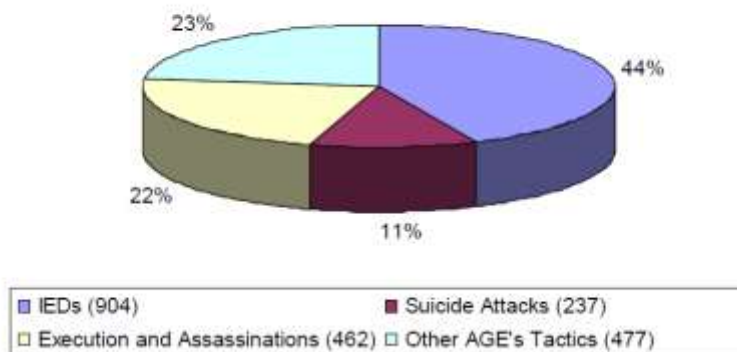
*“Due to lack of accurate information, it is difficult to determine if a killing is an assassination, an act of revenge or criminal activity.”*

#### **Maj. Steven Cole (NATO)**

In the year 2010 the numbers of executions and assassinations had increased dramatically. In 2009 “only” 225 cases of targeted killings were counted by the United Nations Assistance Mission in Afghanistan (UNAMA) and the Afghanistan Independent Human Rights Commission (AIHRC). In 2010 Afghanistan faces an increase of executions and assassinations by 105 percent compared to 2009.

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<sup>10</sup> United Nations High Commissioner for Refugees (UNHCR): UNHCR Eligibility Guidelines For Assessing The International Protection Needs Of Asylum-Seekers From Afghanistan, 17.12.2010.



*Chart 1: Recorded Anti-Government Elements – attributed civilian deaths in 2010 by incident type<sup>11</sup>*

In summer 2010 the numbers of assassinated civilians were extremely high. In July and August 2010 180 persons were killed. One reason for these high numbers were the parliamentary elections in September 2010.<sup>12</sup>

The insurgency tries to destabilize areas, to weaken governmental control and to threaten people willing to work with the government. In Afghanistan at least 140 government officials were killed in 2010.<sup>13</sup> In addition to targeted killings abductions of also threatened state officials. At least 28 officials of provincial governments were kidnapped in 2010.<sup>14</sup>

In most cases of targeted killings the murderers have been using guns. But there have also been assassinations using Improvised Explosive Devices (IEDs). In the year 2010 for example the Governor of Kunduz and the Deputy Governor of Ghazni were killed by IEDs.<sup>15</sup>

<sup>11</sup> UNAMA: Afghanistan: Protection of civilians in armed conflict, Annual report 2010, March 2010, p. 2.

<sup>12</sup> UNAMA: Afghanistan: Protection of civilians in armed conflict, Annual report 2010, March 2010, p. 12.

<sup>13</sup> UNAMA: Afghanistan: Protection of civilians in armed conflict, Annual report 2010, March 2010, p. 12.

<sup>14</sup> UNAMA: Afghanistan: Protection of civilians in armed conflict, Annual report 2010, March 2010, p. 17.

<sup>15</sup> UNAMA: Afghanistan: Protection of civilians in armed conflict, Annual report 2010,

## Targets

One group at risk are representatives of the government. Especially district officials such as district governors and their deputies are often targets of assassinations and abductions. The reason is that the security measures for them are not as tight as for example for provincial governors. In addition, the district officials act in more violent areas. In Afghanistan five district governors were killed in the year 2010. Only in four cases the vacancies could be filled with new governors.<sup>16</sup>

Another group of targeted persons are senior police officers. The latest case was the assassination of the police chief of the province Kunduz in March 2011.

Government officials are not the only group targeted by the insurgency. In 2010 tribal elders with ties to the government or the international military forces were targeted by the Taliban.<sup>17</sup> During the last years religious leader who were willing to work with the government or preaching for example against suicide attacks were also attacked, killed or abducted.<sup>18</sup>

In many cases civilians in addition to the targeted officials are killed or injured by assassinations, especially if IEDs are used. For example in case of the Governor of Kunduz a suicide bomber detonated the bomb

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March 2010, p. 13.

<sup>16</sup> UNAMA: Afghanistan: Protection of civilians in armed conflict, Annual report 2010, March 2010, p. 12/13.

<sup>17</sup> BBC: Afghan elder who spoke out shot dead near Kandahar, 28.4.2010, <http://news.bbc.co.uk/2/hi/8649258.stm>, access 16.3.2011, Associated Press (AP): Tribal elder killed in Afghanistan, 5.5.2010, [http://www.boston.com/news/world/middleeast/articles/2010/05/05/tribal\\_elder\\_killed\\_in\\_afghanistan/](http://www.boston.com/news/world/middleeast/articles/2010/05/05/tribal_elder_killed_in_afghanistan/), access 16.3.2011, Trend: Taliban militants kill tribal elder in south Afghanistan, 31.7.2010, <http://en.trend.az/regions/world/afghanistan/1729033.html>, access 16.3.2011.

<sup>18</sup> Associated Press (AP): Taliban kill mullah critical of suicide attacks, 14.11.2008, [http://www.msnbc.msn.com/id/27716718/ns/world\\_news-south\\_and\\_central\\_asia/](http://www.msnbc.msn.com/id/27716718/ns/world_news-south_and_central_asia/), access 16.3.2011, Air Force Times: Bomb attack kills Afghan religious leader, 1.9.2010, <http://www.airforcetimes.com/news/2010/09/ap-afghanistan-bomb-attack-090110/>, access 16.3.2011, Thaindina News: Suicide bombers, religious leader killed in Afghanistan, 17.5.2010, [http://www.thaindian.com/newsportal/world-news/suicide-bombers-religious-leader-killed-in-afghanistan\\_100365045.html](http://www.thaindian.com/newsportal/world-news/suicide-bombers-religious-leader-killed-in-afghanistan_100365045.html), access 16.3.2011.

inside a mosque and twelve civilians were killed together with the governor.<sup>19</sup>

## Kandahar

Assassinations and executions happen in the whole country but half of the 462 executions and assassinations took place in the south of Afghanistan, especially in Helmand and Kandahar.<sup>20</sup> Kabul faced more spectacular attacks than Kandahar. But according to the Afghanistan NGO Safety Organization (ANSO) one reason could be the stronger presence of the Taliban in Kandahar. Because of this it is possible to conduct more targeted operations.<sup>21</sup>

State officials in Helmand and Kandahar were at high risk because the Taliban tried to undermine the efforts by the government to establish governmental control in this area. In February 2010 the military operation “Moshtarak” started in Helmand. The aim was to “clean” the area of insurgents and to install a new administration (“government in a box”).<sup>22</sup> The next military operation started in Kandahar in July 2010. In the weeks before the beginning of offensive the security related incidents in Kandahar were increasing.<sup>23</sup> The insurgency tried to intimidate Afghan civilians and discourage them from working with the government or international agencies. The most effective measure to reach this aim were targeted killings.<sup>24</sup>

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<sup>19</sup> UNAMA: Afghanistan: Protection of civilians in armed conflict, Annual report 2010, March 2010, p. 13.

<sup>20</sup> UNAMA: Afghanistan: Protection of civilians in armed conflict, Annual report 2010, March 2010, p. i.

<sup>21</sup> ANSO: The ANSO Report 1-15.1.2010, [http://www.afgnsso.org/2010/THE%20ANSO%20REPORT%20\(1-15%20January%202010\).pdf](http://www.afgnsso.org/2010/THE%20ANSO%20REPORT%20(1-15%20January%202010).pdf), Zugriff 16.3.2011.

<sup>22</sup> The Times: Battle for town is a small step on the path to victory, 14.2.2010, <http://www.timesonline.co.uk/tol/news/world/afghanistan/article7026347.ece>, 14.3.2011; Report of the Secretary-General on children and armed conflict in Afghanistan, 3.2.2011, [http://www.ecoi.net/file\\_upload/2016\\_1297848548\\_n1121744.pdf](http://www.ecoi.net/file_upload/2016_1297848548_n1121744.pdf), access 14.3.2011, p. 3.

<sup>23</sup> The New York Times: Kandahar, a Battlefield Even Before U.S. Offensive, 26.3.2010, <http://www.nytimes.com/2010/03/27/world/asia/27kandahar.html>, 14.3.2011.

<sup>24</sup> ICOS: Afghanistan Transition. Dangers of a Summer Drawdown, February 2011, [http://www.ecoi.net/file\\_upload/1788\\_1299508803\\_afghanistan-dangers-drawdown.pdf](http://www.ecoi.net/file_upload/1788_1299508803_afghanistan-dangers-drawdown.pdf), access 14.3.2011, p. 14.

In April 2010 all groups at risk were targeted in Kandahar city. The first assassination happened on April, 2<sup>nd</sup> 2010. The head of the agriculture and livestock cooperative in Kandahar was shot.<sup>25</sup> A few days later, on April, 13<sup>th</sup> 2010 a young woman working for a development agency, a partner of USAID, was killed on her way home.<sup>26</sup> On April, 19<sup>th</sup> 2010 the deputy mayor of Kandahar was shot.<sup>27</sup> His successor was also killed a few months later in October 2010.<sup>28</sup> The last assassination in April 2010 was the murder of a tribal elder. He was the brother of a member of parliament and had strong ties to the government in Kabul. He was shot in the bazaar of Kandahar.<sup>29</sup>

In April 2010 state officials, an employee of a NGO connected with USAID and a tribal elder with ties to the Karzai government were assassinated in Kandahar. The insurgency reached two goals: the presence of the government was weakened and the support for the government declined.<sup>30</sup> In Helmand the civilians killed by targeted killings increased in 2010 by 588 percent compared to 2009. Kandahar experienced an increase by 248%.<sup>31</sup>

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<sup>25</sup> The New York Times: Taliban Aim at Officials in a Wave of Killings, 9.6.2010, [http://www.nytimes.com/2010/06/10/world/asia/10taliban.html?\\_r=1](http://www.nytimes.com/2010/06/10/world/asia/10taliban.html?_r=1) access 16.3.2011.

<sup>26</sup> The New York Times: Taliban Aim at Officials in a Wave of Killings, 9.6.2010, [http://www.nytimes.com/2010/06/10/world/asia/10taliban.html?\\_r=1](http://www.nytimes.com/2010/06/10/world/asia/10taliban.html?_r=1) access 16.3.2011.

<sup>27</sup> The New York Times: A Killing Further Erodes Afghan Faith in Leaders, 20.4.2010, <http://www.nytimes.com/2010/04/21/world/asia/21afghan.html>, access 16.3.2011; BBC: Afghan deputy mayor shot dead at prayer in Kandahar, 20.4.2010, [http://news.bbc.co.uk/2/hi/south\\_asia/8631683.stm](http://news.bbc.co.uk/2/hi/south_asia/8631683.stm), access 16.3.2011.

<sup>28</sup> BBC: Kandahar deputy mayor laid to rest, 5.10.2010, [http://articles.cnn.com/2010-10-05/world/afghanistan.deputy.mayor.killed\\_1\\_azizullah-yarmal-candace-rondeaux-kandahar-air-field?\\_s=PM:WORLD](http://articles.cnn.com/2010-10-05/world/afghanistan.deputy.mayor.killed_1_azizullah-yarmal-candace-rondeaux-kandahar-air-field?_s=PM:WORLD), access 16.3.2011.

<sup>29</sup> The New York Times: A Killing Further Erodes Afghan Faith in Leaders, 20.4.2010, [http://www.nytimes.com/2010/06/10/world/asia/10taliban.html?\\_r=1](http://www.nytimes.com/2010/06/10/world/asia/10taliban.html?_r=1), 16.3.2011; Christian Science Monitor: Afghanistan war: Taliban escalates violence with Kandahar blasts, 26.4.2010, <http://www.csmonitor.com/World/Asia-South-Central/2010/0426/Afghanistan-war-Taliban-escalates-violence-with-Kandahar-blasts>, access 16.3.2011; Gulf Times: Militant assassinations sow fear in Afghan city, 24.4.2010, [http://www.gulf-times.com/site/topics/printArticle.asp?cu\\_no=2&item\\_no=357884&version=1&template\\_id=41&parent\\_id=23](http://www.gulf-times.com/site/topics/printArticle.asp?cu_no=2&item_no=357884&version=1&template_id=41&parent_id=23), access 16.3.2011.

<sup>30</sup> UNAMA: Afghanistan: Protection of civilians in armed conflict, Annual report 2010, March 2010, p. 12.

<sup>31</sup> UNAMA: Afghanistan: Protection of civilians in armed conflict, Annual report 2010, March 2010, p. i.

Besides the insurgency there are criminal syndicates conducting their own terror campaigns. Criminal groups allegedly killed persons who speak out against them and business men. Sometimes it is not easy to ascertain who the murderer is, for example in case of Sitara Ackakzai, a women's right activist and member of the Kandahari parliament. On 11 April 2009 she was shot by four gunmen.<sup>32</sup> The Taliban claimed responsibility for this attack but there were other sources doubting this story. Criminal syndicates could also be responsible for this assassination.<sup>33</sup>

## Conclusion

The security situation in Afghanistan has been deteriorating during the last years. The numbers of incidents and of civilian casualties in Afghanistan have been increasing. But the increase of assassinations and executions is remarkable. Especially in the south of the country representatives of the government are at high risk. Prior to the military operations of the international and the Afghan military forces in Helmand and Kandahar there was a massive increase of assassinations. The killed individuals have been government officials (e. g. district governors, mayors and their deputies). Persons allegedly cooperating with the Afghan or international military forces or the government such as employees of NGOs or tribal elders have been targeted, too. The aim of this tactic is to weaken the influence of the government and to threaten the population.

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<sup>32</sup> Spiegel Online: Bewaffnete erschießen deutsch-afghanische Politikerin, 12.4.2009, <http://www.spiegel.de/politik/ausland/0,1518,618716,00.html>, Zugriff 16.3.2011.

<sup>33</sup> The Independent (Julius Cavendish): Taliban and the mafia: a terrifying combination, 21.4.2010, <http://www.independent.co.uk/opinion/commentators/julius-cavendish-taliban-and-the-mafia-a-terrifying-combination-1949624.html>, access 16.3.2011; Christian Science Monitor: Afghanistan war: Taliban escalates violence with Kandahar blasts, 26.4.2010, <http://www.csmonitor.com/World/Asia-South-Central/2010/0426/Afghanistan-war-Taliban-escalates-violence-with-Kandahar-blasts>, access 16.3.2011.



## Groups at risk - Afghan women

by Antero Leitzinger, Country of Origin Information Unit, Finland

### Women's rights

Before discussing phenomena in other cultures, we should always exercise healthy self-criticism, and study possible similarities in our own heritage. Europeans should know their history and be aware of how our ancestors thought and acted – maybe not that far back in time and space, after all. Modern western civilization is proud of the ancient Romans, whose famous lawyer and orator Cato the Elder considered it honourable for a man to kill his adulterous wife with impunity.<sup>34</sup> The statesman Gaius Julius Caesar was considered both virtuous and forgiving for his divorce based on nothing but rumours of adultery.<sup>35</sup> Christianity too was based on clear gender hierarchy, as stated by Saint Paul's epistles.<sup>36</sup>

Thus we should not be too surprised to find out, that Afghan culture is dominated by strict gender separation and roles, where men are expected to provide for material security and women to make homes sweet. This is neither exclusively Islamic, nor an alien tradition. Our grandparents would not have been nearly as shocked as we are. In fact, Afghanistan in 21<sup>st</sup> century is in some respects more progressive than 19<sup>th</sup> century Europe in regard of women's rights. That means, that there can be further progress, although it will take time and face doubts just like changes in western countries did not happen overnight.

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<sup>34</sup> Aulus Gellius (2<sup>nd</sup> century): "*Noctes Atticae*" (Attic Nights) 10.23 (<http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Gellius/home.html>).

<sup>35</sup> Among many of Caesar's famous proverbs is "*Quia suam uxorem etiam suspiciore vacare vellet.*" (Because he should wish even his wife to be free from suspicion.), recorded by Plutarch in his biography, chapter 10.

<sup>36</sup> "I do not permit a woman to teach or to assume authority over a man; she must be quiet." (1 Timothy 2.12); "Wives, submit yourselves to your own husbands as you do to the Lord. For the husband is the head of the wife..." (Ephesians 5.22-23), among others.

Statistics reveal, that life is hard in Afghanistan, especially for women. Life expectancy is equally low for both sexes, and Afghan women die 22 years earlier than Pakistani women. However, statistical average fails to predict the outlook for people in conditions where ethnicity (whether Pashtuns or other), urbanization, education, social status, and other factors make a big difference. Afghanistan suffers from many generalizations that may be valid in some cases, but not in others.

World media is focusing on armed attacks, road-side bombs, and suicide terrorism, as if such forms of political violence only would determine the lack of “security” in a country. Common crime, traffic accidents, and health risks (unless caused by nuclear radiation or fashionable flu pandemics), are largely forgotten in security evaluations. Nevertheless, 40 times more women die at childbirth in Afghanistan than in any political violence!

## **Wives**

Afghan girls are expected to marry and give birth, to become wives and mothers. The ideal is, as everywhere in the world, a harmonious home with a loving couple and happy children. Parents concern it their duty to select suitable spouses and most marriages are more or less organized by wider families. Marriage is thus no private affair, although responsible parents wish to make good matches that also bring about respect and love between their children. Islam requires the consent of both the bride and groom, but especially brides may feel reluctant to refuse the choice made by their parents (mostly mothers), either because it would feel insulting to doubt their best judgement, or because engagements are concluded at a young age without much of possibilities to wait or search for other options. Legally, the bride must be 16 years old, but the average marriage age is hardly significantly higher (by 19 years anyway), and violations of the age limit are not prosecuted.

Special forms of predominantly forced marriage include “baad” (marriage concluded in exchange of debts or as a penalty), and “badal” (swapping brides between two families to save dowry costs). According to some study, the former count for 10 %, and the latter for 18 % of all Afghan marriages.<sup>37</sup> Such habits were partially outlawed already in

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<sup>37</sup> CNN 3.1.2011 (<http://preferredbypete.com/world-news/29166-afghan-women-speak->

1976, by 517 § of the Penal Code, and again in July 2009, but implementing law has never been very efficient in Afghanistan.<sup>38</sup> Polygamy occurs among rich but non-educated people, because the poor cannot afford high dowry (thousands of US\$ for each bride) and living costs, and the educated prefer monogamous marriages. Exceptions are made if the first wife is seriously sick or childless, but the husband is not cruel enough to divorce her.

Women are not always aware of their rights, because the majority is still illiterate. Men's literacy rate is not much higher, but in this respect, life has changed for the youngest Afghans in the past nine years, and the increasing general literacy is expected to improve women's awareness of the law. In many cases, improving knowledge of religion may also provide strong arguments against abuses or tribal peculiarities not really based on Islamic teachings. While Islam recognizes the husband's position as head of family, including some disciplinary rights over his wife and children, domestic violence is considered sad, but a private matter. Modern western concepts like single parenthood, women's rights to work outside their homes, privacy within family life, women's rights to socialize with unrelated men, or rape within marriage, are largely unknown or frowned upon as imported decadence. Women, who advocate such innovations in Afghan life, are often threatened, and even killed.

A wife is strongest as a mother, because mothers are revered by their sons, and have often developed good skills in manipulating their family members.

### **No way out?**

Divorce is mostly a male privilege. Women can apply for divorce in case of husband's failure to provide for her, severe abuse or illness, and if the husband is absent for more than four years or imprisoned for more than ten years. A female divorcee carries social stigma.

Having extra-marital affairs is especially dangerous for the wife, although evidence rarely fills the prescriptions for proper Islamic trial. Any kind of adulterous behaviour is, however, considered shameful for

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[out-abuse-behind-mask.html](http://www.ecoi.net/local_link/156089/272839_de.html)).

<sup>38</sup> HRW 8.3.2011 ([http://www.ecoi.net/local link/156089/272839 de.html](http://www.ecoi.net/local_link/156089/272839_de.html)).

the wife, while punishing it is considered rather honourable for a man. In some cases, publicity may improve the chances of women for public intervention. International embarrassment forced politicians to amend the Shiia Personal Status Law amended in July 2009, and gained sympathy for some mistreated runaway women, but mostly the chances of attracting support from outside the family are small. The 2300 (reported) annual suicide attempts by women, mostly by self-immolation, are a symptom of the hardships of Afghan women.<sup>39</sup>

Widows are often remarried to the deceased husband's brother or cousin – possibly against his will, but for the sake of providing for her and the children the easiest way.

