



**Upper Tribunal  
(Immigration and Asylum Chamber)**

AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130(IAC)

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19 and 20 November 2019 and  
14 January 2020**

**Decision & Reasons Promulgated**

.....

**Before**

**UPPER TRIBUNAL JUDGE BLUM  
UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**AS  
(ANONYMITY DIRECTION MADE)**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation**

For the Appellant: Ms Naik QC, Mr Toal and Ms Loughran, Counsel instructed by J D Spicer Zeb Solicitors

For the Respondent: Mr Singh QC, Counsel instructed by the Government Legal Department

## COUNTRY GUIDANCE

### ***Risk on return to Kabul from the Taliban***

- (i) *A person who is of lower-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in Kabul.*

### ***Risk of serious harm in Kabul***

- (ii) *There is widespread and persistent conflict-related violence in Kabul. However, the proportion of the population affected by indiscriminate violence is small and not at a level where a returnee, even one with no family or other network and who has no experience living in Kabul, would face a serious and individual threat to their life or person by reason of indiscriminate violence.*

### ***Reasonableness of internal relocation to Kabul***

- (iii) *Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout many other parts of Afghanistan) it will not, in general, be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul and even if he does not have a Tazkera.*
- (iv) *However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above. Given the limited options for employment, capability to undertake manual work may be relevant.*
- (v) *A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return. A person without a network may be able to develop one following return. A person's familiarity with the cultural and societal norms of Afghanistan (which may be affected by the age at which he left the country and his length of absence) will be relevant to whether, and if so how quickly and successfully, he will be able to build a network.*

### ***Previous Country Guidance***

- (vi) *The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to Article 15(c) of the Qualification Directive remains unaffected by this decision.*

- (vii) *The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to the (un)reasonableness of internal relocation to Kabul (and other potential places of internal relocation) for certain categories of women remains unaffected by this decision.*
- (viii) *The country guidance in AA (unattended children) Afghanistan CG [2012] UKUT 00016 (IAC) also remains unaffected by this decision.*

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### Glossary

Afs	Afghani (Afghan currency)
COI	Country of Origin Information
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
GDP	Gross domestic product
HRW	Human Rights Watch
IDPs	Internally displaced persons
IEDs	Improvised explosive devices
IRA/IFA	Internal relocation alternative/Internal flight alternative
IOM	International Organisation for Migration
OCHA	UN Office for Coordination of Humanitarian Affairs
The Panel	The panel of judges who gave the 2018 UT decision
The Qualification Directive or QD	EU Council Directive 2004/83/EC
Refugee Convention	Convention and Protocol relating to the status of Refugees

UN	United Nations
UNAMA	UN Assistance Mission in Afghanistan
UNHCR	UN High Commissioner for Refugees
2003 UNHCR Guidelines	UNHCR Guidelines on International Protection: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, dated July 2003
2016 UNHCR Guidelines	UNHCR Eligibility Guidelines for assessing the international protection needs of asylum seekers from Afghanistan, dated 19 April 2016
The 2018 UNHCR Guidelines	UNHCR Eligibility Guidelines for assessing the international protection needs of asylum seekers from Afghanistan, dated 30 August 2018
The 2018 UT decision	AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 (IAC)
The 2019 Court of Appeal decision	AS (Afghanistan) v Secretary of State for the Home Department [2019] WLR(D) 304, [2019] 4 All ER 855, [2019] EWCA Civ 873
The 2019 UNHCR Submissions	Submissions in the case of <i>MJ v Netherlands</i> (application no. 49256/18) before the ECtHR dated 6 December 2019
The 2019 COI UNHCR Report	UNHCR, Afghanistan: Compilation of country of origin information relevant for assessing the availability of internal flight, relocation or protection alternative to Kabul, dated December 2019
The 2019 EASO Guidance	EASO Country Guidance: Afghanistan, Guidance Note and Common Analysis, dated June 2019
The UNHCR Documents	The 2018 UNHCR Guidelines, the 2019 UNHCR Submissions and the 2019 COI UNHCR Report

