



For the urgent attention of:

Home Office
Foreign, Commonwealth and Development Office
Ministry of Defence
Members of Parliament

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Dear Sir or Madam,

AFGHANISTAN: Urgent briefing on actions required to facilitate the effective evacuation, resettlement and immediate protection of Afghan citizens

We write as organisations active in refugee protection and immigration work, and gravely concerned about the critical situation in Afghanistan, to urge the UK to take immediate steps to ensure the urgent and efficient evacuation, resettlement and protection of people at risk of persecution in Afghanistan following the seizure of the country by the Taliban. This is particularly important given that the Taliban has also indicated that all international troops must pull out by 31 August 2021¹.

The Afghanistan and Central Asian Association and ILPA

The Afghanistan and Central Asian Association works with Afghans and Central Asians living away from their homeland, providing the support, skills and knowledge to live and prosper in the UK. The Association is currently fielding enormous numbers of contacts from people at risk in Afghanistan and their family members in the UK. It has direct experience of the risks faced by such individuals and the current obstacles preventing their route to safety.

The Immigration Law Practitioners' Association (ILPA) is a professional association and registered charity, the majority of whose members are barristers, solicitors, advocates and OISC regulated advisers practising in all aspects of immigration, asylum and nationality law. Many of its members are currently engaged in advising British and Afghan nationals on legal routes to safety and are able to report on the significant difficulties arising in practice.

Persecution in Afghanistan

The reality of persecution in Afghanistan is unfolding at extreme pace. The Taliban is reported to have been "*intensifying the hunt*" for perceived "*collaborators*"; to have been carrying out house-to-house searches even in Kabul; to have jostled, hit and spat on former US embassy staff at Taliban checkpoints and daubed their homes with paint to identify them, even while the fragile truce remains during final

¹https://www.euronews.com/2021/08/23/afghanistan-biden-says-kabul-airlift-may-be-extended-as-evacuations-accelerated?fbclid=IwAR0_kPAhz4QqTax5nevkscWP0ai-Yw9EjUo1oyb-hWCy1OE6F8Sjl_OZ_CE (23 August 2021)

evacuation². There are already cogent reports of persecution, torture and killings. A group of UN Special Rapporteurs and experts recently called for urgent action to prevent *"the slaughter of civilians"*, noting that *"the Taliban's military offensive has been marked by a relentless campaign of direct targeting of civilians, civil society and journalists, summary executions, assassination of human rights defenders, arbitrary detention, mass executions of civilians, and unlawful restrictions on the human rights of women and girls"*; also commenting that as the Taliban has overrun Afghanistan, it has *"engage[d] in acts that may amount to war crimes and crimes against humanity"*³. Meanwhile ongoing conflict and further indiscriminate violence loom⁴. The UN High Commissioner for Refugees has called on all countries (i) not to remove any Afghan back to Afghanistan; and (ii) to allow fleeing Afghan civilians access to their territories in light of the *"rapid deterioration in the security and human rights situation"*, and *"the risk of human rights violations against civilians"*⁵.

The terror and abuse described by international agencies are reflected in the accounts of Afghan nationals approaching legal representatives for advice on routes to safety from persecution. We stress that the risks in Afghanistan are not limited to those working directly with UK forces but include all those associated with the UK's broader democratic mission in Afghanistan and other vulnerable groups as set out below. In light of the immediate needs we are witnessing, we make the following urgent calls on the government and its agencies.

1. Facilitate immediate efforts to increase evacuations and resettlement

The Afghanistan and Central Asian Association, ILPA and other organisations are being inundated with enquiries from Afghan nationals at risk and their family members in the UK seeking safe and legal routes for them to escape danger and persecution. One of the main issues we are hearing from Afghans is the difficulty in exiting the country; visa application centres are closed in Afghanistan, as are the borders. There is an urgent need to step up evacuations and safe, legal routes to protection. This needs to happen immediately: it is possible that thousands of Afghan citizens face a clear threat of harm or death from the Taliban before they can even be considered for resettlement. The logistics of safely exiting the country will only get harder as the security situation deteriorates increasing the importance of opening routes to protection and clear guidance on accessing these. The concrete measures below offer a starting point.