### **Anonymity, mobility, and exceptions**

Women in Afghanistan lead a very private, often anonymous life. Men consider it a cultural taboo to discuss their marital problems or to present their womenfolk in public. Even the (maiden) names of Pashtun women are often erased of memories, as they are referred to only as wives or mothers. The burqa makes Pashtun country and urban poor women appear as non-identifiable light-blue creatures, but many prefer wearing it for the sake of privacy. Hazara women wear Iranian-styled chadors, and other ethnicities have their own traditional clothing. Women without headscarves are very rare in Afghanistan. Lonely female travellers appear abandoned or lost, and are often inexperienced in getting around, even if they have money to pay for transportation. Bystanders may feel pity for them, but also suspicious or eager to abuse their plight.

The Ministry of Women's Affairs runs 11, and non-governmental organizations run 14 shelters for runaway women, but often they end up in prisons, either being sentenced for 2-3 months of vagrancy, or in protective custody.<sup>40</sup> The difficulties in travelling around explain, why four times more men than women emigrate and apply for asylum.

There are always exceptions in Afghanistan. More than 20 % of the members of Afghan parliament are women – some by quota, but others elected by their popularity. Among the presidential candidates

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<sup>39</sup> IRIN 6.8.2010.

<sup>40</sup> ARR 26.11.2010, IRIN 2.12.2010, The New York Times 10.2.2011.

in 2009 were two women. There are women ministers, judges, attorneys, officers in the military and police, and many other outstanding independent women celebrities. They are no less exceptions than the widely published horror-stories. After all, most Afghan women do not make headlines in either ways, but manage to live happily as beloved daughters, sisters, wives, mothers, or even more distant relatives. They were not born orphans, and they still enjoy the loving support of their families. Those traditional private and social safety nets have always been more reliable than those by public law and institutions. However, atrocities against women – child marriages, rapes, robberies, assaults, and murders – have often succeeded in attracting public attention and causing public outrage not only abroad, but also within the Afghan society. Much has changed since ten years ago, although much remains to be done, and should not be expected to change overnight.

### **Further readings**

“We Have the Promises of the World” – Women’s Rights in Afghanistan (HRW 2009)

The “Ten-Dollar Talib” and Women’s Rights – Afghan Women and the Risks of Reintegration and Reconciliation (HRW 2010)

Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan” (UNAMA 9.12.2010)



## Groups at Risk of Persecution – Case Study Austria

*Handout by Judith Putzer; Asylum Court Vienna*

### I. Introductory remarks

- Situation in Austria characterised by the fact that Afghanistan has been one of the leading countries in terms of numbers of asylum applications over the last decade
- Change in „Migration-profiles“ of Afghan asylum seekers within the last decade?
- Legal framework Austria: Direct reference to Refugee definition under the Geneva Convention

### II. Relevant Persecution-profiles

- **Converts** („Sur-place refugees“):  
Well-established practice in Austrian jurisprudence that forum externum (freedom to exercise religious belief) is protected by asylum law
- **Homosexuals:**  
Well-established practice that individuals concerned are not required to take avoiding action in their home country thus eliminating persecution;
- **Persons** under the risk of becoming **victims** of acts of **revenge**:  
Well-established practice that nexus to Convention ground is to be found in membership of a particular social group (family/clan);  
Risk may go beyond traditional rules of blood feud<sup>41</sup>;  
Lack of adequate State protection

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<sup>41</sup> Cf UNHCR position on claims for refugee status under the 1951 Convention relating to the Status of Refugees based on fear of persecution due to an individuals membership or a family engaged in a blood feud.

- **Persons** who themselves (mostly in the course of civil war) **inflicted damage** to others:

Specific problem of coerced collaboration with (either) regime:

Nexus to Convention ground?

Exclusion from refugee status? (relevance of ICJ Judgement on Art 12 QD)

- **Women:**

Discrimination amounting to persecution?

Ceased circumstances after the fall of the Taliban regime?

Lack of adequate State protection („unable and/or unwilling“)

### III. Trends in recent claims

- **Privatisation**/Fragmentation of **violence**:  
Intra-family disputes;  
Neighbourhood disputes (often correlated to land or access to fresh water resources);  
Nexus to Convention ground possibly membership to a particular social group (family/clan);  
Adequate State protection?
- „New“ **Taliban**-related claims?  
Eg: Forced recruitment esp of minors  
Adequate State protection?
- Transgression of **social norms**:  
Ranging from selling of alcohol to extra-marital relations;  
Nexus to Convention ground possibly (imputed) political opinion
- Affiliation to central **government** and/or **international** community

### IV. Conclusions

- Complex pattern of persecution („crossover“-persecution, a variety of agents of persecution)
- Situation of generalized violence in large parts of the country, Taliban gaining territory; security situation continuously deteriorating
- Lack of governance resulting in general inability of the State to respond to duty to protect its own citizens



## **Afghanistan - Groups at Risk and the application of Art 1F – the Dutch Experience**

*by Carolien Giesen, Judge at the Court of Amsterdam, the Netherlands*

### **Groups at risk**

Of the countries from which relatively many asylum seekers come to the Netherlands, the Ministry for Immigration and Asylum, publishes its policy on a regular basis. This policy also serves as a guidebook for the decision makers. In this policy is indicates whether there are groups, within each nationality, that require special attention.

For Afghanistan it concerns the following groups.

#### *Ethnic minorities*

Persons coming from an area where they belong to an ethnic minority, are considered a group at risk. When they claim to have had problems because of belonging to this ethnic minority -be it from the authorities or from local war lords, be it from fellow Afghans- and when their story is credible and can be sufficiently individualised, it can lead to the conclusion that they are eligible for a refugee status.

#### *Women*

The position of women is considered to be very bad. There is violence against, abuse of women in the whole of Afghanistan, including the big cities, on a large scale. It is impossible for them to get legal protection. They do not have the same status as men do. Access to education or health care is limited for them. Women, who have a plausible fear for violence against them, can get a asylum-status. It is not required of them that they have beforehand asked for protection from the authorities.

Among women, special attention is given to women who are accused of not behaving within the accepted social morals. A woman with a so called ‘ westernized’ way of life, needs the protection of powerful people, such as tribal leaders of war lords, to uphold that way of life.

Without that protection, there is no other option for her than to adapt to the traditional ways of life for Afghan women.

If a woman has divorced her husband or has never been married and has no ties to the family she belonged to, especially her father, run the risk of being stigmatised as a prostitute. They then can be an easy victim of numerous crimes, such as women trafficking. Without any social network, they run a high risk of being victim of human right violations.

This means that single women are considered a vulnerable minority group. They are easily to be at risk of violation of article 3 ECHR.

### **The application of Art 1F – the Dutch Case Law**

In late 1997, the Minister of Justice laid down a number of principles for how to apply Article 1F of the United Nations Convention relating to the Status of Refugees (the “Refugee Convention”). These principles were:

The possibilities afforded by Article 1F should be used to the fullest extent possible;

If possible, the subject should be declared an undesirable alien; and

The Public Prosecution Service must be notified, *but he also advised that:*

Article 1F should be interpreted in a restrictive manner.

More than two years later (on 29 February 2000) the Dutch Ministry for Foreign Affairs issued a Country Report (‘ official message’) about Afghanistan, part of which dealt with the Afghani security services. It included the following passage:

*“Both the KhAD and the WAD had very strict selection procedures for recruiting staff (...). This applied even more strongly to the recruitment of officers. Newly recruited officers of the KhAD and the WAD undertook very intensive training (...) during which they were severely tested for their toughness and loyalty. For example, they were required (...) to arrest and torture friends and acquaintances (...). No promotion*

*was possible if they had not proved that they were unconditionally loyal to the communist regime. (...) All the commissioned and non-commissioned officers had worked in the more macabre sections of the KhAD and WAD at one time or another, and had been personally involved in arresting, interrogating and torturing suspect persons and, sometimes, executing them."*

Soon after this Country Report was issued, the Minister of Justice wrote a letter to Parliament (3 April 2000) stating that Article 1F of the Refugee Convention would in future be applied to commissioned and non-commissioned officers (NCOs) of the KhAD/WAD. Not only would new applications for asylum be rejected, but it was also the minister's intention to revoke any asylum permits that had been granted previously, if Article 1F was applicable to the permit holder.

Since 1997, Article 1F has been applied to roughly one thousand asylum seekers, a substantial number of whom were Afghans who had worked for the KhAD/WAD.

Several asylum seekers commenced legal proceedings about the application of Article 1F, and that is how these cases came before the courts.

*How do the courts test the application of Article 1F in the minister's decisions?*

It is important to realise, first, that the Minister of Justice has to demonstrate that there are serious reasons for supposing that an individual falls under the criteria of Article 1F. The minister decided that this had been proven in the case of any former officers and NCOs of the KhAD/WAD, based on the findings of the Country Report. The minister concluded that "personal and knowing participation" in the crimes that the KhAD/WAD were accused of, could be presumed with regard to any individual who had been a KhAD/WAD officer or NCO.

Secondly, it is important to know that the findings in the Country Reports, which are published by the Minister of Foreign Affairs, are considered to be expert opinions. In accordance with settled case law from the highest court in asylum cases in the Netherlands, the Minister of Justice is permitted to rely on such expert opinions, as long as the report provides this information in an impartial, objective and transparent manner, and states the sources from which the

information was taken (insofar as it is possible and safe to disclose them). If these requirements are met, the Minister of Justice may rely on the accuracy of the Country Reports and may, therefore, base decisions on them. It is then up to the individual to whom Article 1F (and so the Country Report) is applied, to provide “concrete reasons for doubting” the accuracy of the expert opinion.

Thus, the validity of Country Reports has been dealt with extensively in case law. In making their assessments, the courts could not only use the public information supporting the Country Reports but also had access to underlying documents which were not available to any of the parties.

*A word about this procedure. The court can ask a party to provide information. This party may claim that the documents are confidential and request that only the court takes note of them. In that case, a different court assesses whether the request for confidentiality is justified. If this court grants the request, then the other party is asked if the confidential documents in question may be taken into consideration. If that party agrees to this, then the court dealing with the asylum case will take the confidential documents into account. Thus, the requirement of adversarial proceedings has been complied with in accordance with Dutch case law.*

The conclusion drawn in case law is that the Country Reports prepared by the Ministry of Foreign Affairs provide information in an impartial, objective and transparent manner, and that the information, partially confidential, on which the Country Report on Afghanistan is based, supports this conclusion.

The next question was, whether any asylum seekers had put forward any concrete reasons that cast doubt on the accuracy of the Country Report on Afghanistan. I am not aware of a single case in which an asylum seeker, who was known to have been a KhAD/WAD officer or NCO, has succeeded in doing this. Merely denying the validity of a Country Report is not good enough, and a number of expert reports that have been cited in such proceedings have not been sufficient either. Cases in point are the reports produced by Antonio Giustozzi (September 2003 and 6 March 2006) and Rubin (March 2007). The courts questioned the authors’ expertise and concluded that the

reports did not provide any “concrete reasons for doubting” the accuracy of the Country Report on Afghanistan.

*The provisional conclusion then is*, that the opinion of the Minister of Justice, that Article 1F could be applied to former officers and NCOs of the KhAD/WAD, is upheld in law. Accordingly, these people were not granted asylum and could not obtain residence permits on any other grounds.

Interestingly, the family members of individuals whom Article 1F was applied to, did not qualify for (derivative) residence status. After all, as the minister states ‘1F individuals’ should be prevented from becoming residents of the Netherlands because their family have been granted residence permits.”

I would now like to briefly indicate some other points that have been discussed in ‘Afghanistan 1F jurisprudence’.

As I said before, even if an asylum permit has already been granted to a foreign national, Article 1F can still be applied and the permit withdrawn. The basis for such a withdrawal is that the asylum seeker has withheld information (not so much about working for the KhAD/WAD, as about the nature of the work) and that, if he had not withheld this information, he would not have been granted the permit. Relying on the principle of legitimate expectations (“I have been issued a permit”) cannot succeed, because, as the minister puts it, “A person who obtains rights on the basis of incorrect or incomplete information, must take into account that the error can be remedied.”

Asylum seekers have asserted repeatedly that they cannot come under the scope of Article 1F because they had not been convicted of any crimes, and no criminal investigations have been instituted against them. This argument fails because, for the assessment of whether Article 1F is applicable, it is not material whether the person concerned can be held criminally liable.

What other European countries do, and in particular, whether they “presume collective liability for violations of human rights” by former KhAD/WAD officers and NCOs or not, does not detract from the Minister of Justice’s power to do so. Neither is the minister bound to consider, first, whether the subject is a refugee before applying Article 1F as a ground for exclusion.

*In short, the application of Article 1F has been upheld in case law. Now, what does this imply for the asylum seeker in question? Did he leave the Netherlands of his own accord? Has he been removed? Indeed, can he be removed?*

Foreign nationals who are not granted asylum status because Article 1F is applied to them, and who are not allowed to stay in the Netherlands on any other ground, are obliged to leave the country of their own accord. It is not always possible to verify whether they have done. There is only a small number who are known to have left the Netherlands (for example, with the aid of the International Organisation for Migration). Some have 'left for an unknown destination'. About half of them, however, are still (illegally) resident in the Netherlands.

A number of the asylum seekers whom Article 1F has been applied to, and who therefore have not been granted residence in the Netherlands, must fear violation of Art. 3 ECHR if they returned to Afghanistan. This means that the Dutch government will not deport them to Afghanistan. So, what to do? Should they be granted residence status for this reason? The Minister of Justice is not of that opinion, and has developed a policy for such cases. The policy is, basically, the asylum seeker is not removed, he is not granted residence status, and only after he has made a plausible case that Article 3 ECHR prevents removal indefinitely, he may then be granted a residence permit, if certain conditions are met.

The notion of 'indefinite', in the minister's view, has also been tested in case law. In this context, it means that the asylum seeker:

- has *for many years* been in the situation that he cannot be removed because removal would constitute a violation of Art. 3 ECHR;
- and that there is no prospect of any change in his situation within a reasonable term.

If that is the case, and if the asylum seeker has made a plausible case that he still cannot be removed, and that departure to a country other than his country of origin is not possible in spite of sufficient efforts made by him to comply with his duty to leave, and if the asylum seeker is considered to be in an exceptional situation in the Netherlands ...

*only then* will the Minister have reason to assess whether it would be disproportionate to withhold a residence permit permanently.

This also applies to those cases in which a foreign national has been declared undesirable. Please note that, in that case, it is punishable for him to be resident in the Netherlands.

That rounds up my overview of Dutch case law about the application of Article 1F. Does anyone have any questions?

I would now like to venture a tentative look into the future, but before I do, I want to draw your attention to the matter of the burden of proof in these Afghan cases. As I mentioned earlier, according to the Minister of Justice, in cases involving officers and NCOs of the KhAD/WAD, we can presume “personal and knowing participation” on the part of the asylum seeker in the crimes which the KhAD/WAD are accused of. The minister then refers to the Country Reports and asserts that it is up to the asylum seeker to give concrete reasons why a specific Country Report should be doubted. This begs the question as to whether the minister is reversing the burden of proof. That may be so, but it is clear from Dutch jurisprudence that the minister may presume “personal and knowing participation.”

In this connection, what the UNHCR has to say in its ‘Note on 1F’ is also relevant:

“A presumption of individual responsibility reversing the burden of proof may arise as a result of (...) a person’s continued membership of a government (or part of it) clearly engaged in activities that fall within the scope of Article 1F.

This would be the case, for example, where the government concerned has faced

international condemnation (...) for gross or systematic human rights abuses. Where the individual has remained in a senior government position despite such criticisms, exclusion may be justified, unless he or she can rebut the presumption of knowledge and personal involvement in such abuses.”

The European Court of Justice, in its ruling of November 2010 (C-57/09 and C-101/09), also gave consideration to the matter of providing proof. The ruling related to Article 12 of the Qualification Directive,

which can be regarded as a translation of Article 1F of the Refugee Convention. The Court of Justice considered that:

“It follows from all those considerations that the exclusion from refugee status of a person who has been a member of an organisation which uses terrorist methods is conditional on an individual assessment of the specific facts, making it possible to determine whether there are serious reasons for considering that, in the context of his activities within that organisation, that person has committed a serious non-political crime or has been guilty of acts contrary to the purposes and principles of the United Nations, or that he has instigated such a crime or such acts, or participated in them in some other way, within the meaning of Article 12(3) of Directive 2004/83.

95 Before a finding can be made that the grounds for exclusion laid down in Article 12(2)(b) and (c) of Directive 2004/83 apply, it must be possible to attribute to the person concerned – regard being had to the standard of proof required under Article 12(2) – a share of the responsibility for the acts committed by the organisation in question while that person was a member.

96 That individual responsibility must be assessed in the light of both objective and subjective criteria.

97 To that end, the competent authority must, *inter alia*, assess the true role played by the person concerned in the perpetration of the acts in question; his position within the organisation; the extent of the knowledge he had, or was deemed to have, of its activities; any pressure to which he was exposed; or other factors likely to have influenced his conduct.

98 Any authority which finds, in the course of that assessment, that the person concerned has – like D – occupied a prominent position within an organisation which uses terrorist methods is entitled to presume that that person has individual responsibility for acts committed by that organisation during the relevant period, but it nevertheless remains necessary to examine all the relevant circumstances before a decision excluding that person from refugee status pursuant to Article 12(2)(b) or (c) of Directive 2004/83 can be adopted.

...”



The District Court in Amsterdam applied these considerations in a judgment which it made in February of this year, concerning a case in which Article 1F was applied to a foreign national who had worked for the KhAD/WAD. The court, referring to the ruling made by the European Court of Justice, found that it was not enough for the Minister for Immigration and Asylum to refer to the Country Report (from the Ministry of Foreign Affairs about the KhAD/WAD) and to offer the asylum seeker the opportunity to provide proof to the contrary. The court held that an individual examination was required.

The highest court in asylum cases in the Netherlands has yet to review this judgment.

- Another question is, has this matter been clarified sufficiently by judicial review, so that it will also be applicable when, sometime in the future, Taliban leaders make their way to the Netherlands/Europe?



## UNHCR Eligibility Guidelines

### for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan with Special Focus on Groups at Risk

*Béatrice Ureche, Legal Consultant, UNHCR*

The intensification and spread of the armed conflict in Afghanistan took a heavy toll on the civilian population in 2010 and this trend continued in the first quarter of 2011.<sup>42</sup> UNAMA documented 7,120 conflict-related civilian casualties (2,777 deaths and 4,343 injuries) last year, the highest number of civilian casualties recorded in one year since the fall of the Taliban in 2001. 2,080 deaths (representing 75 percent of total civilian deaths) are attributed to anti-Government elements, an increase of 28 percent since 2009.<sup>43</sup> The continued instability in Afghanistan has resulted in a shrinking of the humanitarian space, limiting the presence and activities of humanitarian workers and NGOs. Conflict-related human rights violations are on the rise, including in areas previously considered relatively stable. The escalation of the conflict between the Afghan and international military forces, and the Taliban and other armed groups, has contributed to limiting the access to health care and education, particularly in the southern and south-eastern regions of the country.

It is against this backdrop of a worsening security situation and sustained conflict-related human rights violations in Afghanistan that the December 2010 *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan* were issued. They supersede and replace the July 2009 *Eligibility Guidelines* and identify the particular profiles for which eligibility for international protection under the 1951 Convention relating to the

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<sup>42</sup> UN Security Council, The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General, 9 March 2011, S/2011/120, <http://www.unhcr.org/refworld/docid/4d81ae632.html>

<sup>43</sup> UNAMA, Afghanistan: Annual Report on Protection of Civilians in Armed Conflict 2010, March 2011, <http://www.unhcr.org/refworld/docid/4d7744972.html>.

Status of Refugees may arise in the current context in Afghanistan. These risk profiles, while not necessarily exhaustive, include (i) individuals associated with, or perceived as supportive of, the Afghan Government and the international community, including the International Security Assistance Force (ISAF); (ii) humanitarian workers and human rights activists; (iii) journalists and other media professionals; (iv) civilians suspected of supporting armed anti-Government groups; (v) members of minority religious groups and persons perceived as contravening Shari'a law; (vi) women with specific profiles; (vii) children with specific profiles; (viii) victims of trafficking; (ix) lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals; (x) members of (minority) ethnic groups; and (xi) persons at risk of becoming victims of blood feuds.

In Afghanistan, 2010 was characterized by an intensified, systematic and widespread campaign of intimidation of the civilian population by armed anti-Government groups. Attacks by such groups, which have ranged from assassinations, abductions and stand-off attacks, to the use of improvised explosive devices (IEDs) and suicide attacks, increasingly targeted civilians associated with or perceived as supportive of the Government and the international community/ISAF. Targeted civilians include Government officials and civil servants, Government-aligned tribal leaders, Ulema Council members, religious scholars, judges, doctors, teachers, and workers on reconstruction/development projects. Although the majority of targeted attacks on civilians have occurred in those groups' strongholds, the number of targeted assassinations and executions of civilians has also increased in other parts of the country previously considered more secure.