## **A. Introduction**

1. On 23 March 2018 the Upper Tribunal (Upper Tribunal Judges Allen and Jackson) promulgated a Country Guidance decision *AS (Safety of Kabul) Afghanistan CG* [2018] UKUT 118 (IAC) which considered the risk faced by citizens of Afghanistan on return to Kabul from the Taliban and the reasonableness of internal relocation to Kabul. The conclusion of the Upper Tribunal was that a person who is of lower-level interest for the Taliban is not at real risk of persecution from the Taliban in Kabul and that, having regard to the security and humanitarian situation in Kabul

as well as the difficulties faced by the population living there, it would not, in general, be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in the city.

2. One of the issues considered in the 2018 UT decision was the likelihood of a person living in Kabul being killed or injured as a result of conflict -related violence. The Upper Tribunal referred to a 0.01% likelihood of being a casualty of a security incident even though the evidence before the Tribunal indicated that the percentage risk was substantially higher than this.
3. On 24 June 2019 the Court of Appeal (Lord Justice Underhill, Lady Justice King and Lord Justice Singh) in *AS (Afghanistan) v Secretary of State for the Home Department* [2019] WLR(D) 304, [2019] 4 All ER 855, [2019] EWCA Civ 873 set aside the 2018 UT decision on the basis that the conclusion that the percentage risk of being a casualty from a security incident was 0.01% was not reasonably open to the Upper Tribunal on the evidence before it. The Court of Appeal found that the case would need to be remitted to the Upper Tribunal in order for it to reconsider the decision on the reasonableness of Kabul as an internal relocation alternative on the basis of the correct figure regarding risk of death or injury from security incidents. This was the only error of law identified by the Court of Appeal, which stated the following with respect to the scope of the remittal:

80. In those circumstances it seems to me that the remittal to the Upper Tribunal can and should be on the basis that it need reconsider its conclusions only on the question of the extent of the risk to returned asylum-seekers from security incidents of the kind considered at paras. 190-9 of its Reasons. Although of course the relevance of that risk is to the overall issue of whether it is reasonable for asylum-seekers to be expected to relocate to Kabul, it is in practice a self-contained element within that assessment, and since I would hold that there was no error of law in the Tribunal's approach to the other elements I see no reason why those elements require to be reconsidered.

81. The fact that the remitted issue is self-contained means that there would be no difficulty in it being heard by a differently-constituted Tribunal; and I think that in the circumstances of the present case, given the nature of the error on ground 1, that would be the correct course. A fresh Tribunal would of course not be privy to the evidence called on the previous occasion, or the submissions made; and that would mean that the evidence as to security risk adduced at the previous hearing would have to be adduced again (unless agreed), together with any updating evidence that might now be available, and further submissions made. But the scope of the remitted hearing would still be far more limited than first time round.

82. Those limits on the scope of the remittal are subject to one important qualification. We were told that last year, after the decision of the Upper Tribunal, UNHCR produced further Guidelines on returns to Afghanistan, which, unlike the 2016 version, unequivocally recommend that "given the current security, human rights and humanitarian situation in Kabul, an

IFA/IRA is generally not available in the city". It will be for the Tribunal, no doubt after hearing submissions, to consider whether that assessment requires a reconsideration of its country guidance on a more extensive basis than is required by the remittal of this appeal. If it decides that it does, it is likely to make sense either for the scope of hearing to be increased or (which may be procedurally more correct) for the remittal in this case to be heard along with whatever appeal is the vehicle for that wider consideration.

4. On 24 July 2019, the Upper Tribunal gave the parties Directions which, inter alia, provided that:
  - a. the findings made in the 2018 UT decision are preserved save that
    - i. new findings are to be made on the extent of the risk to returned asylum seekers from security incidents of the kind considered in paragraphs 190 – 199 and as to the relevance of that risk to the reasonableness of Kabul as an internal relocation alternative;
    - ii. the Upper Tribunal is entitled to reconsider any of the findings made in the 2018 UT decision if and to the extent it thinks it right to do so in the light of developments since that date; and
  - b. the appellant has permission to argue on the basis of the evidence before the Upper Tribunal that removal to Afghanistan would expose him to a real risk of serious harm within the meaning of Article 15(c) of the Council Directive 2004/83/EC (“the Qualification Directive”).