² Reuters, *'Taliban are rounding up Afghans on blacklist'* (15 August 2021); BBC, *'Afghanistan: Taliban carrying out door-to-door manhunt, report says'* (20 August 2021); Sky News, *'Afghanistan: Taliban are searching people's houses in Kabul, says female MP who has chosen to stay'* (19 August 2021); Independent, *'Afghan staff at US embassy trying to flee Kabul report being marked with paint by Taliban who follow them home'* (23 August 2021). The Taliban has ominously commented that if the international troops are not out by 31 August 2021, this would be *"a clear violation"* (BBC, *'Taliban say deadline move 'a clear violation''* (23 August 2021))

³ OHCHR, *'Afghanistan: UN experts urge swift global action to protect human rights and prevent 'civilian slaughter''*. "We are outraged by the wanton attacks on civilians, the targeting of independent journalists and media, and the violence being directed at women and girls including the imposition of strictures on their capacity to function in any independent way in society, which is entirely inconsistent with the dignity and rights of women and girls. Today, reports from 16 provinces continue to show that the majority of women are experiencing the same rights violations as 20 years ago at the control of the Taliban". In Badakhshan and Takhar, Taliban leaders have issued a directive to local religious leaders to provide them with a list of girls over the age of 15 and widows under the age of 45 for 'marriage' to Taliban fighters (Independent, *'The world must not look away as the Taliban sexually enslaves women and girls'* (22 August 2021)).

⁴ Tolo News, *'Local Forces Retake 3 Districts From Taliban in Baghlan'* (21 August 2021); BBC News, *'Anti-Taliban resistance group says it has thousands of fighters'* (23 August 2021).

⁵ UNHCR, *'Position on returns to Afghanistan'* (August 2021).

2. Increase the capacity of UK government staff and facilities to assist Afghans at risk

It is imperative that as many people as possible are able to access timely evacuation from Afghanistan.

There is a need to urgently deploy more government staff to receive telephone enquiries on its emergency assistance line. Advisers have reported that individuals can wait for over four hours to be put through and have been cut off whilst awaiting assistance.

The telephone lines must also be made free or charge for national and international calls. People in Afghanistan are currently spending huge sums of money on telephone cards to use the line and there is no guarantee they will continue to be able to access telephone credit.

A facility should also be established to enable family members in the UK to submit email applications for family reunion where such family are at risk and the UK is the most appropriate country of refuge. This has a precedent in the 1990 Somali Family Reunion Policy during the then breaking crisis in the Horn of Africa⁶. The situation here is even more acute with clearly vulnerable categories of people being at high risk of immediate harm.

3. Expand the categories of people eligible for assistance with evacuation and resettlement and ensure they are supported to access protection

The UK government has announced priority assistance to the following categories of person though it is unclear what assistance, if any, is being offered in practice towards evacuation.

The groups identified include current or former Chevening scholars; people with existing leave or an open application for a visa; journalists and those who worked with British news agencies; members of civil society groups for women's rights; Afghan government officials; officials working in counter-terrorism and counter-narcotics; and employees of charities, humanitarian organisations and NGOs. The UK's priorities for assistance must include all those at risk from their involvement in the democratic mission and in need of assistance and therefore include human rights defenders, lawyers and judges, musicians, artists and poets, academics and educators; as well as those who face real and imminent threats of persecution from the Taliban such as women, children, the LGBTQI+ community, civilians perceived to have supported the Afghan government or forces, members of minority religious groups, and the Hazara minority ethnic group. All people in these categories of risk and need for assistance must be prioritised for urgent and effective evacuation along with their families through facilitated and expedited processes.