The increased targeting of civilians is seen as part of a concerted effort by armed anti-Government groups to gain control over territories and populations. 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. The intensification of the armed conflict and the targeted attacks and intimidation have been effective in slowing the hiring of (notably lower level) Government workers in certain areas, and have affected the freedom of movement of unarmed civil servants.

Humanitarian workers in areas where there are insurgent activities or infiltration by Taliban or other armed groups also continue to be targeted by these groups on the basis of their perceived association with the central Government and the international community. Similarly, human rights activists, particularly women's rights activists, face systematic violence and threats at the hands of armed groups, local warlords and militias.

The deteriorating security conditions in the country continue to pose a serious risk to the lives of journalists, who face targeted abductions by armed anti-Government groups. Local guides, interpreters, and fixers for international journalists are also targeted. Apart from security challenges, reporting on the armed conflict is subject to restrictions since March 2010, when the Government requested the media not to report live from the scene of a terrorist attack anywhere in Afghanistan. In addition, journalists covering issues considered as sensitive, such as corruption and drug trafficking, may be subject to intimidation, harassment and violence at the behest of the authorities and at the hands of armed opposition groups, warlords, militia leaders and organized criminal elements. According to reports, journalists who meet with the Taliban are frequently detained by security forces, *inter alia*, on suspicion of collaboration with the group.

Human rights abuses against women and girls during Taliban rule are well documented. Since 2001, the Government has taken important measures towards the improvement of the situation of women in the country. The situation of Afghan women and girls remains, however, of serious concern on a number of fronts, particularly in areas under the effective control of the Taliban and Hezb-i-Eslami, where women in a wide range of professions are reportedly targeted.

Often perceived as transgressing social norms, women in the public sphere – such as female parliamentarians, provincial council members, civil servants, journalists, lawyers, teachers, human rights activists and women working for international organizations - may be subject to intimidation, threats, including through 'night letters' and handbills posted in public places, as well as physical attacks and killings. These attacks are at the hands of armed opposition groups, particularly in areas under their control; but also local traditional and religious power-

holders; families and community members; and in some instances, Government authorities.

Sexual and gender-based violence against women in Afghanistan is reportedly endemic. Women perceived as not conforming to the gender roles ascribed to them by society, tradition and law may be subject to “honour killings”, rape, abduction, forced abortion and domestic violence. Societal taboos and fear of stigmatization and reprisals, including at the hands of their own community and family members, often deter victims from reporting incidents of violence. As the stigma attached to sexual violence falls on the victim rather than the perpetrator, victims of rape face ostracism, forced abortions and even death.

Rooted in discriminatory views about the role and position of women in the Afghan society, harmful traditional practices are pervasive in Afghanistan. Such practices include child and forced marriages, exchange marriages, forced isolation in the home and honour killings. As a culturally accepted practice, forced marriage is at times used to settle debts or strengthen a family’s status through social alliances. Economic insecurity and ongoing conflict perpetuates the problem of child marriages.

Despite Government efforts to promote gender equality, women continue to face pervasive social, political and economic discrimination due to persistent stereotypes and customary practices marginalizing them. Thus, women without male support and protection generally lack the means of survival, given existing social norms imposing restrictions on women living alone, including limitations on their freedom of movement. Detention on the ground of perceived “morality crimes,” such as “running away” from home (including in situations of domestic violence), being improperly unaccompanied or refusing marriage, also occurs.

Adopted in July 2009, the Law on the Elimination of Violence against Women criminalizes sexual violence, forced and underage marriage, forced labour and prostitution, and significantly enhances protection and the promotion of women’s rights. However, implementation of the law remains a huge challenge. Effective prosecution of violent sexual crimes, including rape, is reportedly undermined in some areas by the impunity enjoyed by perpetrators, who often have links to powerful

commanders, members of armed opposition groups, organized criminal networks, or local powerbrokers.

Children are one of the most vulnerable groups in Afghanistan and bear the brunt of the ongoing armed conflict. Although used by all parties to the conflict, armed opposition groups are mainly responsible for the grave violations committed against children. Forced recruitment of children by anti-Government elements is reported, particularly in the southern, south-eastern and eastern regions. Children are reportedly lured into carrying explosives or trained in conducting suicide attacks against national and international security forces by the Taliban, often resulting in their own death. They also continue to be recruited by the Afghan National Security Forces, despite the official Government policy barring under-age recruitment.<sup>44</sup>

The deterioration of the security situation has also had a detrimental effect on education. Armed opposition groups, as well as conservative elements in some communities that are opposed to the education of girls, have increased their attacks on schools, teachers and pupils, particularly schoolgirls. The southern region suffered the majority of attacks in the last two years, while attacks also spread in the northern provinces previously considered relatively safe.<sup>45</sup> Such attacks and threats have had a ripple effect, causing schools in the surrounding area to shut down or attendance rates to drop.<sup>46</sup> According to the Afghan Ministry of Education, about 350 schools are still

closed mainly due to insecurity and threats, thereby depriving over 200,000 children of an education.<sup>47</sup> It is reported that, on 29 March 2011, Mullah Mohammad Omar, the Taliban “supreme leader”, issued a decree instructing insurgents not to attack schools and intimidate

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<sup>44</sup> UN Security Council, Report of the Secretary-General on children and armed conflict in Afghanistan, 3 February 2011, S/2011/55, available at: <http://www.unhcr.org/refworld/docid/4d6238044.html>.

<sup>45</sup> UN Security Council, Report of the Secretary-General on children and armed conflict in Afghanistan, 3 February 2011, S/2011/55, available at: <http://www.unhcr.org/refworld/docid/4d6238044.html>.

<sup>46</sup> Oxfam, High Stakes: the Status of Girls Education in Afghanistan, 24 March 2011, <http://www.oxfam.org.uk/resources/policy/education/downloads/bp-high-stakes-girls-education-afghanistan-240211-en.pdf>

<sup>47</sup> IRIN, Afghanistan: Government hails Taliban decree on schools, 29 March 2011, <http://irinnews.org/PrintReport.aspx?ReportID=92312>.

schoolchildren. It is still too early to ascertain the effect, if any, of the decree.

Sexual abuse and violence against children, including at the hands of family members, is pervasive and vastly underreported and concealed in Afghan society.<sup>48</sup> Reports of children, especially boys, being sexually abused and exploited by armed groups, including through the practice of *baccha baazi* (dancing boys), continue to emerge. The general climate of impunity, a vacuum in the rule of law, lack of faith in investigating and prosecuting authorities, and misplaced shame have adversely affected the reporting of sexual violence and abuse against children to law enforcement authorities and the subsequent prosecution of perpetrators. It should also be noted that child sexual abuse, against both girls and boys, is not clearly defined as a crime in Afghan law, and perpetrators of such violations are rarely brought to justice.<sup>49</sup>

Children continue to be detained for alleged association with armed opposition groups by Afghan authorities, as well as the international forces present in Afghanistan. Allegations of ill-treatment of child and adult detainees, lengthy detention without charge or trial, *incommunicado* detention and lack of access to defence counsel in National Directorate of Security and Ministry of Justice facilities have been reported.<sup>50</sup> The UN Secretary-General has recently expressed concern that child detainees are not treated in line with international standards of juvenile justice.<sup>51</sup>

In addition, Afghan children, alongside men and women, are trafficked internally and internationally for sexual exploitation and forced labour,

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<sup>48</sup> UN Security Council, Report of the Secretary-General on children and armed conflict in Afghanistan, 3 February 2011, S/2011/55, available at: <http://www.unhcr.org/refworld/docid/4d6238044.html>.

<sup>49</sup> UN Security Council, Report of the Secretary-General on children and armed conflict in Afghanistan, 3 February 2011, S/2011/55, available at: <http://www.unhcr.org/refworld/docid/4d6238044.html>.

<sup>50</sup> UN Security Council, The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General, 9 March 2011, S/2011/120, <http://www.unhcr.org/refworld/docid/4d81ae632.html>.

<sup>51</sup> UN Security Council, Report of the Secretary-General on children and armed conflict in Afghanistan, 3 February 2011, S/2011/55, available at: <http://www.unhcr.org/refworld/docid/4d6238044.html>.



including domestic servitude and forced begging. Although efforts are being made by the authorities to investigate and prosecute trafficking incidents, no convictions for trafficking-related offences have been reported and there are serious concerns that some victims of trafficking are punished for acts they may have committed as a result of being trafficked.

The Afghan Constitution defers to Shari'a law for matters not explicitly stipulated therein. Consequently, persons accused of committing crimes against Shari'a law, such as blasphemy, apostasy, homosexuality and adultery (*zina*), are at risk not only of social rejection and violence at the hands of their families, community members and the Taliban, but also of formal prosecution. It is important to note that according to several interpretation of Shari'a law, conversion from Islam is considered apostasy.

Given the pervading strong social taboos, there is little information available on the treatment of LGBTI individuals in Afghanistan. It should, however, be noted that "homosexual conduct" is a *Hudood* crime punishable by death, as well as subject to long imprisonment under the Afghan Penal Code. Although no death sentences have been handed out since the fall of the Taliban, overt homosexual relations are generally not tolerated.

Afghanistan is a complex mix of ethnic groups with inter-relationships not easily characterized. Ethnic-based tension and violence have arisen at various points in the history of Afghanistan. Since the fall of the Taliban regime in late 2001, however, ethnically-motivated tension and violence have diminished markedly in comparison to earlier periods. Concerns regarding ethnic discrimination and clashes, particularly in relation to land use/ownership rights, remain nevertheless. Land disputes, particularly where ethnic differences arise or claims involve the illegal occupation of land by persons in positions of authority, are sometimes resolved by resorting to violence or threats. Where restitution is pursued, the rightful owners may be at risk of ill-treatment, arrest and detention by local militia leaders or security officials, in the absence of political, tribal or family protection. Generally, persons residing in areas where they are an ethnic minority are at heightened risk when attempting to reclaim land and property. One of the groups affected are the Pashtuns, who have been uprooted

in large numbers by ethnic violence in the north and west of the country following the collapse of the Taliban regime.

Marginalized during the Taliban rule, the Hazara community continues to face some degree of discrimination and may face intimidation and attacks by the Taliban when suspected of working for, or being supportive of, the Government and ISAF. Furthermore, despite the comparatively stable security situations in provinces and districts where the Hazara constitute a majority or a substantial minority, such as Jaghatu, Jaghori and Malistan districts in Ghazni province, the security situation in the remainder of the province has been worsening. Jaghori district, for example, is increasingly isolated given that some access routes to and from the district, including large stretches of the strategic Kabul-Kandahar road, are reportedly under Taliban control.

The practice of blood feuds is rooted in traditional Afghan culture and it is often initiated in reaction to perceived violations to the honour of women, property rights, and land or water issues or, according to the Pashtunwali Code, “*zar, zan, zamin*” – meaning gold, women and land. According to the practice, individuals associated with the family or tribe of the “wrongdoer” are targeted by the victim’s tribe or family members. Revenge is sought through killing, physically injuring or publicly shaming the perpetrator or his family or tribe. Often long-running conflicts, lasting for generations, blood feuds can sometimes be settled through a formal decision of a *jirga* – a community-based dispute resolution mechanism – particularly among the Pashtuns. A peaceful compromise, such as a *baad dadab* marriage, a tribal form of dispute-settling in which the offending family offers a girl for marriage into the “wronged” family, may sometimes prevent a dispute from spiralling into a blood feud.

### **Part 3. Afghanistan: Subsidiary Protection**



# Subsidiary Protection - Afghanistan

*by Martin Schmidt, Country of Origin Information Unit, Austria*

## Introduction

Subsidiary protection contains many different topics. The Austrian Federal Asylum Office conducted a fact finding mission to Kabul in October 2010 and subsidiary protection was an important issue. My presentation will focus on topics like health care, the economic situation and the food security.

## Food security

Afghanistan is a food importing country because it does not produce enough food. Since the 1960s and 1970s the irrigated arable land declined from 3.8 million hectare to 1.8 million hectare. This reduction is the consequence of years of conflict in the country. The situation has deteriorated further due to several natural disasters during the last decade. Since 2002 there have been four severe droughts and each year a part of the country is hit by flooding.<sup>52</sup>

The most productive agricultural areas are in the West and South of the country. The mountainous areas in the centre and in the north produce far less food. Due to imports there is enough food in the country. Food shortages are mainly a problem of food distribution. Because of the security situation and of bad infrastructure it is difficult to supply the whole country with food.<sup>53</sup>

Approximately 30 percent of the population suffer from lack of food and nearly 80 percent of them live in rural areas.<sup>54</sup> The situation in urban areas is much better. But there are also vulnerable groups in urban areas such as households of widows or displaced persons who suffer hunger.

In Kabul, for example, the market system is working. There is enough food to buy in the city. For people in need several organizations and

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<sup>52</sup> BAA: FFM-Bericht Afghanistan, Dezember 2010, p. 54.

<sup>53</sup> BAA: FFM-Bericht Afghanistan, Dezember 2010, p. 55.

<sup>54</sup> BAA: FFM-Bericht Afghanistan, Dezember 2010, p. 54.

mosques provide food. The World Food Programme (WFP) had a voucher – programme in the year 2009. WFP distributed voucher to needy persons and with this vouchers they were able to buy things at the market. The shopkeepers could go to the bank and exchange the vouchers for money, paid by the WFP. So besides the help for persons in need the local business was strengthened.<sup>55</sup>

## Health care

*“The state is obliged to provide free means of preventive health care and medical treatment, and proper health facilities to all citizens of Afghanistan in accordance with the law.”*

### **The Constitution of the Islamic Republic of Afghanistan, Article 52**

80 percent of the Afghans can reach basic health care facilities within two hours walk. But there is a huge difference between the health care situation in cities and in remote areas. In the major cities of Afghanistan the quality of the health care system is much better. There are several reasons for it. On the one hand, most of the Afghan medical staff wants to work in cities because of the security situation and the living conditions. On the other hand, international NGOs are very important for the health care system and these organizations are working for different reasons mainly in urban areas.<sup>56</sup>

In rural areas in Afghanistan the health care system is weak. There is a lack of professionals - especially female medical staff which hinders the access of females to medical care. The lack of midwives and female professionals is responsible for the high rates of maternal and child mortality.<sup>57</sup>

In Kabul there are approximately 80 private and public hospitals. They are well equipped. Because of the influx of people into the city there are not enough public hospitals. Despite the better health care

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<sup>55</sup> BAA: FFM-Bericht Afghanistan, Dezember 2010, p. 56.

<sup>56</sup> BAA: FFM-Bericht Afghanistan, Dezember 2010, p. 49-50.

<sup>57</sup> BAA: FFM-Bericht Afghanistan, Dezember 2010, p. 50-51.

situation in Kabul rich Afghans travel to Pakistan or India for medical treatment.<sup>58</sup>

### **Economic situation**

The GDP increased by 22.5 percent in 2009/2010.<sup>59</sup> For 2010/2011 the growth is estimated to be 8.5-9 percent. The inflation rate is 5 percent.<sup>60</sup> The GDP composes of 31 percent by agriculture, 26 percent by industry and 43 percent by services.<sup>61</sup> The most important pillar of the GDP growth is the private consumption. Ironically the security situation is an important reason for private consumption because it generates need for goods and services.<sup>62</sup>

Since 2004 the GDP of the country was increasing by more than 10 percent every year.<sup>63</sup> But there is a great volatility because of its reliance on agriculture and these products are subject to weather fluctuations. In the years with good harvests (2008/09 and 2009/10) the percentage of fresh and dry fruits and seed had increased.<sup>64</sup>

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<sup>58</sup> BAA: FFM-Bericht Afghanistan, Dezember 2010, p. 53.

<sup>59</sup> Worldbank: Afghanistan Economic Update, October 2010, [http://siteresources.worldbank.org/AFGHANISTANEXTN/Resources/305984-1264608805475/Af\\_Eco\\_Update\\_Dec\\_2010.pdf](http://siteresources.worldbank.org/AFGHANISTANEXTN/Resources/305984-1264608805475/Af_Eco_Update_Dec_2010.pdf), accessed 17 March 2011, p. 2.

<sup>60</sup> Worldbank: Afghanistan Economic Update Dezember 2010, <http://www.worldbank.org.af/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/AFGHANISTANEXTN/0,,contentMDK:22796974~menuPK:305990~pagePK:2865066~piPK:2865079~theSitePK:305985,00.html>, accessed 17 March 2011.

<sup>61</sup> CIA World Factbook, Afghanistan, last Update: March 8th, <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html>, accessed 18 March 2011.

<sup>62</sup> Worldbank: Afghanistan Economic Update, October 2010, [http://siteresources.worldbank.org/AFGHANISTANEXTN/Resources/305984-1264608805475/Af\\_Eco\\_Update\\_Dec\\_2010.pdf](http://siteresources.worldbank.org/AFGHANISTANEXTN/Resources/305984-1264608805475/Af_Eco_Update_Dec_2010.pdf), accessed 17 March 2011, p. 2.

<sup>63</sup> GDP: 2004: 29%, 2005: 7.5%, 2006: 8%, 2007: 8%, 2008: 11.5%, 2009: 3.4%, 2010: 22.5%, 2011: 8.9%; Source: Index mundi: Afghanistan GDP - real growth rate, [http://www.indexmundi.com/afghanistan/gdp\\_real\\_growth\\_rate.html](http://www.indexmundi.com/afghanistan/gdp_real_growth_rate.html), accessed 18 March 2011; The International Monetary Fonds (IMF) provides slightly different numbers: 2003: 15.1, 2004: 8.8, 2005: 16.1, 2006: 8.2, 2007: 14.2, 2008: 3.4, 2009: 22.5, 2010: 8.6, 2011: 7.0, IMF: World Economic Outlook, 2010, <http://www.imf.org/external/pubs/ft/weo/2010/01/pdf/text.pdf>, accessed 18 March 2011, p 160. April 2010

<sup>64</sup> Worldbank: Afghanistan Economic Update, October 2010, [http://siteresources.worldbank.org/AFGHANISTANEXTN/Resources/305984-1264608805475/Af\\_Eco\\_Update\\_Dec\\_2010.pdf](http://siteresources.worldbank.org/AFGHANISTANEXTN/Resources/305984-1264608805475/Af_Eco_Update_Dec_2010.pdf), accessed 17 March 2011, p. 3.

The unemployment rate is 40 percent. But according to ILO 93 percent of the population older than 16 years have to work. For surviving it is necessary to work and earn at least a little money. There is no public unemployment insurance or other public financial support. 80-90 percent of the working force is working in the informal sector.<sup>65</sup>

## **Conclusion**

Afghanistan is one of the poorest and most corrupt countries in the world. But there are some positive indicators. The GDP in the last years has grown in average by more than 10 percent. A free health care system was established in the country and school attendance is possible in many parts of the country. But there are still huge problems. Under- and unemployment are widespread and many families suffer from hunger. The most important problem is that the security situation has been deteriorating year by year. There is a big difference between rural and urban Afghanistan. The situation in Afghan cities is much better than in rural areas, no matter whether you have a look at the food security, the health care situation or the economic situation.

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<sup>65</sup> BAA: FFM-Bericht Afghanistan, Dezember 2010, p. 42-43.



# **Hungarian State Practice in determining Subsidiary Protection applications of Afghan Asylum Seekers**

*by Dóra Virág Dudás, Judge of the Budapest Municipal Court, Hungary*

## **Introduction**

Afghanistan unfortunately features at the top of European statistics not only on the basis of alphabetical order, but also in terms of the number of its nationals claiming asylum world-wide. In 2010, 702 Afghans applied for asylum in Hungary, one third of the total number of asylum applications in the country. Afghan nationals tend to refer only to the generally poor security situation of their homeland, rather than set out a credible individual story. Consequently, a great number of cases do not focus on refugee status but on the need for complementary protection. The assessment of this need is carried out in the asylum procedure, which has two instances: one before the refugee authority, the Office of Immigration and Nationality (hereinafter: OIN), and one before the Municipal Court of Budapest (hereinafter: BMC). The approach of the two levels is not entirely the same in all respects, as the state authority is more policy based, while the court is more protection based, as it has to enforce the law as it is and asylum law is protection based. Consequently it tends to interpret the relevant laws according to their most favourable meaning, setting up limits for the practice of the refugee authority.

## **Legal Framework**

The Act LXXX of 2007 on Asylum (hereinafter: the Asylum Act), in line with the Qualification Directive, stipulates that subsidiary protection shall be granted to a foreigner or stateless person who does not satisfy the criteria of recognition as a refugee but it is substantiated that there is a risk that in their country of origin they would be exposed to serious harm and is unable or, owing to fear of such risk, unwilling to avail themselves of the protection of their country of origin.

*Sur place* events can be also taken in consideration, and family members are also entitled to recognition as beneficiaries of subsidiary protection.

However, no one shall be granted subsidiary protection who committed a crime against peace, a war crime or a crime against humanity; a crime which is punishable by imprisonment of five years or more under the relevant laws of Hungary; a crime contrary to the purposes and principles of the United Nations; and whose stay in Hungary violates national security (exclusion grounds).

If someone would otherwise be eligible for subsidiary protection but falls under exclusion, a yearly renewable temporary protection is to be granted to them on the basis of the *non-refoulement* principle.

Subsidiary protection provides equal rights as refugee status (i.e. rights of a citizen, except suffrage), while temporary protection provides only tolerated status with basic social benefits.

In compliance with Article 15 of the Qualification Directive, the threat of death penalty, torture, cruel, inhuman or degrading treatment of punishment, and a serious threat to the life or physical integrity of a civilian person which is the consequence of indiscriminate violence used in the course of international and internal armed conflict shall be regarded as serious harm. The adjective “individual” has not been transposed into Hungarian law, since the legislator found that this requirement was contrary to the meaning of word “indiscriminate”.

As a result of the worsening conflict-related generalized violence in Afghanistan, assessing subsidiary protection claims lodged by Afghan asylum seekers requires thorough, up-to-date assessment both by the refugee authority and the court reviewing the lawfulness of the first instance rejections.

### **Hungarian State Practice in Subsidiary Protection Applications**

As mentioned above, the approaches of the refugee authority and the courts do not correspond with each other in all respects when interpreting the Hungarian measure implementing Article 15 (c) of the Qualification Directive. Here I intend to introduce the two approaches side by side in order to provide a real picture of the current dilemmas, strengths and weaknesses of recent Hungarian practice.

The elements of assessment of the need of subsidiary protection due to a general lack of security in the country of origin (in the present case, Afghanistan) are the following:

1. Whether there is an international or internal armed conflict?
2. Whether indiscriminate violence is used in this conflict?
3. Whether this violence seriously threatens the life or physical integrity of the applicant?
4. Whether the applicant is an 'innocent' civilian or is somehow involved in the conflict?
5. Whether there is effective and available internal protection against the threat for the applicant?

*1. (International or internal) armed conflict*

According to national practice, armed conflict does not only involve actions which are considered to be armed conflicts according to the international humanitarian law, but has a broader meaning.

It is irrelevant whether two or more parties are fighting with each other or whether there is only one entity which commits attacks.

The type or nature of arms used in the conflict is also irrelevant. Not only firearms and bombs, but swords, suicide bombs or any other tools used for the purposes of fighting and causing physical harm may be considered as evidence of armed conflict.

However, hostile actions must meet a minimum threshold of duration, intensity and gravity to be considered as 'armed conflict' in the application of Article 15 of the Qualification Directive.

Due to the lack of first hand information, neither the OIN nor the BMC analyses the number of civilian casualties, the frequency of security incidents or the number of persons displaced, but relies on the latest evaluations by other agencies. The OIN, however, considers that armed conflicts are not limited to regions which are listed in the UNHCR Eligibility Guidelines of 17 December 2010 (Helmand, Kandahar, Kunar, and parts of Ghazni and Khost), or which suffer the highest numbers of attacks according to the latest Quarterly Data Report of The Afghanistan NGO Safety Office (ANSO), but also include less dangerous parts of Afghanistan as well taking into account special circumstances (mainly the applicant's individual circumstances). In addition, the BMC goes even further, as the generally fragile and fluctuating (recently worsening) security situation in many regions makes the court more

cautious and consider more and more provinces as zones of armed conflict independently of individual factors.

In parts of Afghanistan where there is no armed conflict, only the threat of the death penalty or torture, cruel, inhuman or degrading treatment or punishment (Article 15 a) and b) of the Qualification Directive) may constitute grounds for subsidiary protection.

In relation to the risk of torture, cruel, inhuman or degrading treatment the OIN requires that the threat should be 'individual', which means that it should be more than general, something special which targets the applicant more than others. If the threat is not exceptional, the OIN only grants temporary protection. However, the court has not approved this interpretation, as the law does not require refugee-like nexus for subsidiary protection.

## *2. Indiscriminate violence*

In the view of the OIN in the regions where only improvised explosive devices (IED) explosions or suicide attacks occur the violence applied in the armed conflict cannot be considered as indiscriminate, as these kinds of attacks target military objectives of international and national armed forces, governmental institutions and civil servants, not posing relevant threat to ones whom are not targeted.

However, suicide attacks and IED explosions generally cause civilian casualties as well, and these methods are also used in civilian areas (around roads, government buildings, hotels, markets, etc.), so the BMC considers that these kinds of attacks should be considered indiscriminate.

## *3. Serious threat to life and physical integrity*

According to national practice, a threat is considered serious if it is real in the case of the person concerned. The general situation and the individual circumstances should be considered together to estimate the reality of the danger. Here only life and physical integrity should be taken account, as other human rights are irrelevant in the application of Article 15 c) of the Qualification Directive.

The OIN claims in some cases that the threat is not serious enough, because, due to the targeted nature or the relatively small number of the attacks, there is little chance to lose one's life or physical integrity.

But the BMC always stresses that a real chance is sufficient to give rise to a need for protection.

#### *4. Civilians versus persons involved in the conflict*

Only civilians may enjoy subsidiary protection based on indiscriminate violence used in armed conflict. Those involved in the conflict will be considered victims of targeted, as opposed to indiscriminate, violence. In such cases only a risk of death penalty or torture, cruel, inhuman or degrading treatment would lead to subsidiary protection. Since individuals involved in armed conflict may themselves have committed acts which may exclude them from the right to subsidiary protection, they may only be entitled to temporary protection.

#### *5. Internal protection alternative*

In case the applicant comes from a part of their country where a genuine risk of serious harm is substantiated, it should be determined whether there is an internal alternative to international protection.

According to the Asylum Act an internal protection alternative is available if there is a place in the country of origin which is safe enough, if it can be reached in a safe way, and if it is reasonable to expect one to live there.

Safe residence means that there is no real prospect of suffering harm either by armed conflict or by other criminal actions.

Safe access means safe roads and regions leading to the safe place of relocation from the point where the applicant will arrive at their country.

Reasonability means basic infrastructure and services, and availability to sustain oneself (accommodation and livelihood opportunities).

In the assessment of these elements personal circumstances are duly considered, especially as regards the element of reasonability.

The OIN considers Kabul, the capital of Afghanistan, to be a real protection alternative for healthy young men, even unskilled ones who do not have any ties there, because it considers it is possible for them to maintain themselves there without any support. However, the OIN, based on humanitarian reason, does not return families with children or single women to Kabul.

The court is even more generous, as according to the country of origin information sources Kabul is getting full of internally displaced persons and relocated asylum seekers. It has hardly enough capacity to offer more accommodation and livelihood for newcomers who do not have any support there to start a new life. Consequently the BMC only sends back Afghans to Kabul if they have family or other social ties there, or their survival (basic accommodation and livelihood) is guaranteed there by other means. The standard is the same as other safe zones (mainly the Northern provinces).

### **Humanitarian issues**

Humanitarian issues (such like the economic situation, health condition, age, family status, social relations of the asylum seekers and the economic situation of their country) in themselves rarely justify any form of international protection, because both subsidiary and temporary protection requires risk of death penalty, torture, inhuman or degrading treatment, and humanitarian circumstances in themselves only in extreme cases may be considered as inhuman or degrading treatment.

However, as mentioned above, 'soft' issues are taken into consideration in the determination of subsidiary protection in case of real risk of serious harm in the region of origin within Afghanistan, as in these cases internal protection alternative is to be examined. Relocation is never applicable if it is not reasonably expectable for the asylum seeker to stay in the certain region due to the security situation or the unacceptably poor living (housing and livelihood) conditions.

### **Case law**

Here are some excerpts of relevant judicial decisions:

*Judgement No. 24.K.33.913/2008/9 of 16 March 2009*

In the application of c) the following elements shall be considered:

- more general threat of harm than in cases of a) or b),
- which is a consequence of international or national armed conflict,
- indiscriminate violence,
- the geographical scope of the violence,

- serious factual circumstances from the past, which are still existing.

Civil population is targeted by the suicide attacks, which cannot be considered as civil war, but entirely fits within the category of armed conflict. Suicide attacks indiscriminately threaten not only the targeted persons, but everyone who is present. Not the extreme nature of a situation grounds subsidiary protection, but the satisfaction of the legal requirements of such protection.

*Judgement No. 6.K.30.862/2010/11 of 19 November 2010*

The 'individual' nature of the threat is not a prerequisite to be granted subsidiary protection. According to Hungarian asylum law only real threat of serious harm and lack of exclusion are the requirements of such protection.

*Judgement No. 20.K.31.823/2010/4 of 12 October 2010*

The principle of *non-refoulement* is not relevant to the entire territory of Afghanistan, as there are zones, mainly Kabul and the Northern provinces, where rejected asylum seekers may be relocated, depending on their personal circumstances. The applicant of the case came from a province which is safe and where his family lives so his life there will be secured.

*Judgement No. 17.K.33.831/2010/4 of 22 October 2010*

The applicant cannot be sent back to his province of origin, Laghman, because according to the country of origin information that province is unsafe due to intense armed conflict. However, the applicant may settle down in Kabul, even without the support of his family, as he lived and worked there before, so he has local acquaintances and sufficient knowledge of the local circumstances.





## **Subsidiary Protection in Afghan asylum cases: The German practice**

by Dr. Otto Mallmann, Presiding Justice at the Federal Administrative Court (retired)

### **Introduction**

In Germany Afghans are at the top of those seeking asylum. In 2010 5905 citizens of Afghanistan applied for asylum in Germany. The total number of asylum seekers was about 48600.

The competent authority is the Federal Office for Migration and Refugees, a federal government agency under the supervision of the Federal Ministry of the Interior.

The Federal Office can grant

- (1) asylum as provided in the German constitution (granted to 0,4 % of applicants in 2010)
- (2) the status as refugee according to the standards of the Geneva Convention (granted to 11%)
- (3) subsidiary protection under the EU Qualification Directive and
- (4) protection against deportation under national German law<sup>66</sup>

In case of a negative decision by the Federal Office the applicant may take legal action at the local first instance Administrative Court. This is the general Administrative Court, there is no specialised jurisdiction for asylum cases. Under certain conditions cases may be brought to the second instance, the Higher Administrative Court, and to the third instance, the Federal Administrative Court.

Important decisions of this court in migration and asylum law cases are presented in English translation on the court's web site: [www.bundesverwaltungsgericht.de](http://www.bundesverwaltungsgericht.de)

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<sup>66</sup> (3) and (4) granted to 32,5%.

In principle first and second instance Administrative Courts investigate the relevant facts of the case ex officio. The courts may go beyond the material submitted by the parties and conduct their own investigation of the case. They consider for instance reports of the Federal Foreign Office, the UNHCR, amnesty international and private experts. Expertise received by one court is shared with other courts. The asylum seeker is obliged to cooperate and to submit all relevant facts to the Court.

The appeal to the Federal Administrative Court is limited to questions of law. This Court decides on the basis of the facts established by the Higher Administrative Court. The Federal Administrative Court may control, however, whether the investigation of facts violates procedural law.

The proportion of successful applications is high in Germany. In 2009 about 59% of the applications of Afghans were successful. This figure comprises asylum, refugee status, subsidiary protection and protection against deportation under national law. The majority of these cases concerns protection against deportation under national law. In the first 6 months 2010 about 49% of the applications were successful.

More than half of the applicants state that they come from Kabul or Herat. The proportion of applicants aged between 10 and 19 is high, 2009 it was about 40%. Many of them are unaccompanied minors, in most cases boys or young men.

Women are normally not deported to Afghanistan in practice. The same can be said about men at an advanced age. Typical complainants at court proceedings are younger men.

In the Court practice also law suits against the withdrawal of the asylum status or subsidiary protection plays a certain role.

### **Subsidiary protection**

The provision for subsidiary protection under Art. 15 (c) of the Qualification Directive has been implemented in the German Residence Act. Under this Act the deportation of a foreigner is not to be ordered if, as a member of the civilian population, he would be exposed there to a substantial individual danger to life or limb as a result of an

international or internal armed conflict. The characteristic of a threat 'by reason of indiscriminate violence' is incorporated into the national transposition provision even if is not explicitly mentioned.

## 1. International or internal armed conflict

The concept of internal armed conflict is interpreted by the Federal Administrative Court<sup>67</sup> taking account of the significance of this concept in international humanitarian law. The orientation to international humanitarian law means that – at the lower end of the scale – cases of internal disturbances and tensions such as riots and isolated and sporadic acts of violence cannot be considered as internal armed conflicts. At the upper end of the scale such a conflict exists in the case of an armed conflict between the state's armed forces and dissident armed forces which exercise such control over part of the territory of the state as to enable them to carry out sustained and concerted military operations. Typical examples for an internal armed conflict are civil-war disputes and guerilla warfare. However, the conflict must in any case demonstrate a certain degree of intensity and constancy.

The orientation to the criteria of international humanitarian law runs up against its limits where it is opposed to the purpose of granting protection to civilians who are threatened with indiscriminate violence in armed conflicts. With an eye to this purpose the existence of an armed conflict in the sense of Art 15 (c) does not necessarily presuppose that the parties to the conflict must have achieved such a high level of organisation as it is necessary to satisfy the requirements under the Geneva Conventions of 1949. It may also suffice that the parties to the conflict are able to carry out sustained and concerted acts of such intensity and constancy that the civilian population is thereby typically also caused to suffer significantly. Equivalent considerations may also apply to the requirement that that the party to the conflict opposing the state's armed forces must exercise effective control over a portion of the states territory.

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<sup>67</sup> With respect to this and the following points see Judgement of 27 April 2010 – BVerwG 10 C 4.09 with further references. The judgment is presented on the Court's web site (see above)

An internal armed conflict need not concern the whole state, it may be restricted to part of it. In this case in principle the asylum seeker's region of origin should be considered.

According to the Federal Office and many court decisions there is an internal armed conflict in Afghanistan in regions where armed disputes similar to civil war are taking place between the troops of the ISAF/NATO and the Afghan army on the one side, and the Taliban and other opposition forces on the other side.

## 2. Serious individual threat to life or person by reason of indiscriminate violence

Court practise is based on the Elgafaji decision of the European Court of Justice (ECJ)<sup>68</sup>. According to the Federal Administrative Court in any case findings must be made as to the level of indiscriminate violence in the territory in question. If there are no personal circumstances increasing risk, an especially high level of indiscriminate violence is necessary. If personal circumstances increasing risk are present, a lower level of indiscriminate violence will be sufficient. Factors that increase risk may be reasons of profession – e.g. as a physician or journalist – requiring to spend time near the source of danger. Such factors may also include personal circumstances by reason of which the applicant, as a civilian, is additionally subject to the danger of selective acts of violence – for example, because of his religious or ethnic affiliation.

But even in the case of personal circumstances that increase danger, a high level of indiscriminate violence or a high density of danger to the civilian population must be found in the region in question. The mere

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<sup>68</sup> Judgment of 17 February 2009 – C-465/07: Referring also to recital 26 the ECJ found that a serious individual threat requires an extraordinary situation which would be characterised by such a high degree of risk that substantial grounds would be shown for believing that that person would be subject individually to the risk in question (marginal no. 36, 37). The more the applicant is able to show that he is specifically affected by reason of factors particular to personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection (marginal no. 39).

presence of an armed conflict and the finding of a factor increasing risk in the person of the applicant is not sufficient for this purpose. What is necessary, rather, is at least an approximate quantitative determination of the total number of civilians living in the area concerned, on the one hand, and on the other hand, the number of acts of indiscriminate violence committed by the parties to the conflict against the life or person of civilians in this region, as well as a general assessment of the number of victims and the severity of the casualties (deaths and injuries) among the civilian population. To that extent, the criteria for a finding of a group persecution that have been developed under refugee law may also be applied accordingly.

The relevant facts have to be established, if necessary by an expertise in the individual proceedings.

The facilitated standard of proof according to Art. 4 (4) of the Directive presupposes for subsidiary protection that the complainant has suffered serious harm before his emigration. A forced recruitment for service in war - also by the Taliban - is not per se implicitly inhuman or degrading in the sense of Art. 3 ECHR and does not necessarily mean that serious harm has been suffered. Further details must be established.

### 3. Internal protection alternative

It must be determined whether there is an internal alternative to international protection in the sense of Art. 8 of the Qualification Directive. It must be considered whether the applicant can reach such a place in the country of origin in a safe way and whether he can reasonably be expected to live there.

In practice mainly Kabul and Herat are considered as possible protection alternatives.

When deciding whether a protection alternative exists the individual circumstances of the case must be taken into account (e.g. age of applicant, possibility to find work and accommodation, existence of family ties may be relevant). The Federal Office considers the region around the city of Herat as relatively safe.

## **Protection against deportation according to national law**

Provisions of national law play an important role with respect to protection against deportation. These provisions are not based on EU law. One rule is particularly important for asylum seekers from Afghanistan. According to this rule a foreigner may not be deported to his home country if it is very probable that he would there be exposed to an extremely dangerous situation. That means that the return to the home country would very likely cause the foreigner's death or severe injuries.

Mainly according to this rule and also based on some other provisions of national law 32.5 % of asylum seekers from Afghanistan have been granted protection against deportation in 2010. The mentioned rule presupposes a general danger, but not necessarily an armed conflict.

Some recent decisions assume such a situation in Kabul also for young men depending on the situation of the individual case (e.g. no family ties or social network; prognosis of no sufficient income to pay for feeding and accommodation). The Federal Administrative Court<sup>69</sup> has quashed such a judgment in a pilot decision because of insufficient fact findings and remanded proceedings to the lower court.

## **Difficulties of fact finding**

Fact finding is often difficult in cases on asylum seekers from Afghanistan. Although general information on the situation is available, it may be doubtful whether it is still actual. In addition it is some times difficult to get the actual information concerning a specific area.

There are special problems with respect to the individual situation of the asylum seeker. This concerns for instance the allegation that there are no family members and no relatives and friends in Afghanistan any more. Frequently courts decide based on general credibility criteria as the analysis of possible contradictions in the whole submission of facts of the asylum seeker.