The Afghan Relocation and Assistance Policy ("ARAP") is an existing Home Office programme designed to resettle Afghan nationals and their families who have supported British efforts in Afghanistan. It is necessary to ensure that the scope of the policy is broadened to ensure that it does not just cover 'direct' employees but also those working for contractors and UK-funded projects.

⁶ In recognition of the fact that many of those who were displaced by the war in northern Somalia were unable to get to a diplomatic post to apply for family reunion, ministers agreed in September 1998 to introduce a concession whereby the UK sponsor could present the facts of the case here so that as far as possible visa applications could be determined before applicants set out on difficult and hazardous journeys. The special arrangements were considered an important facility for those Somalis who could not apply for visas overseas in the normal way. They are referenced in a Home Office letter to Tower Hamlets Law Centre of 17 May 1990, available at https://www.refworld.org/cases,GBR_HC_QB,3ae6b6560.html

In all schemes, it is necessary to broaden the scope of evacuation and resettlement assistance and criteria to ensure that individuals at risk may be accompanied or joined by their family members. Culturally, Afghan households are multi-generational and the current restriction of programmes to ‘immediate family’ excludes extended family members who are in reality dependent on the male head of household and main applicant⁷. Ineligibility for immediate evacuation and timely access to resettlement leaves applicants’ close family members at risk of destitution and as easily identifiable targets for retribution from the Taliban. It also leaves nationals eligible for relocation feeling unable to leave to escape persecution for fear of what will happen to their remaining family in Afghanistan.

4. Facilitate additional safe legal routes for evacuations and access to protection

There is an urgent need to open safe and legal routes to protection from Afghanistan. Many people, particularly women and girls, will be unable to move freely in Afghanistan to access safe havens or protection. As specialist immigration practitioners, we are aware that existing routes for family reunion can be used and expanded to process applications for visas from those people at risk in Afghanistan with family members in the UK. Such routes should be expanded to facilitate family reunion for a broader category of family members than currently eligible and to relax the existing criteria for sponsorship of family members from abroad. Again, there is precedent for the same (see above). Such applications must be considered under an expedited process.

It is essential that these and other viable routes for applying for entry clearance to the UK from Afghanistan facilitate applications from home without having to approach embassies or engage in dangerous travel and with a reduced evidential burden in light of the danger of obtaining or retaining documents under the current insurgency. The UK must also work to guarantee safe passage from Afghanistan for people seeking protection (see further below).

5. Accelerate the establishment of the resettlement scheme and expand its scope

The government has announced the Afghan citizens resettlement scheme proposing to resettle 20,000 Afghan refugees over the next 5 years. Given the scale of the crisis in Afghanistan and the real and present danger, we urge the UK to begin operating the scheme now and to accelerate its work to ensure immediate help to the largest possible number of people at risk, removing any cap on annual or total numbers to ensure that applications are based on humanitarian need rather than quotas. Moreover, the figure of 20,000 appears to have been arrived at by reference to the Syrian Vulnerable Persons Resettlement Scheme (VPRS) but fails to take any account of the respective size of the populations of the countries concerned or the relative proportion of the population in need.

6. Grant protection to Afghan nationals arriving in the UK whatever their means of arrival

From earlier this year, the Home Office has routinely applied ‘inadmissibility’ rules to asylum applicants who have arrived in the UK via third countries, restricting their access to protection procedures. These people face the threat of removal, and long and distressing delays before they are granted secure status and the chance to rebuild their lives. In light of the catastrophe in Afghanistan, no Afghan should be made to endure this. The Home Office should grant refugee status or humanitarian protection to all Afghans without delay in recognition of their protection needs. Again, there is precedent for this by reference to the Exceptional Leave to Remain (“ELR”) policies in place

⁷ In *AS (Safety of Kabul) Afghanistan CG* [2020] UKUT 00130 (IAC), the Upper Tribunal accepted the evidence of Dr Liza Schuster on the wide repercussions that the loss of a breadwinner has on the wider family in a society without social security (see §64, §203).

for Afghan nationals from January 2001 until 18 April 2002 before the Taliban were ousted by the allied military operation.