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<sup>69</sup> Judgement of 29 June 2010- BVerwG 10 C 10.09

## **Part 4. Afghanistan: Unaccompanied Minors**





# Unaccompanied Asylum Seekers from Afghanistan at Risk

*by Sabina Catar, Country of Origin Information Unit, Austria*

## Introduction

Afghanistan has approximately 29.8 million inhabitants. Of those 42 percent are children aged 14 years or younger. The average life expectation is 45.02 years.<sup>70</sup> The youth bulge goes along with a high regard of elder people.<sup>71</sup>

## Violence against Children and Adolescents in the Context of Armed Conflict

Children are frequently confronted with the consequences of the current situation and belong to the vulnerable groups.<sup>72</sup> The UN estimates that at least 1,795 children were killed in the armed conflict between 1 September 2008 and 30 August 2010.<sup>73</sup> 2010 was the most violent year since 2001 and the proportion of killed children increased by 55 percent in comparison to 2009.<sup>74</sup> E.g. nine children were recently killed while collecting fire wood. According to news reports the NATO-Helicopters had mistaken them for Taliban.<sup>75</sup> But more Afghan civilians

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<sup>70</sup> CIA – Central Intelligence Agency: The World Fact Book – Afghanistan, 8 March 2011: <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html>; access 17 March 2011

<sup>71</sup> Even RAWA that stresses the equality of all human beings mentions as one of its teaching principles: “- Respect the wisdom and dignity of the elders in every family.”: RAWA - Revolutionary Association of the Women of Afghanistan: RAWA Educational Policy, undated: <http://www.rawa.org/policy.htm>; access 9 March 2011

<sup>72</sup> UNHCR - UN High Commissioner for Refugees: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 17 December 2010, p. 25: <http://www.unhcr.org/refworld/docid/4d0b55c92.html>; access 17 March 2011

<sup>73</sup> UN News Service, Ban calls for greater efforts to tackle child rights violations in Afghanistan, 14 February 2011: <http://www.unhcr.org/refworld/docid/4d637384c.html>; access 8 March 2011

<sup>74</sup> Security Council: Report of the Secretary-General on children and armed conflict in Afghanistan, 03 February 2011, p. 8: [https://www.ecoi.net/file\\_upload/2016\\_1297848548\\_n1121744.pdf](https://www.ecoi.net/file_upload/2016_1297848548_n1121744.pdf); access 11 March 2011

<sup>75</sup> Refer to: The New York Times: Nine Afghan Boys Collecting Firewood Killed by NATO Helicopters, 2 March 2011:

are killed by anti-government groups than by national or international security forces.<sup>76</sup>

During the same period at least nine children were executed as alleged informers sent by international military forces. In June 2010 the Taliban in Helmand publicly killed a seven-year old boy accused of being a spy.<sup>77</sup>

Children also tend to be among the victims of mines and IEDs.<sup>78</sup> 568 children were killed or injured by mines and other arms related explosives between 1 September 2008 and 30 August 2010.<sup>79</sup>

Anti-government forces or other conservative elements might also target especially schools, teachers and school children – particularly girls: “Such attacks have spread throughout the country, with a notable increase in areas around Kabul, Wardak, Logar and Khost, and in the eastern provinces of Laghman, Kunar and Nangarhar. Areas previously

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[http://www.nytimes.com/2011/03/03/world/asia/03afghan.html?\\_r=1&partner=rss&emc=rss](http://www.nytimes.com/2011/03/03/world/asia/03afghan.html?_r=1&partner=rss&emc=rss); access 9 March 2011

<sup>76</sup> Security Council: Report of the Secretary-General on children and armed conflict in Afghanistan, 3 February 2011, p. 8:

[https://www.ecoi.net/file\\_upload/2016\\_1297848548\\_n1121744.pdf](https://www.ecoi.net/file_upload/2016_1297848548_n1121744.pdf); access 11 March 2011

<sup>77</sup> BBC News: UN report says violence against Afghan children growing, 15 February 2011: <http://www.bbc.co.uk/news/world-south-asia-12461474>; access 17 March 2011

Security Council: Report of the Secretary-General on children and armed conflict in Afghanistan, 3 February 2011, p. 8:

[https://www.ecoi.net/file\\_upload/2016\\_1297848548\\_n1121744.pdf](https://www.ecoi.net/file_upload/2016_1297848548_n1121744.pdf); access 11 March 2011

<sup>78</sup> Refer for example to: RFE/RL - Radio Free Europe/Radio Liberty: Roadside Bomb Kills 12 Civilians In Afghanistan's Paktika Province, 6 March 2011:

[https://www.ecoi.net/local\\_link/155985/272720\\_de.html](https://www.ecoi.net/local_link/155985/272720_de.html); access 9 March 2011

AlertNet: FACTBOX-Security developments in Afghanistan, Feb 26, 26 February 2011:

<http://www.trust.org/alertnet/news/factbox-security-developments-in-afghanistan-feb-26/>; access 09 March 2011

<sup>79</sup> UN News Service, Ban calls for greater efforts to tackle child rights violations in Afghanistan, 14 February 2011: <http://www.unhcr.org/refworld/docid/4d637384c.html>; access 8 March 2011

Security Council: Report of the Secretary-General on children and armed conflict in Afghanistan, 3 February 2011, p. 8:

[https://www.ecoi.net/file\\_upload/2016\\_1297848548\\_n1121744.pdf](https://www.ecoi.net/file_upload/2016_1297848548_n1121744.pdf); access 11 March 2011

considered stable, such as Takhar and Badakhshan, are now also affected.”<sup>80</sup>

### **Selling of Children and Kidnapping of Children for Exploitation**

Many boys have to work: for example polishing shoes, collecting trash to sell it or begging. They take any paid job they can get.<sup>81</sup> The dire living conditions of IDP-children make them especially vulnerable to exploitation such as forced labour or sexual assaults.<sup>82</sup>

It occurs that very poor families sell one of their children for the survival of the rest of the family.<sup>83</sup> These children might be put to forced labour<sup>84</sup> or they are sexually exploited: Boys might become “dancing boys”<sup>85</sup> or recruits in anti-government forces (see below). Girls are sold into forced marriages<sup>86</sup> or prostitution.<sup>87</sup>

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<sup>80</sup> UNHCR - UN High Commissioner for Refugees: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 17 December 2010, p. 26: <http://www.unhcr.org/refworld/docid/4d0b55c92.html>; access 17 March 2011

<sup>81</sup> BBC News: The sexually abused dancing boys of Afghanistan, 07 September 2010: <http://www.bbc.co.uk/news/world-south-asia-11217772>; access 11 March 2011

<sup>82</sup> IRIN News - Integrated Regional Information Network / ReliefWeb: AFGHANISTAN: IDP children suffer more than most, 26 November 2009: <http://www.reliefweb.int/rw/rwb.nsf/db900SID/ACIO-7Y6DAL?OpenDocument>; access 11 March 2011

<sup>83</sup> RAWA - Revolutionary Association of the Women of Afghanistan: Slideshow of RAWA Orphanages, undated: <http://www.rawa.org/orphanage.htm>; access 9 March 2011

<sup>84</sup> IRIN News - Integrated Regional Information Network / ReliefWeb: AFGHANISTAN: IDP children suffer more than most, 26 November 2009: <http://www.reliefweb.int/rw/rwb.nsf/db900SID/ACIO-7Y6DAL?OpenDocument>; access 11 March 2011

<sup>85</sup> Frontline: Uncovering the world of "bacha bazi", 20 April 2010: <http://www.pbs.org/wgbh/pages/frontline/dancingboys/view/?autoplay>; access 11 March 2011

<sup>86</sup> UNHCR - UN High Commissioner for Refugees: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 17 December 2010, p. 23: <http://www.unhcr.org/refworld/docid/4d0b55c92.html>; access 17 March 2011

<sup>87</sup> For various purposes of human trafficking applicable to Afghan victims in general and children in particular: UNHCR - UN High Commissioner for Refugees: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 17 December 2010, p. 27: <http://www.unhcr.org/refworld/docid/4d0b55c92.html>; access 17 March 2011

These problems are addressed in “the Law on the Elimination of Violence against Women (2009)” and in article 427 of the Penal Code: “However, implementation of the law remains a huge challenge, as does for example, the need to define what constitutes an act of rape.”<sup>88</sup>

### **“Dancing boys” – bachabaze (“playing with boys”)**

Sexual violence against boys and girls is a massive problem and usually goes unpunished in the few cases where it is reported. There is no specific law against it.<sup>89</sup>

“Dancing boys” forced by poverty or violence against them dance in women’s clothes at parties for wealthy, influential men. Some men take them as constant companions and are seen with the boys in public. The boys are sexually abused. The phenomenon is on the rise although it is condemned by religious authorities. The existence of this practice respectively of its aspect of sexual exploitation is often denied – including by representatives of the police. Still its existence is common knowledge. There are men touring the streets to find young boys (possibly as young as nine years) of vulnerable background. These boys are so poor that they need the meals and the few dollars they might earn for their survival or that of their family. Others are too frightened to flee. Because the perpetrators are (relatively) wealthy and powerful – including members of police and army - many „dancing boys“ assume that there is no help for them.<sup>90</sup> Even one of the few

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<sup>88</sup> Security Council: Report of the Secretary-General on children and armed conflict in Afghanistan, 3 February 2011, p. 10:

[https://www.ecoi.net/file\\_upload/2016\\_1297848548\\_n1121744.pdf](https://www.ecoi.net/file_upload/2016_1297848548_n1121744.pdf); access 11 March 2011

<sup>89</sup> UN News Service, Ban calls for greater efforts to tackle child rights violations in Afghanistan, 14 February 2011: <http://www.unhcr.org/refworld/docid/4d637384c.html>; access 8 March 2011

<sup>90</sup> BBC News: The sexually abused dancing boys of Afghanistan, 07 September 2010:

<http://www.bbc.co.uk/news/world-south-asia-11217772>; access 11 March 2011

The New York Times: Afghans Plan to Stop Recruiting Children as Police, 29 January 2011: <http://www.nytimes.com/2011/01/30/world/asia/30afghan.html?partner=rss&emc=rss>; access 10 March 2011

Frontline: Interview: Radhika Coomaraswamy, 20 April 2010:

<http://www.pbs.org/wgbh/pages/frontline/dancingboys/etc/coomaraswamy.html>;

access 11 March 2011

Frontline: Uncovering the world of "bacha bazi", 20 April 2010:

Afghan journalists writing about the „dancing boys“ does not give names out of fear for his life. Hence, there is no end of this abuse of boys in sight.<sup>91</sup> The practice of “dancing boys” is to some extent tolerated in society and the boys are regarded as status symbols.<sup>92</sup>

### **(Forced) Recruitment of minors**

Minors join armed groups because of poverty and high unemployment. Lacking reliable documentation of birth dates is also part of the problem.<sup>93</sup>

UNHCR is concerned because of the recruitment of minors by the Afghan National Police and the Afghan National Security Forces.<sup>94</sup>

There are reports of sexual abuse of boys by armed groups “across the country”.<sup>95</sup> The government promised to fight child abuse. However, because of the stigma and because of the weak control of commanders by the government next to nothing has been done to tackle the problem.<sup>96</sup> According to the UN “political will” was shown, a committee was formed and Afghanistan would consider introducing laws punishing the recruitment of children.<sup>97</sup>

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<http://www.pbs.org/wgbh/pages/frontline/dancingboys/view/?autoplay>; access 11 March 2011

<sup>91</sup> Frontline: Interview: Nazer Alimi, 20 April 2011:

<http://www.pbs.org/wgbh/pages/frontline/dancingboys/etc/alimi.html>; access 11 March 2011

<sup>92</sup> UNHCR - UN High Commissioner for Refugees: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 17 December 2010, p. 27: <http://www.unhcr.org/refworld/docid/4d0b55c92.html>; access 17 March 2011

<sup>93</sup> IRIN News - Integrated Regional Information Network: Fears over child recruitment, abuse by pro-government militias, 20 January 2011:

[https://www.ecoi.net/local\\_link/153048/268979\\_de.html](https://www.ecoi.net/local_link/153048/268979_de.html); access 10 March 2011

<sup>94</sup> UNHCR - UN High Commissioner for Refugees: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 17 December 2010, p. 25: <http://www.unhcr.org/refworld/docid/4d0b55c92.html>; access 17 March 2011

<sup>95</sup> IRIN - Integrated Regional Information Network: Fears over child recruitment, abuse by pro-government militias, 20 January 2011:

[https://www.ecoi.net/local\\_link/153048/268979\\_de.html](https://www.ecoi.net/local_link/153048/268979_de.html); access 10 March 2011

<sup>96</sup> IRIN - Integrated Regional Information Network: Fears over child recruitment, abuse by pro-government militias, 20 January 2011:

[https://www.ecoi.net/local\\_link/153048/268979\\_de.html](https://www.ecoi.net/local_link/153048/268979_de.html); access 10 March 2011

<sup>97</sup> General Assembly: Annual report of the Special Representative of the Secretary-

Those problems are so substantial that Afghanistan is included on a UN blacklist of countries where child soldiers are used. Beside anti-government groups the Afghan National Police was listed as one of the “Parties that recruit and use children”.<sup>98</sup> However, neither of those organisations is listed among “Parties that commit rape and other forms of sexual violence against children.”<sup>99</sup> Other reports voice these allegations (see below).

Due to the security situation the UN was only able to verify 26 out of 47 allegations of under-age boys recruited by armed groups and the security forces, including the police.<sup>100</sup>

### **Anti-Government Armed Groups**

According to a UN report following anti-government recruit minors: “Haqqani network, Hezb-i-Islamic, Taliban, Tora Bora Front and the Jamat Sunat al-Dawa Salafia”.<sup>101</sup>

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General for Children and Armed conflict, Radhika Coomaraswamy, Distr.: General, 3 September 2010: <http://www.un.org/children/conflict/documents/A-HRC-15-58e.pdf>; access 10 March 2011

<sup>98</sup> General Assembly: Annual report of the Special Representative of the Secretary-General for Children and Armed conflict, Radhika Coomaraswamy, Distr.: General, 3 September 2010: <http://www.un.org/children/conflict/documents/A-HRC-15-58e.pdf>; access 10 March 2011

<sup>99</sup> General Assembly: Annual report of the Special Representative of the Secretary-General for Children and Armed conflict, Radhika Coomaraswamy, Distr.: General, 3 September 2010: <http://www.un.org/children/conflict/documents/A-HRC-15-58e.pdf>; access 10 March 2011

<sup>100</sup> UN News Service, Ban calls for greater efforts to tackle child rights violations in Afghanistan, 14 February 2011: <http://www.unhcr.org/refworld/docid/4d637384c.html>; access 8 March 2011

Also refer to: Security Council: Report of the Secretary-General on children and armed conflict in Afghanistan, 03 February 2011, p. 5: [https://www.ecoi.net/file\\_upload/2016\\_1297848548\\_n1121744.pdf](https://www.ecoi.net/file_upload/2016_1297848548_n1121744.pdf); access 11 March 2011

<sup>101</sup> IRIN - Integrated Regional Information Network: Fears over child recruitment, abuse by pro-government militias, 20 January 2011:

[https://www.ecoi.net/local\\_link/153048/268979\\_de.html](https://www.ecoi.net/local_link/153048/268979_de.html); access 10 March 2011

Also refer to: Security Council: Report of the Secretary-General on children and armed conflict in Afghanistan, 03 February 2011, p. 4:

[https://www.ecoi.net/file\\_upload/2016\\_1297848548\\_n1121744.pdf](https://www.ecoi.net/file_upload/2016_1297848548_n1121744.pdf); access 11 March 2011

Children from IDP families and from communities that have become isolated because of fights in their areas are particularly vulnerable. The groups mentioned above also apply forced recruitment according to an UNHCR report. It is especially common in the South, Southeast and East. Reportedly, armed groups bring kidnapped children even to Pakistan for military training.<sup>102</sup>

These groups also abduct children for other reasons: “Incidents indicate that armed groups abducted children for a variety of reasons, including retaliation, recruitment, ransom, and to pressure an exchange or release of certain individuals detained by the authorities.”<sup>103</sup>

The UN reports cases of children that were used as suicide bombers or they were used to place explosives.<sup>104</sup> A recent example was a child throwing a hand grenade at a convoy of the International Military Forces.<sup>105</sup>

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<sup>102</sup> UNHCR - UN High Commissioner for Refugees: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 17 December 2010, p. 25: <http://www.unhcr.org/refworld/docid/4d0b55c92.html>; access 17 March 2011

For an additional example of reported abductions refer to: Security Council: Report of the Secretary-General on children and armed conflict in Afghanistan, 03 February 2011, p. 5: [https://www.ecoi.net/file\\_upload/2016\\_1297848548\\_n1121744.pdf](https://www.ecoi.net/file_upload/2016_1297848548_n1121744.pdf); access 11 March 2011

<sup>103</sup> Security Council: Report of the Secretary-General on children and armed conflict in Afghanistan, 3 February 2011, p. 11: [https://www.ecoi.net/file\\_upload/2016\\_1297848548\\_n1121744.pdf](https://www.ecoi.net/file_upload/2016_1297848548_n1121744.pdf); access 11 March 2011

<sup>104</sup> UN News Service, Ban calls for greater efforts to tackle child rights violations in Afghanistan, 14 February 2011: <http://www.unhcr.org/refworld/docid/4d637384c.html>; access 8 March 2011

UNHCR - UN High Commissioner for Refugees: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 17 December 2010, p. 25-26: <http://www.unhcr.org/refworld/docid/4d0b55c92.html>; access 17 March 2011

Also refer to: Security Council: Report of the Secretary-General on children and armed conflict in Afghanistan, 03 February 2011, p. 2: [https://www.ecoi.net/file\\_upload/2016\\_1297848548\\_n1121744.pdf](https://www.ecoi.net/file_upload/2016_1297848548_n1121744.pdf); access 11 March 2011

<sup>105</sup> The Afghanistan NGO Safety Office: [https://www.ecoi.net/file\\_upload/1788\\_1299161882\\_the-anso-report-16-28-february-2011-read-only.pdf](https://www.ecoi.net/file_upload/1788_1299161882_the-anso-report-16-28-february-2011-read-only.pdf); access 9 March 2011

In seven cases Pakistani boys were found to be used in military action in Afghanistan. In one case an eleven-year-old was caught with explosives, presumably for a suicide attack.<sup>106</sup>

## **Taliban**

Officially, even the Taliban set a minimum age of 18 or 19 years. However, younger persons were caught in fights and the Taliban approve of a video of a child playing a suicide bomber. Recently, a 14-year old would-be suicide bomber was arrested.<sup>107</sup> The Taliban use children to place IEDs<sup>108</sup> or to perpetrate suicide attacks by indoctrinating, tricking or forcing the children.<sup>109</sup>

## **Afghan (Pro-)Government Forces:**

During the last years there have been major recruitment campaigns which helped unintentionally to increase the problem of recruiting minors.<sup>110</sup> The official age for joining the Afghan security forces is 18 years.<sup>111</sup> Since 24 April 2010 there has been an order prohibiting the

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<sup>106</sup> Security Council: Report of the Secretary-General on children and armed conflict in Afghanistan, 3 February 2011, p. 5:  
[https://www.ecoi.net/file\\_upload/2016\\_1297848548\\_n1121744.pdf](https://www.ecoi.net/file_upload/2016_1297848548_n1121744.pdf); access 11 March 2011

<sup>107</sup> The New York Times: Pashtun Boys' Video Exalts Suicide Raids, 5 March 2011:  
<http://www.nytimes.com/2011/03/06/world/asia/06afghan.html?ref=afghanistan>;  
access 9 March 2011

<sup>108</sup> IRIN - Integrated Regional Information Network: Fears over child recruitment, abuse by pro-government militias, 20 January 2011:  
[https://www.ecoi.net/local\\_link/153048/268979\\_de.html](https://www.ecoi.net/local_link/153048/268979_de.html); access 10 March 2011  
Compare also with the abuse of children by the Taliban in Pakistan: BBC News: Pakistan's youth taken back from the Taliban, 08.10.2010: <http://www.bbc.co.uk/news/world-south-asia-11506006>; access 11 March 2011

<sup>109</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict: Mission Report - Visit of the Special Representative for Children & Armed Conflict to Afghanistan, 20-26 February 2010, p. 5:  
<http://www.un.org/children/conflict/documents/countryvisits/afghanistan.pdf>; access 18 March 2011

<sup>110</sup> Security Council: Report of the Secretary-General on children and armed conflict in Afghanistan, 3 February 2011, p. 4:  
[https://www.ecoi.net/file\\_upload/2016\\_1297848548\\_n1121744.pdf](https://www.ecoi.net/file_upload/2016_1297848548_n1121744.pdf); access 11 March 2011

<sup>111</sup> Security Council: Report of the Secretary-General on children and armed conflict in Afghanistan, 3 February 2011, p. 3:  
[https://www.ecoi.net/file\\_upload/2016\\_1297848548\\_n1121744.pdf](https://www.ecoi.net/file_upload/2016_1297848548_n1121744.pdf); access 11 March 2011



hiring of minors for police service. The order also specifies penalties for recruiters and measures to deal with minors found to be already working in the police.<sup>112</sup>

There are reports that police, army and pro-government forces (e.g. Afghan Local Police) still recruit minors. At least two local elders accuse the community based pro-government militias of sexual abuse of recruited minors.<sup>113</sup> This would be in line with reports linking police and army members having “dancing boys” (see above).

For example, the UN reports of a twelve-year-old working as policeman and of recruitment campaigns on school compounds. The district police of Badakhshan publicly attempted to recruit literate 16-year-old boys and girls.<sup>114</sup>

In reaction to the UN blacklist that includes the Afghan National Police the Afghan government drew up an agreement with the UN promising to end the recruitment of minors by the police.<sup>115</sup> The agreement contains plans to improve birth registration and age identification as

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<sup>112</sup> Security Council: Report of the Secretary-General on children and armed conflict in Afghanistan, 3 February 2011, p. 15: [https://www.ecoi.net/file\\_upload/2016\\_1297848548\\_n1121744.pdf](https://www.ecoi.net/file_upload/2016_1297848548_n1121744.pdf); access 11 March 2011

<sup>113</sup> IRIN - Integrated Regional Information Network: Fears over child recruitment, abuse by pro-government militias, 20 January 2011: [https://www.ecoi.net/local\\_link/153048/268979\\_de.html](https://www.ecoi.net/local_link/153048/268979_de.html); access 10 March 2011  
The concern that minors are still recruited is also mentioned in: Security Council: Report of the Secretary-General on children and armed conflict in Afghanistan, 3 February 2011, p. 4: [https://www.ecoi.net/file\\_upload/2016\\_1297848548\\_n1121744.pdf](https://www.ecoi.net/file_upload/2016_1297848548_n1121744.pdf); access 11 March 2011

<sup>114</sup> Security Council: Report of the Secretary-General on children and armed conflict in Afghanistan, 3 February 2011, p. 6-7: [https://www.ecoi.net/file\\_upload/2016\\_1297848548\\_n1121744.pdf](https://www.ecoi.net/file_upload/2016_1297848548_n1121744.pdf); access 11 March 2011

<sup>115</sup> The New York Times: Afghans Plan to Stop Recruiting Children as Police, 29 January 2011: <http://www.nytimes.com/2011/01/30/world/asia/30afghan.html?partner=rss&emc=rss>; access 10 March 2011  
Also refer to: General Assembly: Annual report of the Special Representative of the Secretary-General for Children and Armed conflict, Radhika Coomaraswamy, Distr.: General, 3 September 2010: <http://www.un.org/children/conflict/documents/A-HRC-15-58e.pdf>; access 10 March 2011

well as punishing recruiters of minors and those who sexually abuse under-age recruits.<sup>116</sup>

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<sup>116</sup> General Assembly: Annual report of the Special Representative of the Secretary-General for Children and Armed conflict, Radhika Coomaraswamy, Distr.: General, 3 September 2010: <http://www.un.org/children/conflict/documents/A-HRC-15-58e.pdf>; access 10 March 2011

## **The child as an Asylum-Seeker - a UK judge's perspective**

*by Andrew Jordan, Judge of the Upper Tribunal, UK*

The appeal process is begun when an appellant disagrees with the decision of the Secretary of State for the Home Department, known as 'the Home Office', refusing his claim to be a refugee. The decision to remove him creates a right of appeal to the Tribunal. It is supported by a letter setting out in detail the reasons why the appellant's claim has been refused. This letter forms the Home Office's argument.

There are two levels of appeal. The First-tier Tribunal hears the appeal and makes findings of fact. Those findings will normally stand in all subsequent appeals. Both sides have a right of appeal to the Upper Tribunal. The appeal lies if the First-tier Tribunal has made an error of law in its decision.

I am a Senior Immigration Judge in the United Kingdom, sitting in the Upper Tribunal dealing with the second level of appeals in immigration and asylum appeals. There are presently about 25 of us working in the Upper Tribunal sitting alone or in panels of 2 or 3. We intervene only if there has been an error of law.

### **Country Guidance cases**

A principal function of the Upper Tribunal is to develop a series of cases where we offer guidance to First-tier Judges when faced with similar generic problems. These are known as country guidance cases and, where the same circumstances apply, they should be followed. The process has been approved by Strasburg as providing a tool by which first instance decision-makers may produce consistent decisions in the assessment of risk. In many cases, the Upper Tribunal will hear several appeals from different judges involving essentially the same point in order to bring together the underlying principles in a single comprehensive judgment.

In the context of Afghanistan, this might provide help in deciding answers to questions often arising in Afghan cases. Some examples might be:

- Is there a risk faced by those who were involved in former regimes, the pro-Communist government or the Taliban.
- Is there a risk faced by those who are opposed to the Taliban?
- If a person is at risk in his home area, can he find safe refuge in Kabul?
- Are children or lone women in a specific risk category?
- Is the level of violence in Afghanistan at such a level to prevent the forcible return of anybody or is the humanitarian situation so poor as to prevent returns?

These principles can be seen in action in a country guidance case issued in 2010 dealing with the situation in Afghanistan: HK and others (minors – indiscriminate violence – forced recruitment by Taliban – contact with family members) Afghanistan CG [2010] UKUT 378 (IAC).

### **The appeal process**

Any decision on the risk of return requires a consideration of three separate parts of the jig-saw puzzle:

First, what is the background information that deals with the country conditions in the country of the appellant's nationality?

Second, what conclusion does the Immigration Judge make about the facts of the appellant's claim? We prefer to make findings of fact on the appellant's claim after we have considered the background material because what might seem an unlikely claim in the United Kingdom, might seem plausible in the context of an understanding of country conditions. (It might seem unlikely that a young girl is telling the truth if she says there are no longer any schools for girls in her home area; it is quite likely to be true in places where the Taliban have closed the schools or prevented girls from attending those that remain.)

Third, (and this is essentially a matter of judgment), an analysis of whether the appellant is at real risk given the facts the Immigration Judge has found as to the circumstances of the appellant's case as assessed by the country conditions known to the Immigration Judge.

In the United Kingdom the process is an adversarial one: the Immigration Judge has to decide the competing claims made by the appellant and his representative on the one hand and the Home Office's representative on the other. It is generally limited to the evidence, including information about country conditions, that the parties decide to submit.

### **Background material**

In every case, the Home Office will provide Country of Origin Service Reports (COIS reports) published by the Research and Development section of the Home Office dealing with country conditions.

The appellant can provide any additional background information and expert reports.

The Tribunal has to consider any policies used by the Home Office in deciding cases of a particular type.

### **The United Kingdom government's policy towards the return of unaccompanied children**

The Home Office has a published policy to the effect that no child (that is, no person under the age of 18) is returned to his country of origin (or the country from which he has travelled) if there are not in place safe and adequate reception arrangements or facilities for his return. As the United Kingdom authorities have not entered into arrangements with any foreign country to provide accommodation or hostel placements for the return of their nationals under the age of 18, a minor who claims he has no family to return to will be permitted to stay in the United Kingdom during his minority.

Hence all minors are granted leave to remain until they are 17½. Why 17½? Perhaps it is to encourage their making arrangements to return, to give them 6 months notice.

This grant of leave is a significant advantage to an asylum-seeker if only because it provides him with a period in which he can forge links with his adopted country.

### **The age assessment**

Hence, there are real incentives for both minors and young adults to advance a claim that they are under 18. Whilst in the United Kingdom, the local authorities in the areas in which they reside are under obligations to provide for their welfare and, where applicable, for their education. With a local authority short of cash, this is not an obligation they take on enthusiastically if the person who claims to be 14 looks 26 and has a well-developed beard. Thus, in accordance with a recognised process of assessment, it is usually the local authority who will first make an age-assessment.

The burden of proof is upon a claimant to establish he is a minor but, in reality, he will only be asked to do so if an examination raises doubts as to his age.

Although the initial assessment will be made by the Home Office or the Local Authority, the age of a claimant is a matter for the court to determine.

### **The evolving practice in relation to cases involving children**

#### ***A The rights of a child whilst in the United Kingdom***

Council Directive 2003/9/EC of 27 January 2003 lays down minimum standards for the reception of asylum seekers. It makes provision for unaccompanied minors at Articles 19.1 and 19.2. 19.1 imposes on Member States a requirement as soon as possible to take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, in other ways. 19.2 provides that unaccompanied minors who make an application for asylum shall be placed with a foster-family or in other ways.

Article 19.3 provides:

"Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her family as soon as possible. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have

remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety."

The United Kingdom authorities have transposed these requirements into domestic legislation. See also the UNHCR Guidelines of 22 December 2009

### **The welfare of the child as a primary consideration.**

Section 55 of the Borders Citizenship and Immigration Act 2009 provides that when carrying out his functions in relation to immigration, asylum or nationality, the Secretary of State must do so

"having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom"

The welfare of the child is not paramount, but it is a primary consideration. It must be weighed together with all other relevant factors, but no other factor is to be treated as inherently more significant than the welfare of the child.

A failure to pay regard to these factors renders the decision of the Secretary of State or the First-tier Tribunal wrong in law.

### ***B. The return of a child to his family***

The Secretary of State has an obligation to take steps to trace the appellant's family.

In the past the courts and tribunals have placed the obligation on the appellant where there were close relatives in Afghanistan who assisted the minor claimant to travel to the United Kingdom. As part of the move towards granting children greater safeguards, the courts have held that the duty is upon the government to ensure a child will be safe on return, not on the claimant to prove he has lost contact with his family.

### ***C. The 'up-grade' asylum appeal***

The Tribunal has long since decided that, a child is capable of being a member of a particular social group for the purposes of the Refugee

Convention and its five-fold categorisation of those subjected to persecution.

A person who has been accepted a minor will be granted leave to remain but also has the right to pursue an asylum claim on the basis that a refugee is entitled to a decision on his claim. A refugee has additional civil benefits if he is recognised as such. Hence this is often known as an 'up-grade appeal'. In many cases, a refugee will after a passage of time be given a permanent right of residence in the United Kingdom.

### **The hypothetical risk of return**

Asylum claims made by minors are conducted on the hypothetical basis as to whether they would be at risk were they to be returned now. (They are not able to pursue a human rights claim because they are not to be returned and are therefore at no present risk.)

It is basic asylum law that a receiving state does not *give* refugee status to an applicant who is found to be at risk of persecution for a Convention reason. Instead, the process is one of *recognition*: if a person is a refugee a government to whom he claims should *recognise* his status as a refugee.

The nature of the appeal is to consider the risk that he would face on return on a hypothetical basis, even though there is no prospect of his being returned. Furthermore, the enquiry is not to treat him as an adult for this purpose but to consider the risks that a child would face. Afghan citizens are returned to Kabul. The first question is, therefore, whether a child is at risk in Kabul. This is unlikely to be a risk derived from the political conflict because Kabul is relatively safe from insurgent groups or the Taliban. It is more likely to be an assessment of the risk faced from exploitation, trafficking or poverty. If the appellant is to travel from Kabul to another part of the country, the method of return is a necessary ingredient in any appraisal of risk.

### **Article 15(c) of the Qualification Directive**

If they fail to establish they are at risk for a Refugee Convention reason but are at risk of serious harm, they will be granted humanitarian (subsidiary) protection. Article 15(c) of the Directive requires the



receiving state to grant protection in circumstances which now include when a person is in fear of a

*"serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict"*

The United Kingdom government has accepted the situation in Afghanistan amount to a *situation of international or internal armed conflict*. In Afghan cases, the dispute centres upon whether an applicant establishes he has an objective fear of a *serious and individual threat to a civilian's life or person by reason of indiscriminate violence*.

Elgafaji (Case C-465/07) defines this concept:

"Individual must be understood as covering harm to civilians irrespective of their identity where the degree of indiscriminate violence characterising the armed conflict taking place reaches such a high level that substantial grounds are shown for believing that a civilian ...would solely on account of his presence on the territory... face a real risk of being subjected to the serious threat" (Elgafaji [35]). "The more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required" (Elgafaji [39]).



## **Unaccompanied minor asylum seekers from Afghanistan – the situation in Sweden**

*by Patrick Alm, Judge, Head of Unit at the Migration Court of Stockholm, Sweden*

### **Statistics**

	2008	2009	2010
Number of unaccompanied minor asylum seekers from Afghanistan	347	780	1.153
Positive decisions from the Migration Board for all asylum seekers from Afghanistan	43%	53%	55 %

During 2010 Sweden has seen the second largest influx of unaccompanied minor asylum seekers from Afghanistan in Europe. The number of asylum seekers is estimated to rise during 2011-2012. During 2008-2009-2010 unaccompanied minors represented 44 – 46 - 48 % of all asylum seekers from Afghanistan. Positive decisions for unaccompanied minor asylum seekers are probably more frequent than for asylum seekers from Afghanistan in general.

### **The asylum procedure**

The Migration Board investigates and decides on asylum applications. Unaccompanied minor asylum seekers are assisted by an appointed legal custodian and an appointed public counsel. If the Migration Board decides to reject the application, the applicant can appeal to a Migration Court. Depending on where the decision was taken, the Migration Court in Stockholm, Gothenburg or Malmö considers the appeal. The appeal process includes a consideration of whether a residence permit shall be granted on any grounds. The Migration Board is counterparty to the applicant during these proceedings. The court has a duty to ensure that the case is examined sufficiently. Both parties has a duty to present relevant country of origin information. The court can also, on its own motion, add such information to the case. If the Migration Court also rejects the application, an appeal can be made to

the Migration Court of Appeal which, however, only decides on cases where a leave to appeal has been granted.

### **Expulsion**

A decision of expulsion is normally taken together with a decision to reject an asylum application. The appeal process includes a consideration of the question of expulsion. If a decision on expulsion enters into force, the asylum case can be reopened if the applicant invokes new circumstances of protection which can be assumed to constitute an impediment to enforcement. The Migration Board also has the possibility to grant a residence permit if there are new medical or other special grounds. Before an expulsion of a child is enforced, the Migration Board has to consider whether the child could be reunited with his or her family or relatives or whether any authority could answer to the needs of the child. The former Tripartite MoU between Sweden, Afghanistan and UNHCR in return of Afghans has not been extended after 30 April 2009.

### **Refugees**

The provision concerning refugees in Swedish law, Chapter 4 Section 1 of the Aliens Act, corresponds to Article 1.A 2) of the Refugee Convention and Article 2 b) of the Qualification Directive. The Swedish provision also includes two more persecution grounds, "gender" and "sexual orientation". The refugee provision is rarely applied in relation to unaccompanied minor asylum seekers from Afghanistan.

### **Subsidiary protection**

Chapter 4 Section 2 of the Aliens Act regulates persons eligible for subsidiary protection as follows

"1. there are substantial grounds for assuming that the alien, upon return to the country of origin, would run a risk of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment, or as a civilian would run a serious and personal risk of being harmed by reason of indiscriminate violence resulting from an external or internal armed conflict, and

2. the alien is unable or, because of a risk referred to in point 1, unwilling to avail himself or herself of the protection of the country of origin.”

Chapter 4 Section 2 corresponds generally to Article 15 of the Qualification Directive. Unaccompanied minor asylum seekers from Afghanistan invoke sometimes individual reasons that fall under the first part of Chapter 4 Section 2.1. This can be reasons of family conflicts, land disputes and conflicts with war lords or Taliban. With respect to the second part of this provision, the Migration Board has declared in February 2010 that there is an internal armed conflict in ten provinces (Kandahar, Helmand, Uruzgan, Ghazni, Zabul, Paktika, Paktya, Khost, Kunar and Farah). The Migration Board has been of the opinion that the situation in these provinces meets the Elgafaji criteria, so that all persons from these provinces are in need of international protection. The Migration Court in Stockholm has, as far as I am aware, made the same assessment as the Migration Board.

### **Persons otherwise in need of protection**

Chapter 4 Section 2a of the Aliens Act regulates persons otherwise in need of protection as follows

“1. needs protection because of an external or internal armed conflict or, because of other severe conflicts in the country of origin, feels a well-founded fear of being subjected to serious abuses.”

The provision of Chapter 4 Section 2.a on internal armed conflict has not, as far as I am aware, been applied in relation to Afghanistan following the entry into force of the Qualification Directive. The provision on severe conflict is applied in situations when, for example, the general situation in a country, or a part of a country, is not as severe as an internal armed conflict but when State authorities cannot impartially protect the basic human rights of the citizens. The application of the provision requires that there is a casual connection between the severe conflict and the abuses. The Migration Board has declared, in February 2010, that the situation in the remaining 18 provinces of Afghanistan, except for Herat, Balkh, Bamyan, Takhar, Badakshan and Panisher, meets the criteria for severe conflict. The Migration Court in Stockholm has, as far as I am aware, made the same assessment regarding these provinces. The provision on severe conflict

is sometimes applied in relation to minor asylum seekers. If so, considerations are made with respect to the individual reasons, to whether the minor belongs to an exposed group as well as to the severity of the situation in the actual province.

### **Other aspects of the right to protection**

Generally, neither Afghan or international authorities and organizations nor clans can be expected to protect asylum seekers against an individual or general risk. Furthermore, an internal flight alternative is not possible for unaccompanied minor asylum seekers from Afghanistan unless they can be reunited with their family. This follows from the abovementioned declaration of the Migration Board. As far as I am aware, the Migrations Court in Stockholm has made the same assessments in these respects.

### **Humanitarian grounds**

Chapter 5 Section 6 of the Aliens Act includes a provision based on humanitarian grounds, whereby factors like the applicants health, adaption to Sweden and situation in the home country can be taken into account and lead to a permanent residence permit. There is a quite narrow interpretation of this provision for adults, but the requirements for persons under 18 years (minors) are a bit more generous.

### **Concluding remarks**

The Migration Courts decides in individual cases on how the general situation in the provinces shall be considered. The abovementioned declaration of the Migration Board has been an important starting point for these considerations. As outlined before, the number of unaccompanied minor asylum seekers from Afghanistan continues to rise in Sweden and a large number of the applications is also granted. A critical factor for the Migration Board is the possibility to clarify the age of the applicant. The cases that arrive to the Migration Courts do not often include complicated assessments of the individual risk. More frequent are considerations of whether there is sufficient information on the whereabouts of the family of the minor. In these aspects the credibility of the applicant in general and in particular when it comes to his or her family is critical. If it is clarified that the minor has no family

that can support him or her in Afghanistan, a residence permit on humanitarian grounds is normally granted.





## Separated, asylum-seeking children in European Union Member States

*by the European Union Agency for Fundamental Rights<sup>117</sup>*

This report [*“Separated, asylum seeking children in European Union Member States”*] examines the experiences and views of separated, asylum seeking children and those of adults responsible for their care across 12 European Union Member States. It addresses the need to incorporate children’s views and accounts of their experiences into work that seeks to inform policy action. The FRA research results fill a gap in current knowledge about how separated, asylum-seeking children from different national, ethnic, religious and cultural backgrounds live in the European Union, by asking them directly about their opinions and experiences. It is based on fieldwork research which was outsourced to the International Organization for Migration (IOM). The fieldwork research included 336 separated children from different countries – mainly originating from Afghanistan (22%), Morocco (just over 10%), Somalia (also just over 10%) and Iraq (9%) – as well as 302 adults responsible for assisting or working with these children, comprising care workers, social workers, teachers, psychologists, health specialists, legal guardians, legal practitioners, government officials – including law enforcement officers – interpreters and researchers. The fieldwork was carried out during 2009 in Austria, Belgium, Cyprus, France, Hungary, Italy, Malta, the Netherlands, Poland, Spain, Sweden and the United Kingdom.

According to the United Nations (UN) Convention on the Rights of the Child (CRC), a child temporarily or permanently deprived of his or her family environment shall be entitled to special protection and assistance provided by the state. The latter shall ensure alternative care for such a child in accordance with national laws and, when

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<sup>117</sup> The Executive Summary and Opinions are taken from the report “Separated, asylum seeking children in European Union Member States; Comparative Report, November 2010” upon agreement with the European Union Agency for Fundamental Rights Agency. Reproduction is authorised, except for commercial purposes, provided the source mentioned above is acknowledged.

considering solutions, due regard must be given to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background. The CRC also requires states to take appropriate measures to ensure that asylum-seeking and refugee children, unaccompanied or accompanied by their parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of their rights.

On 3 June 2010, the Council of the European Union, in its conclusions on unaccompanied minors invited the European Commission to assess whether EU legislation on unaccompanied minors offers them sufficient protection. The Council asked the Member States to monitor the quality of care provided for them in order to ensure that "the best interest of the child is being represented throughout the decision-making process".

This report complements the parallel study of the European Migration Network (EMN) regarding policies on reception, return and integration arrangements for and numbers of unaccompanied minors; seen together, the ERN study and FRA report provide significant added value assisting ongoing policymaking at EU and national level.

## **Key findings:**

### **Accommodation**

The children had experienced various forms of accommodation, but preferred smaller facilities. Adults agreed that these are better suited to their needs. Large centres are often overcrowded and do not always provide adequate living and sanitary conditions for children. Forms of closed accommodation and detention centres, as well as hotels and hostels, are not suitable, and mixing children with adults was seen by the adults interviewed as entirely inappropriate. The children's experiences of foster care varied; older children, however, preferred semi-autonomous living in small scale accommodation facilities. While children mostly preferred to stay in or close to a big city, most adults were concerned about the risks they could face in that type of location.

Children often complained about the quantity and quality of food, the inflexible timing of lunches and dinners, and their cultural

appropriateness. In some countries, adults shared these concerns. Children liked to have access to kitchen facilities and pocket money to buy their own food.

### **Social workers**

Children were on the whole satisfied with the care and support provided by social workers, sometimes expressing great appreciation for the affection they showed towards them. Adults suggested that the number, qualifications and training of social workers should be improved.

### **Healthcare**

Children had mixed experiences of healthcare. Most were satisfied with the medical treatment and the behaviour of medical staff. However, problems identified included lack of medical screening upon arrival, insufficient attention to health complaints, and, in one case, denial of specialist medical treatment. A need for better interpretation was also identified, in particular concerning psychological support. Some girls noted that their preference for female doctors was not always accommodated. Interpretation and intercultural mediation often only relied on the support provided by social workers, foster parents and other persons of trust. Children had rarely asked for psychological support. Many children claimed that they were not aware of its availability and adults noted the need for better psychological support.

### **Religion and cultural norms and values**

Children's cultural norms and values were not always taken into consideration with regard to food, health and schooling, as well as in the context of the conduct of legal procedures concerning them, including the asylum interviews. For many children, religion was an important source of motivation and support, and they were satisfied to be in an environment where they could practice their religion freely. Some children complained, however, that their religious needs were neglected, for example, those regarding food or availability of spiritual support.