7. Grant protection to Afghan nationals living in the UK and ensure no returns

Equally pressing is the treatment of Afghan nationals currently in the UK who will already be experiencing unimaginable suffering, worrying about their family members in Afghanistan and the fate of their country. Afghans with pending asylum applications should be granted refugee status and access to family reunification immediately.

The Home Office should also proactively concede Afghan asylum and human rights appeals pending before the First-tier Tribunal (Immigration and Asylum Chamber), notify the President of the First-tier Tribunal of this position in response to his encouragement of an early indication of the Home Office position on appeals generally⁸. The Home Office must also undertake not to adjourn pending asylum appeals and ensure that these are heard without delay where status cannot otherwise be conceded.

For those living in the UK without status or who are appeals rights exhausted, their asylum/protection claims should be urgently reconsidered and at the very minimum a grant of limited leave to remain with the right to work made pending the final resolution of their claims. We would request a facility enabling people to contact the Home Office by email. The ability to submit fresh claims by email should also be reinstated for this group.

Return to Afghanistan is not feasible and we therefore ask for a commitment to the ending of returns to Afghanistan for the foreseeable future. Since no safe returns are possible, Afghan nationals held in immigration detention must be immediately released.

8. Support NGOs and organisations working to help people at risk in Afghanistan

The scale and speed at which this humanitarian crisis is unfolding is unprecedented. Given the number of individuals in need of protection, we call on the government to make funding immediately available to organisations working on the evacuations and resettlement efforts to ensure that those most in need area able to quickly and safely access protection and assistance.

We also urge the government to support NGOs, firstly by agreeing that any existing budgets can be reallocated to provide assistance to people seeking safety from persecution in Afghanistan and, secondly, by confirming that informal financial arrangements outside the banking system (which is liable to collapse if not collapsed already) will not be challenged by the Charity Commission or other UK authorities where there is no evidence of deliberate abuse.

9. Address practical obstacles on the ground in Afghanistan

There is an urgent need to ensure that all efforts towards evacuations and resettlement are practical and accessible. We have liaised with human rights and humanitarian practitioners in other jurisdictions who are engaged with the evacuation on the ground in Kabul. From these discussions,

⁸ Message to IAC Stakeholder Groups – Afghan Appeals, 19 August 2021

the following points have been raised which we ask are considered in order to maximise the effectiveness of the UK's efforts to evacuate and resettle those in need of protection:

- The establishment of humanitarian corridors or routes to safety to allow people safe passage out of the country via Kabul airport and/or bordering States. Any Afghan person attempting to flee Afghanistan now faces Taliban checkpoints and the real risk of harm.
- Ensuring military personnel at Kabul airport have a full understanding of eligibility criteria for assistance and coordinate effectively with their counterparts, following reports that personnel are turning people away at Kabul's airport gates if they are not citizens of the relevant country, even if they have all the necessary paperwork, and placing them at increased danger.
- Centralisation and sharing of clear information on eligibility criteria for evacuation and protection to other states, lawyers and civil society organisations to facilitate their assistance to people on the ground in Afghanistan.
- Effective coordination between States active in managing airport evacuations as contradictory information is reaching Afghan nationals depending on the national branch they approach causing fear, uncertainty and confusion.
- Urgent collaborative action with other States and international bodies to mitigate the humanitarian disaster looming in Afghanistan.

10. Engage proactively with the UK's Afghan community

We urge you to work proactively with Afghanistan communities in the UK, including the Afghanistan and Central Asian Association and other Afghan charities, who offer unparalleled knowledge and analysis as well as a direct link to information on the ground. The Afghanistan community is an important part of British society and it is essential to listen to their voices and engage with their expertise.

Conclusion

We urge the UK government to take these steps to respond urgently to the crisis that is unfolding. We are ready to provide every assistance in securing protection for Afghans at risk and look forward to your confirmation of the actions taken in each of these areas.

Yours faithfully,

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