### **Recreation and leisure**

Children and adults saw recreational activities, and in particular sports, as vital activities and a source of strength, but opportunities for these

varied between and within countries. Access to television and internet were mentioned as important and affordable sources of information and entertainment, allowing children to have news of their home country, but sufficient access was not always available.

### **Education and training opportunities**

Children appreciated education and wanted to attend school. Their experiences, however, varied; those who had learnt the language and attended normal classes with local children were more satisfied. Children complained about the limited information provided on educational possibilities. Adults noted difficulties in school enrolment and some schools were reportedly reluctant to take these children while lacking the resources to provide the special support the children needed. Adults were also concerned about regular school attendance, suggesting the need for better monitoring. They noted that special educational and psycho-social support was essential.

Children often asked for more intensive language tuition, so that they could transfer quickly to normal schools. Children who needed to support their families were sometimes frustrated attending school and preferred to work even in low-paid, unskilled jobs, although they were aware of the benefits of education. A number of children preferred vocational training, to “learn a trade”, but in some countries access to training was prevented due to the requirement of a work permit. Most children wanted to work, mainly after finalising their education. Some children were or had been working irregularly in order to cover their own needs or to support their families, or simply “to take their mind off their problems”. Some children were allowed to do chores for pocket money.

### **Social interaction and experiences of racism**

Children wanted to interact more with peers from the host country, because this gave them a sense of „belonging“ and improved their language skills. Some, however, indicated that they felt more comfortable with people from their own country or ethnic group.

It is important to note that children in foster families or living independently found it easier to develop relations with peers from the host country. Children in other placements complained of practical barriers, including lack of money for transport or leisure activities, or an

early evening curfew. Many children had experiences of racist behaviour and discrimination, usually in public places, and according to adults, influenced by prejudice against migrants and asylum-seekers.

On the whole, adults considered children's social integration as a positive step, although some were skeptical about the idea of integrating older children who may soon be entering adulthood and returned to their home country.

### **Legal guardianship and legal representation**

Many children were not fully aware of the responsibilities of a guardian or even whether they had one or who this was. Even some adult respondents – not guardians themselves – were unsure of a guardian's role; for example, if this entailed only legal or also welfare support. There was often reference to delays in assigning a guardian.

The frequency and quality of contact between guardians and children varied. A significant number of children were satisfied and wanted a more personal relationship with their guardian – an issue that adult respondents also thought was important for a child's well-being.

Children and adults were often critical of the role of legal representatives, advisers and counselors, suggesting that they should be better trained and qualified, and stressing the need for adequate interpretation.

### **Age assessment**

Children feared and were critical of age assessment procedures. Some children had little information about them, others considered age assessment as unfair, and most wished that officials would "simply believe them". Children were often distressed about the possibility of being perceived as "liars".

Age assessment procedures are not standardised across the European Union. Adults noted that the conduct of age assessment examinations is not based on common standards within EU Member States; on the whole, they were not satisfied with current procedures, expressing doubts about their reliability and objectivity.

## **Family tracing and reunification**

Many children were in contact with family members and most said that they wish to be reunited with their family in their host country, although this rarely occurs. Some children, however, did not want to contact their families, because they had been mistreated or neglected by them in the past.

Not all children were aware of possibilities for family tracing or reunification or how or where to request them and most children who asked for family reunification were unhappy with the outcome due to a number of obstacles, including the length of the procedure.

Children and adults expressed reservations about family tracing considering, on the one hand, the possible negative impact on the asylum claim and, on the other hand, the risks family members may face. In addition, some children feared learning bad news about their families.

## **The asylum procedure**

The information provided to children was not always drafted or communicated in a child-friendly way. Children were frustrated by the limited time allocated to discussing their case with legal advisers and many said that they lacked information on the specific role of the different persons involved in the asylum procedure and, in particular, the interviews.

Most respondents claimed that the asylum process often takes a very long time to conclude due to the large number of asylum applications coupled with the limited availability of trained and qualified staff. Some adult respondents supported the idea of processing children's applications on a priority basis. However, accelerated procedures need to include procedural safeguards in regard to the quality of the examination.

The asylum interview was seen by most children as a form of "interrogation", despite steps to make them feel comfortable. The formality of the setting or the presence of unknown persons upset children and many expressed the wish to have a person they trust attend their interviews. Children also had negative experiences with interpreters, who did not always speak their dialect and, in some cases,

expressed doubts about their impartiality. Adults noted that the selection of the interview questions or the assessment of the children's responses was not always sensitive to the children's cultural background and some children complained that questions were designed to "catch them out" rather than to establish facts. Some children said that they had been questioned about their own traumatic experiences in a way that frightened them.

The "final decision" is a very emotional issue for the children and, according to several adult respondents, a negative decision is experienced as a real trauma. Many children believed that decisions are subjective and arbitrary, and some interpreted a negative decision as a personal failure.

### **Detention**

Five children were interviewed while in detention in the Netherlands. Others spoke of their experiences of detention for minor offences or to check their identity, and some children were detained upon arrival until their age was established. Some of the children, whose movement was restricted on grounds of their own protection against trafficking, also said that they felt „detained“.

### **Maltreatment and abuse**

A small number of respondents spoke about maltreatment or abuse in rather general terms. Some children spoke about specific experiences of physical abuse during their journey and some considered „not being taken seriously“, being pressured by officials or considered „liars“ as forms of abuse.

When asked about help and support in cases of maltreatment or abuse, most children said that they would turn to a social worker, but could not say if and how they were encouraged to report abuse cases. Many adults were satisfied that existing general complaint and support provisions for abused children would protect them adequately. Some adults, nonetheless, questioned if these children would report abuse, fearing how it may impact on the outcome of their asylum claim.

### **Turning 18**

The transition from childhood to adulthood is a difficult process particularly for separated, asylum-seeking children who have to

struggle with many problems. Provision of care, living conditions and legal options change significantly from the moment they legally become adults, but practices differ between EU Member States in the management of this transition phase. Young people whose legal status was not decided by the time they turned 18 and those whose application for asylum was rejected face a great risk of drifting into an irregular status.

Children who had received a positive decision on their asylum application were more optimistic about their future options. A significant number of children were unaware of the consequences of reaching the age of majority and how this would affect their housing, support, living conditions, education and work opportunities. However, most children expressed concern and anxiety about where they would stay after turning 18 and whether they would be able to continue their education or find work. Many adults shared the same concerns.

## **Opinions**

The following opinions highlight key aspects of protection regarding the living conditions, as well as legal issues and procedures concerning separated, asylum-seeking children in EU Member States identified in this report. These and other important aspects are outlined in greater detail in the concluding considerations of each section.

### **Accommodation and social workers support**

Separated, asylum-seeking children should be placed in adequate accommodation and under care in accordance with their best interests, identified on the basis of a thorough assessment of their needs, which must be regularly reviewed. Younger children should preferably be placed in the care of adult relatives or with foster families from their own culture, following a thorough assessment of their suitability. Older, more mature children should be placed in suitable, preferably semi-autonomous small group accommodation, with due regard to their need for privacy, under the supervision of adequately trained social workers. The placement of separated children together with adults not responsible for their care is not suitable, including placement in hotels and hostels, or other forms of rented private housing. The provision of adequate facilities is particularly important with respect to children



requiring special care, and particularly the protection or treatment of their physical or mental health.

The care provided to separated, asylum-seeking children should be comparable to that provided to children holding the citizenship of the host country, including the appropriate ratio of qualified social workers to allow for individualised care.

### **Access to health and education**

A thorough health assessment of separated, asylum-seeking children to attend to their health needs should be conducted as soon as possible upon their entering into contact with authorities, while ensuring their informed consent. The results of this assessment should in no way influence or affect negatively the outcome of the asylum claim. Access to adequate healthcare must be guaranteed to all children without discrimination and irrespective of their legal or other status.

In compliance with the relevant EU legislation, access to education must be guaranteed to separated, asylum-seeking children under similar conditions as for country nationals. In order to be able to make adequate choices, child-friendly information on educational possibilities should be provided as soon as possible to these children in a language that they understand. The children should be consulted on educational possibilities.

Educational authorities and schools should be adequately resourced to provide special educational and psychosocial support to separated, asylum seeking children, particularly as regards language training.

Separated, asylum-seeking children should benefit from appropriate access to vocational education and training; a flexible approach to work permit requirements should be applied, in so far as the children can meet educational and language requirements.

### **Legal guardianship and representation**

Every separated, asylum-seeking child and his/her carers should receive adequate and easy to understand information about the possibilities to complement the child's limited legal capacity and the various forms of representation of the interests of the child available under the domestic legal system. A legal guardian should be provided to every separated, asylum-seeking child as soon as possible.

Persons assigned legal guardianship duties, as well as any other persons in charge of safeguarding the child's best interests, should be provided with appropriate training and support to carry out their functions adequately. Where necessary, the support of professional interpreters should be provided in order to facilitate close and frequent communication between the child and his/her legal guardian or other representative.

Adequate legal representation, advice and counseling, as well as free legal aid, as appropriate, should be provided to separated, asylum-seeking children and their legal guardians or other representatives, in the context of legal procedures, as soon as possible, in order to ensure fair access to justice.

The exercise of legal guardianship and other representation functions should be monitored through regular and independent assessments, by judicial authorities for instance.

### **Detention**

Separated, asylum-seeking children should never be detained for reasons relating to their residence status, or their lack of it, or the conditions of their entry in an EU Member State. Detention should only be applied where this is in the child's best interests, and with similar conditions and safeguards as for children having the citizenship of the respective state.

In EU Member States where detention is used for the purpose of removal, there is a need to scrupulously respect all safeguards provided for in Article 17 of the Return Directive, that is, to: apply detention only as a measure of last resort and for the shortest appropriate period of time; provide accommodation in institutions provided with personnel and facilities that take into account the needs of children; offer the children the possibility to engage in leisure activities, including play and recreational activities; and provide the children with access to education.

## **Part 5. Afghanistan: Return**



# **Enforced Return and Assisted Voluntary Return to Afghanistan in Germany**

*by Corinna Wicher, Head of Section 213, Temporary Protection, Support of Voluntary Return, Information Centre Return Support, Liaison Office, Federal Office for Migration and Refugees, Germany*

## **Introduction**

This paper provides at first with an overview of the distinction between enforced return and assisted voluntary return by Germany. Then it shows some statistics concerning enforced return to Afghanistan and gives examples of challenges which occurred during the implementation of enforced return to Afghanistan in the past. At last, this paper contains some information on the approach of assisted voluntary return in Germany in general and with a focus on Afghanistan.

Germany has a distinct separation between voluntary and enforced return. Since Germany has a federal system some competences are placed within the federal authorities, others within the regional government of the 16 federal states (*Länder*).

## **Return and Assisted Voluntary Return**

**Enforced return** places the power of decision with the immigration authorities, which are not part of the federal administration, but are subject to the instructions of one of the 16 Federal *Länder*. The competence of the immigration authorities for measures under residence and passport law is regulated by the Residence Act. The immigration authorities issue deportation orders and carry out the deportations.

Depending on the scope of the cases different authorities are involved: the Federal Police (=Coordination Unit of the Federation for Returns-Related Matters), the *Länder* police forces, and, in the event of detention awaiting deportation, the Interior or Justice Departments of the *Länder*. Responsibility for the organisation and implementation of enforced return does not lie in the mandate of the Federal Office.

**Assisted voluntary return** is one of the essential elements of German migration policy.

Programmes of assisted voluntary return are offered by various institutions like the Federal Office for Migration and Refugees, the federal *Länder* and NGOs. Voluntary return is not explicitly regulated by law and is only defined in the Residence Act (*Aufenthaltsgesetz*) as a task of the Federal Office for Migration and Refugees. According to the Residence Act, the Federal Office manages the Federation's funding for programmes to promote voluntary return.

Voluntary return in Germany is treated with priority compared to enforced return.

Voluntary return opens the possibility to terminate residence in Germany without a conflicting situation for a person obliged to leave the country. Furthermore, it offers a humane, sustainable and safe alternative to removal. It is based on a well informed decision by the returnee and it offers a quick solution compared to enforced return. Aliens obliged to leave, as well as those who wish to return to their home countries for other reasons, are to be offered prospects.

The aim here is to provide security and a sustainable situation in the returnees' home country.

### **Statistics**

In the year of 2010, a total number of 24 Afghan refugees were deported from Germany (9 Afghan nationals in the 1<sup>st</sup> Quarter, 15 Afghan nationals in the 2<sup>nd</sup> Quarter of 2010). All of them were men. 11 persons – therefore barely half of the total number – were Afghan nationals convicted for a criminal offense in Germany.

In comparison to this, from a total number of **41.332** first applications in 2010, **5.905** applications were filed from Afghan nationals. Regarding the total number of 5.007 decisions concerning applications from Afghan nationals, **2.382** applications were dismissed by the Federal Office.

Afghanistan ranked 1st place (14,3 %) from all first applications filed in 2010.

On 31 Dec. 2010, there were **1.580** Afghan nationals in Germany who were required to leave Germany. The main reason for the small number of enforced returns of Afghan refugees is the unstable situation concerning the internal security in Afghanistan.

## **Challenges**

In the past, diverse problems occurred during the implementation of enforced return to Afghanistan. The reasons for these problems were for instance that

- the Russian Airline TRANSAERO offered a new routing to Afghanistan
- forced returns with the Afghan airline ARIANA were only possible via Istanbul
- Turkish authorities only granted admission for transit transportation in case of police escort
- regardless of the decision of the Federal Office, administrative courts often affirm obstacles to deportation in favor of Afghan nationals who are required to leave Germany (therefore, the number of Afghan nationals who were required to leave Germany was lower than the number of dismissed applications)

From 2002 until July 2004 and from May 2005 until May 2006 the Federal Office supported a return project in Afghanistan ("RANA") which was implemented by IOM. Within the framework of the community actions 2005 of the European Refugee Fund, the Federal Office submitted a project proposal "Co-ordinator for Returns to Afghanistan" in May 2006. The project partners were France, Netherlands, Austria and Switzerland.

The purpose of the project was the promotion of voluntary return of Afghan nationals residing within the EU States. In this respect, it was intended to deploy a Co-ordinator for Returns to Afghanistan, whose job it was to ascertain the possibilities of initial accommodation until the returnee is able to travel onward to his or her native town, be present at the airport in order to greet returnees upon their arrival, provide advice for them (e. g. search for employment, vocational training), to arrange contacts with governmental and municipal bodies and with NGOs active in Afghanistan and to monitor the progress of

returnees and/or the return process. After this project was selected for support in September 2006 and the grant agreement was signed in December 2006, it had been due to several circumstances – including the development in Afghanistan – that obstacles occurred in implementing the project. Even after the European Commission agreed to suspend the implementation of the project for the period from Sept. 2007 till May 2008, the general security in Afghanistan did not improve. Rather, many aid organizations revised their safety regulations and restricted the movement of their co-workers as a reaction to abductions and attacks. The Federal Office realized that the coordinator would be considerably restricted in his project activities due to limited free movement because of the security situation. Therefore, the Federal Office decided to stop pursuing the project.

### **Assisted Voluntary Return in Germany**

In the following a short general introduction on the promotion of voluntary return in Germany will be followed by some specific information and statistics on assisted voluntary return to Afghanistan.

The Basic-Programme for assisted voluntary return is the REAG/GARP-Programme (**R**eintegration and **E**migration Programme for **A**sylum Seekers in **G**ermany / **G**overnment **A**ssisted **R**epatriation Programme). The original REAG-Programme – which offers travel assistance including the costs of transportation and a small travel aid – was supplemented in 1989 by the GARP-Programme, which offers a start-up aid for nationals from specific country groups. Since 2002, both programmes are combined into one programme, the so called REAG/GARP-Programme.

In addition to that, the Federal States/local authorities/NGOs offer separate support programmes.

The ZIRF-Database (Information Centre for Voluntary Return = **Z**entralstelle für **I**nformationsvermittlung zur **R**ückkehrförderung) contains a variety of information on voluntary return.

The REAG/GARP-Programme is jointly funded and coordinated by the Federal Office and the Federal States. The practical implementation (like travel preparations, flight bookings, support in acquiring travel documents, paying travel and start-up assistance) is carried out by IOM



(The International Organisation for Migration) on behalf of the Federal Office and the Federal States.

The programme offers the following financial aids:

#### **REAG – Aid**

- Costs of Transportation
- Travel Aid

#### **GARP – Start-up Aid**

- Fixed payment
- Assistance for returnees from specific countries of origin relevant in the field of migration
- Amount depends on the country of origin (3 country groups)

→ GARP start-up assistance may not be granted to persons who got a deportation order. Travel expenses may be granted if the departure would otherwise be delayed.

The following persons are entitled to benefit from the programme:

- **Asylum Seekers** (including rejected aliens)
- **Recognised Refugees**
- **Other Refugees** – status granted by international public law, humanitarian or political reasons
- **Victims** of forced prostitution and of human trafficking
- **Other Aliens** under particular circumstances

The benefits are granted only to persons who are without own financial means. However, the beneficiaries have no legal entitlement to the benefits.

Under these conditions, nationals from Afghanistan can get the following REAG-financial aid:

- **Costs of Transportation**  
→ In case of transportation by airplane, train or bus, the actual arising travel expenses can be refunded.

→ In case of transportation by car, a fuel contribution of **250 €** is paid.

- **Travel Aid**

In addition to that, the programme includes a travel aid of **200 €** for adults and **100 €** for children up to the age of 12 years.

Because of the high relevance of Afghanistan in the field of migration in Germany, the GARP– Start-up aid for Afghan nationals include **750 €** for adults and **375 €** for children up to 12 years.

In the year of 2007 3.437 persons left Germany under the REAG/GARP-Programme while in 2008 there were only 2.799 persons. Whereas in 2009 the Federal Office counted 3.107 returnees under REAG/GARP, in 2010 the number of returnees went up to 4.507 which means an increase of 1.400 persons compared to the previous year.

In this context, the numbers of assisted returnees to Afghanistan between 2007 and 2010 are relatively low. In 2010, 83 Afghan nationals left Germany with REAG/GARP-assistance.

The TOP TEN states of origin have remained largely unchanged during the recent years. The TOP TEN countries of assisted voluntary returns in Germany in 2010 were Serbia (980), Iraq (487), Kosovo (377), Macedonia (535), Russia (207), Turkey (164), China (179), Azerbaijan (174), Vietnam (177) and Iran (96). In this context, Afghanistan was on the 11<sup>th</sup> place (83) in 2010.

### **ZIRF – The Information Centre for Voluntary Return**

The ZIRF is placed within the Federal Office for Migration and Refugees in the field of Assistance for Voluntary Return and was established in 2003.

The objectives of the ZIRF are the provision, collection, preparation and transfer of information on voluntary return for authorities (especially for foreigners' registration offices), other institutions involved and persons interested in voluntary return.

As a main instrument of the ZIRF, the ZIRF-Database was set up in 2004. The ZIRF-Database is available to all authorities and counselling centres as well as to the public via the links [www.zirf.eu](http://www.zirf.eu) or <https://milo.bamf.de> and has been enhanced constantly.

Information is provided on topics related to:

- assisted return in general
- information on the existing promotional services and programmes of the Federation, the *Länder* and the local authorities
- information on countries of origin and
- a list of all counselling centres countrywide

The database was expanded in 2006 by including the **ZIRF Counselling** component which is financed by the Federation and the *Länder*.

ZIRF Counselling contains **Country Fact Sheets** in German, English and in relevant national languages. It also includes the possibility to raise specific **individual enquiries** from persons interested in returning (for example: the possibility of obtaining specific medical treatment or medicine at home, housing situation, etc.).

Currently, there are Country Fact Sheets for 29 countries of origin available. They provide information on:

- 34 General Information
- Economy and Labour Market
- Housing
- Health
- Education
- Activities and contact person from local NGOs and International Organizations

Individual enquiries can be asked for every country via Email ([ZIRF-Counselling@bamf.bund.de](mailto:ZIRF-Counselling@bamf.bund.de)).

If an individual request is sent to the ZIRF-Counselling via email it will regularly be answered within two to three weeks by IOM. After the request is answered by IOM and sent back to our ZIRF-Counselling office, an anonymous version of every answered request is uploaded to the ZIRF-Database for public access. In the year of 2010, 258 enquiries were answered (4 enquiries for Afghanistan, all concerning medical care).

The enquiries are classified into 7 topics: Health Care, Job Market, Housing, Social Concerns, Public Administration, Education and Vulnerable Groups. Various topics in one enquiry are possible. As you can see on the chart, most requests deal with Health Care (33 %), followed by Social Concerns (23 %), Housing (19 %), Job Market (15 %), Education (6 %), Public Administration (2 %) and Vulnerable Groups (2 %).

In 2011, the following ZIRF-developments are planned:

- Optical transformation of the ZIRF-Database to a **Homepage**
- Access to **English Homepage** ([www.zirf.eu](http://www.zirf.eu) or [www.bamf.de](http://www.bamf.de))
- Continuation and development of **information exchange** with other partners and institutions (Forum - ZIRF)

## **Assisted Voluntary Return and Reintegration to Afghanistan**

*by IOM International Organization for Migration*<sup>118</sup>

### **Assisted voluntary return and reintegration – the IOM approach**

IOM's assisted return activities have become an indispensable part of ensuring the integrity of regular migration. They are part of a comprehensive approach to migration management, which includes timely asylum adjudication, effective removals of irregular migrants, regular migration options and accurate public information on those options. When implemented quickly, they can also be an effective deterrent to irregular migration. Assisted Voluntary Return and Reintegration (AVRR) advantages all players on the origin-transit-destination spectrum: for the migrant it is a humane alternative to deportation; for the country of destination it is more cost effective and administratively expedient than forced return; and for the country of origin, and its bilateral relations with the country of destination, it is politically more palatable and less sensitive than the return of émigrés "in shackles" whilst significantly facilitating the reintegration of their nationals. For migrants who seek, or need, to return home but lack the means to do so, AVRRs are often the only solution to their immediate plight. Lack of support for migrants for a safe and speedy return can have grave consequences for the migrants, and at the same time place heavy socio-economic burdens on destination and transit countries' asylum and social welfare systems.

AVRRs have been operating for already three decades now, beginning with the German REAG programme. In the past 10 years, AVRRs have assisted more than 400,000 thousand migrants to return safely to over 160 countries of origin – many of them from Europe. Those assisted include any person abroad requiring the humane and cost-effective support of IOM, such as unsuccessful asylum seekers, irregular migrants, stranded migrants, and victims of trafficking. As migration becomes more complex, there is also increasingly a need for

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<sup>118</sup> March 2011

international brokering of cooperative approaches between origin, transit and destination countries. IOM has established some multilateral fora to foster effective partnerships on return migration. With its global network of over 420 field offices in more than a hundred countries of origin, transit and destination, IOM is well placed to develop and manage these comprehensive approaches to voluntary return migration.

### **Types of AVRR Programmes and Projects**

At present, IOM implements more than 25 AVRR regular programmes and some 100 projects worldwide.

IOM operates three types of AVRR programmes:

- general return assistance for irregular migrants, unsuccessful asylum seekers, refugees and others wishing to return from the host country;
- specific return and reintegration assistance tailored to the needs of certain groups (e.g. nationality, vulnerable groups, etc.);
- assistance to migrants stranded en route.

Additionally, there are a variety of initiatives that support these AVRR programmes including outreach to potential returnees, enhanced return counselling and information services and reintegration support, as well as capacity building of states and NGOs in AVRR.

The assistance provided to returnees in IOM's programmes is spread out to cover a number of activities conducted at different stages of implementation. There may be differences between programmes, but the essential elements of a standard AVRR are threefold:

Pre-departure stage – information dissemination and counselling, provision of return-related, origin country information, medical assistance (e.g. medical examinations and documentation), and transport assistance arrangement including travel documentation.

Transportation stage – departure assistance (including travel and reinstallation allowances), transport (movement coordination, transit assistance, unaccompanied baggage, documents and formalities) and medical assistance (pre-embarkation medical checks and medical escorts).

Post-arrival stage – reception, inland transport, health-related support, disbursement of return or re-installation grants, reintegration assistance (often in cooperation with local entities, and non-governmental organizations) as well as monitoring follow-up.

Reintegration assistance is critical to facilitating sustainable returns for all parties – the migrants, and host and origin countries. Unless the factors that compelled people to emigrate by irregular means in the first place are addressed, a substantial number of returnees will not stay in the country of return, but will continue pursuing migration options in the face of unsustainable living conditions at home.

### **Types of reintegration assistance**

Reintegration assistance can range from pocket money upon return, to limited, one time reinstallation grants at the micro-level to a variety of social and economic assistance measures, provided directly to the migrants or, in the form of institutional assistance at the macro-level, to the communities of return in the country of origin.

Targeting communities of return, rather than just the individual returnees, may involve longer-term, structural and development aid. This can help avoid variations in individual assistance packages, which, if attractive enough, can be a pull factor for further irregular migration.

Reintegration assistance is critical in developing countries of origin or in post-conflict situations such as in Afghanistan, where there is a dire need of assistance for reconstruction and stabilization. Reintegration assistance can help the migrant's reinsertion into the society and, if linked to structural aid measures, assist recovery and reconstruction of the country. Returning migrants can either be 'mainstreamed' within ongoing structural assistance measures or – as in the case of the return and reintegration of qualified nationals – be employed in reconstruction and rehabilitation programs funded by the international community or the returning government.

### **IOM in Afghanistan**

Afghanistan became IOM's 105th member state in 2004. IOM has been working in Afghanistan since 1992 and has several offices there, including a Head Office in Kabul as well as sub-offices in Badakshan, Gardez, Herat, Kandahar, Kunduz, Mazar-I-Sharif, Bamyan, and

Jalalabad – all dedicated to assisting people who have returned to Afghanistan. In addition IOM works in partnership with other organizations throughout the country.

With almost 20 years' presence in Afghanistan, IOM has solid experience and effective operational structures in place. Currently, IOM has several projects in support of the country's rehabilitation and reconstruction process.

In 2003, the European Commission set up a joint programme for the reception and reintegration of voluntary returnees to Afghanistan from EU member states. The "Return, Reception and Reintegration of Afghan Nationals to Afghanistan" (RANA) programme was designed to complement existing national AVR programmes by providing extended reception and reintegration assistance in Afghanistan. In addition to host country-specific cash grants, reintegration options for returnees consisted of training, job referral and on the job training. In late 2004 a grant to start up a small business was added as an option for reintegration assistance. The assistance package also included medical assistance, in-country transportation and temporary accommodation as needed. In an effort to contribute to community development, the project also provided livelihood assistance to vulnerable community members including orphans and widows.

The programme ended in April 2007, by which time nearly 2,100 voluntary returnees from 12 EU countries had been assisted through RANA. In addition almost 2,000 involuntary returnees from EU countries had received temporary accommodation, transportation and referrals to reintegration assistance. In total, 1,092 returnees (both voluntary and involuntary) received longer-term reintegration assistance. Of these, about three quarters opted for small business support.<sup>119</sup>

Currently, IOM implements a variety of national AVRR programs in Afghanistan, e.g. for Sweden, Switzerland, Denmark, Netherlands (REAN Plus), Norway (IRRANA).

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<sup>119</sup> Hunzinger, Laurence (2007): *Return, Reception and Reintegration of Afghan Nationals to Afghanistan*. External Evaluation, Final Report, European Union/International Organization for Migration, July 2007.



Since 2000, just over 7,000 migrants have been assisted to return to Afghanistan from Europe with the help of IOM.



## **Annex 1: Agenda Afghanistan Conference**

### **Conference on Afghanistan** *Agenda*

**31.03.2011 – 01.04.2011**

**Austrian Federal Ministry of the Interior**

**Grosser Festsaal**

**Minoritenplatz 9**

**1010 Vienna, Austria**

**Thursday, 31.03.2011**

**09:00 – 09:30      *Registration***

**09:30 – 10:00      *Welcome statements by***

*Mathias Vogl, Director-General Legal Affairs, Austrian  
Federal Ministry of Interior*

*Helmut Hörtenhuber, Constitutional Court of Austria*

*Robert Visser, Executive Director, European Asylum  
Support Office (EASO)*

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**Panel 1:**

**Afghanistan, country of origin of asylum applicants in European  
countries - general part**

**Moderation**

*Martijn Pluim, International Centre for Migration Policy Development,  
Director Eastern Dimension*

**Historical Overview of the conflict in Afghanistan**

*Christoph Erisman, Country Analyst at the Federal Office for Migration  
(FOM), Switzerland*

**Migration trends from Afghanistan**

*Martin Hofmann, International Centre for Migration Policy  
Development, Programme Manager*

**Security situation in Afghanistan**

*Barbo Helling, Senior Adviser/Regional Adviser at the Norwegian  
Country of Origin Information Centre*

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## **Profile of Afghan asylum applicants – case study Austria**

*Monika Potkanski, Social Researcher, Austrian Integration Fund*

## **Afghan - asylum applications, unaccompanied minors and decision making in Europe**

*Mike Bisi, Temporary Desk on Iraq*

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**12:00 – 13:30**    **Lunch Break (provided)**

**13:30 – 15:00**    **Panel 2**

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### **Panel 2: Refugee protection in Afghan asylum cases**

#### **Moderation**

*Susanne Giendl, legal expert at the Austrian Supreme Administrative Court*

#### **Country of Origin Information on groups at risk - state officials**

*Martin Schmidt, Country of Origin Information Unit, Austria*

#### **Country of Origin Information on groups at risk - women**

*Antero Leitzinger, Country of Origin Information Unit, Finland*

#### **Decision practice on groups at risk – case study the Netherlands**

*Carolien Giesen, Refugee Judge, the Netherlands*

#### **Decision practice on groups at risk – case study Austria**

*Judith Putzer, Asylum Court, Austria*

#### **UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan with special focus on groups at risk**

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*Béatrice Ureche, UNHCR, Division of International Protection, Legal Consultant*

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**15:00 – 15:30    *Coffee Break***

**15:30 – 17:00    *Panel 3***

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**Panel 3: Subsidiary protection in Afghan asylum cases**

**Moderation**

*Gerald Dreveny, Austrian Ministry of Interior*

**The humanitarian situation**

*Martin Schmidt, Country of Origin Information Unit, Austria*

**Decision practice on subsidiary protection – case study Hungary**

*Dudás Dóra Virág, Judge at the Municipal Court of Budapest*

**Decision practice on subsidiary protection – case study Germany**

*Otto Mallmann, Presiding Justice at the German Federal Administrative Court (retired)*

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**Friday, 01.04.2011**

**09:00 – 10:30    Panel 4**

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**Panel 4: Unaccompanied Minor Asylum Seekers from Afghanistan**

**Mike Bisi**

*Project Co-ordinator, Temporary Desk on Iraq*

**Minors at risk in Afghanistan**

*Sabina Catar, Country of Origin Information Unit, Austria*

**Decision practice on unaccompanied minor asylum seekers from Afghanistan – case study UK**

*Andrew Jordan, Senior Immigration Judge of the Upper Tribunal (Immigration and Asylum Chamber)*

**Decision practice on unaccompanied minor asylum seekers from Afghanistan – case study Sweden**

*Patrik Alm, Judge, Head of Unit at the Migration Court of Stockholm*

**The situation of the Unaccompanied and Separated children in the EU and their position vis-à-vis the asylum procedure**

*Maria Estebanez, Fundamental Rights Agency*

**10:30 – 11:00    Coffee Break**

**11:00 – 12:30    Panel 5**

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## **Panel 5: Return of denied Afghan asylum seekers**

### **Moderation**

*Gernot Resinger, Austrian Ministry of Interior*

### **Return to Afghanistan in practice**

*Corinna Wicher, Head of Section 213, Temporary Protection, Support of Voluntary Return, Information Centre Return Support, Liaison Office, Federal Office for Migration and Refugees, Germany*

### **Return to Afghanistan in practice**

*Francine Vernaud Safavi, Country of Origin Information Unit, Federal Office for Migration, Switzerland*

### **Voluntary Return in practice**

*Andrea Götzelmann, Project Coordinator, Assisted Voluntary Return and Reintegration Unit, IOM Vienna*

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**12:30 – 13:00    Summary and Closing of the Conference**



## Annex 2: Description of Panelists

### Conference

### on asylum related questions regarding Afghanistan

### Description of panelists

**Andrea Götzelmann** works as a project coordinator for various projects at IOM Vienna. She is responsible, *inter alia*, for the coordination of a project providing assistance in the voluntary return and reintegration of returnees to the Chechen Republic of the Russian Federation. Ms. Götzelmann holds a degree in Political Science and English from the University of Vienna.

**Andrew Jordan** is a Senior Immigration Judge. He was an advocate for most of his working life. In 2000 he was appointed to hear immigration appeals and was appointed to the next level of the appeal Tribunal in 2003 hearing appeals from the Tribunals below on points of law only and deciding cases that offer guidance to immigration judges about country conditions and specific risks faced by asylum-seekers. For some years, he has sat on a panel advising the United Kingdom authorities on the quality of country information used by the Home Office (who make the original decisions).

**Antero Leitzinger** is researcher within the COI unit of the Finnish Immigration Service since 1998. His specialization is Central Asia, Middle East (excluding Iraq), and North Africa. He holds a doctor of political science from Turku University, with earlier studies in Helsinki and Zürich and with a special expertise on Finnish immigration history. He is the author of several books (travel guides, history and politics) and articles (about early immigrants to Finland, about the Islam, etc.). He currently works on a book on the Uyghurs.

**Barbo Helling** is Senior Adviser/Regional Adviser at the Norwegian Country of Origin Information Centre. She is responsible for information on Afghanistan and Pakistan. In November 2010 she went on a Fact Finding Mission to Kabul.

**Béatrice Ureche**, a legal consultant with the Division of International Protection, United Nations High Commissioner for Refugees (UNHCR), has been working in the field of international refugee and human rights law, at national and international levels, for the past nine years. Since joining UNHCR, in June 2007, Béatrice Ureche has drafted country-specific policy positions, including eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan, Eritrea, Ethiopia, Pakistan and Sri Lanka. From 2005-2007, Béatrice worked as a Legal Researcher with the UK Asylum and Immigration Tribunal and acted as a Contributing Editor for the Immigration Appeal Reports. In 2004, she coordinated an investigation into human rights violations perpetrated against non-Albanian ethnic minorities in Kosovo during the clashes of March 2004. From 2002-2004 she served as a legal officer in the Special Court for Sierra Leone. Béatrice is qualified lawyer in Massachusetts, USA, and Quebec, Canada."

**Carolien Giesen** is a judge, since 1999. She works at the court of Amsterdam. She has been working as a criminal court judge and as an investigating judge. Currently (since 2008) Carolien Giessen works in the section of the court that treats administrative-law cases, among which cases of asylum seekers. She is chairman of the national consultative council of all the court-sections that treat asylum cases.

**Christoph Erismann** studied history and philosophy at the University in Berne. He works for the Federal Office for Migration (FOM) in Switzerland since 1986 as the responsible analyst for Asian countries with the main focus on Sri Lanka and Afghanistan.

**Corinna Wicher** is working since 2006 with the Federal Office for Migration and Refugees in Germany. After working in the integration and the human resource department she took over the section for Temporary Protection, Support of Voluntary Return, Information Centre Return Support and Liaison Office in 2008. She is also responsible for Resettlement and Relocation Procedures.

**Dóra Virág Dudás** graduated in law in 1997 in Hungary and since then has been working at the Municipal Court of Budapest. As an administrative judge she deals, among other areas of law, with asylum and migration cases. She coordinates the judicial work of Hungarian asylum judges, lectures and publishes in this field in Hungary and internationally. Dóra Virág is a member of the International Association

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**Francine Vernaud Safavi** has been working at the Federal Office for Migration since 1991. From 1991 till September 2010 she was a specialist in the Asylum Procedure, mainly for Maghreb countries and some Asian countries, namely Afghanistan and Sri Lanka. Since the reorganization of the Federal Office for Migration in September 2010 she is a specialist in the Asylum and Return Procedures.

**Gerald Dreveny** since 2004 is working in the field of asylum: at first as a legal officer at the Austrian Federal Asylum Office, then for three years as the head of the Country of Origin Information Unit and since 2009 as the deputy head of the department for asylum and care within the Federal Ministry of Interior. He represents Austria for the preparation of new legal acts in the field of asylum in the respective working groups of the Council of the European Union.

**Gernot Resinger** works since 2004 in the Austrian Federal Ministry of Interior and is head of the return unit. He is group leader for the working group on migration and return at the Council of the European Union and is national contact point to the Contact Committee for the Return Directive at the European Commission.

**Judith Putzer** is Judge at the Asylum Court in Vienna, Austria, since 1998. She is member of Chamber C of the Court which, among other countries of origin of asylum seekers, is responsible for asylum appeals of Afghan citizens. Judith Putzer is co-author of a manual on the Austrian asylum law and published several articles on international and national refugee law.

**María Amor Martín Estébanez** is a Programme Manager of Legal Research at the Department of Equality and Citizen's Rights of the European Union Agency for Fundamental Rights (FRA). Previously she was a legal officer at the Legal Services, Office of the Secretary General, of the Organization for Security and Co-operation in Europe (OSCE), and prior to that a consultant for the Council of Europe, OSCE High Commissioner on National Minorities and several NGOS. She has also been a lecturer of International Law for the Foreign Service Programme at the University of Oxford and a researcher and project manager at the Institute for Human Rights of the Abo Akademi University (Finland).

**Martijn Pluim**, presently Director, Eastern Dimension started his career in ICMPD in 1999. Having worked on issues as diverse as asylum, border management, Roma migration, the Budapest Process and source country information, he presently is also in charge of ICMPDs policies in the areas of Illegal migration and Return, Trafficking in Human Beings and Border Management. In addition to his work in ICMPD, he is member of the EU Group of Experts on Trafficking in Human Beings

**Martin Hofmann** holds a university degree in Political Science with a focus on European Integration, the Political System of the European Union and the Austrian Political System at the University of Vienna. At the International Centre for Migration Policy Development (ICMPD) he functions as programme manager for legal migration and integration. He has coordinated and worked in several EU and national funded projects in the area of migration, migration management and integration. His work has focused on comparative studies and publications in the areas of immigration, irregular migration, human smuggling, integration, asylum and migration policy development in the national and European context. Moreover, he has worked as main researcher for the ICMPD secretariat of the Budapest Process, a consultative forum of more than 50 Governments and 10 international organisations, aiming at developing comprehensive and sustainable migration management systems in the wider European context.

**Martin Schmidt** is COI expert of the Austrian Federal Asylum Office since May 2009. He is responsible for Afghanistan and Iran. In 2010 he went on a Fact Finding Mission to Kabul. He is the author of several reports about the security situation, minorities in Afghanistan and Afghan refugees in Iran.

**Mike Bisi** has a long track of working experience in international relations since 1992. As Project Co-ordinator of the Temporary Desk on Iraq (TDI), he is currently working with European governments, the European Commission and other stakeholders to establish a network, strategy, initiatives and tools to enhance practical cooperation on data, asylum, resettlement and return with regard to the Iraqi caseload. The tools on Data and Asylum have recently been extended to Afghanistan, Russia and Somalia with a view to developing generic tools for other caseloads.

**Monika Potkanski** is sociologist. She works for the Austrian Integration Fund dealing with research on migration and integration. As a co-author for the publication „AfPak“, she conducted an extensive research on the Afghan diaspora in Austria.

**Otto Mallmann** has been working as an Administrative Court Judge for about 30 years, during the last years until September 2010 as Presiding Justice at the German Federal Administrative Court dealing with law of migration and law of asylum cases. In addition he was an “ad-hoc-judge” at the European Court of Human Rights in a number of cases. For 10 years Dr Mallmann has been the German delegate at the Consultative Council of European Judges (CCJE), an advisory body of the Council of Europe. Publications and lectures in Germany and abroad mainly concern matters of administrative law (e.g. law of migration and law of asylum), data protection (based on his experience as head of section at the Data Protection Commissioner of Hessen 1980/81), requirements of the European Convention on Human Rights and EU Law.

**Patrick Alm** is a Refugee judge since five years, dealing mainly with asylum seekers from Afghanistan and Iran. Since one and a half year he is the Head of Unit at the Migration Court of Stockholm. He has previous experiences in civil and criminal courts, practiced law in a business law firm as well as EU and procedural law legislation in the Ministry of Justice and the Ministry for Foreign Affairs.

**Sabina Catar** is a country expert for the Middle East in the Country of Origin Unit of the Federal Asylum Office Austria.

**Susanne Giendl** is an independent human rights consultant with specialisations in asylum, migration and election related issues. In 2010, she was the Human Rights, Gender and Minorities Analyst for the EU Election Assessment Team (EUEAT) in Afghanistan, earlier that year the Legal Analyst for the EUEAT Iraq. She has also worked in many other missions abroad over the years, and as the head of the Asylum and Migration Department at Caritas Austria and member of the Caritas Europe Migration Commission from 2005-2006. When not abroad or otherwise seconded, Ms. Giendl works as a legal expert at the Austrian Supreme Administrative Court, mostly in asylum and migration issues