## **B. The 2018 UT Decision**

5. The question considered by the Panel for country guidance in the 2018 UT decision was whether the current situation in Kabul was such that the guidance given in *AK (Afghanistan)* [2012] UKUT 00163 (IAC) needed revision in the context of consideration of internal relocation to Kabul.
6. The 2018 UT decision was made following consideration of the written and oral evidence of three experts (Dr Liza Schuster, Dr Antonio Giustozzi and Ms Emily Winterbotham) and a substantial body of documentary evidence including, inter alia, reports from the United Nations High Commissioner for Refugees (UNHCR), the UN Assistance Mission in Afghanistan (UNAMA), the European Asylum Support Office (EASO), the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), and multiple reports from news sources and non-governmental organisations. Evidence was considered up to and including December 2017.

7. The Panel found that the appellant was not at risk of persecution from the Taliban in Kabul even though he would be at risk in his home area. It was also found that he would not be at risk of forcible recruitment to an armed group in Kabul, or at risk because of “westernisation”. This aspect of the 2018 UT decision was not appealed and the case proceeded on the basis that the appellant does not face a risk of persecution in Kabul.
8. At paragraph 172 the Upper Tribunal noted that the appellant did not claim that conditions in Kabul were in breach of Article 3 of the European Convention on Human Rights or that the situation in Kabul met the threshold in Article 15(c) QD.
9. The Panel began its assessment of the evidence relevant to internal relocation by summarising the position of UNHCR as set out in the 2016 UNHCR Guidelines. The 2016 UNHCR Guidelines, which do not include any specific guidance about internal relocation to Kabul (as opposed to Afghanistan generally), state that internal relocation would only be reasonable where an individual has access to shelter, essential services (such as sanitation, healthcare and education), and livelihood opportunities. It also states that internal relocation is reasonable only where an individual has access to a traditional support network of members of his or her (extended) family or his or her ethnic community who have been assessed to be willing and able to provide genuine support to the applicant in practice unless the applicant is a single able-bodied man (or part of a married couple) of working age without identified specific vulnerabilities. In respect of a single able-bodied man without external support, the 2018 UT decision quoted the following from the 2016 UNHCR Guidelines:

UNHCR considers that the only exception to the requirement of external support are single able-bodied men and married couples of working age without identified specific vulnerabilities. Such persons may in certain circumstances be able to subsist without family and community support in urban and semi-urban areas that have the necessary infrastructure and livelihood opportunities to meet the basic necessities of life and that are under effective Government control. Given the breakdown in the traditional social fabric of society caused by decades of war, mass refugee flows and internal displacement, a case-by-case analysis will, nevertheless, be necessary.
10. The Panel considered a range of factors at paragraphs 98 – 171 relevant to the reasonableness of internal relocation to Kabul, which were evaluated under the following subheadings: the security situation, housing and associated amenities, healthcare, employment/socio-economic conditions, returns procedure and available assistance on return, and evidence of the experience of returnees to Afghanistan.
11. Having set out the relevant evidence, the Panel emphasised, at paragraph 189, the weight that can and should be attached to the 2016 UNHCR Guidelines.



12. It then made the following findings at paragraphs 190 – 230 which, taken together, led it to conclude that it was not generally unsafe or unreasonable for a single healthy man to internally relocate to Kabul:
- a. The fluidity and volatility of armed conflict is likely to be less in Kabul than in smaller urban centres and rural areas given that it is well defended and the authorities have a good record of maintaining control of larger cities (paragraph 190).
  - b. The number of civilian casualties has increased between 2009 and 2017 (paragraph 192).
  - c. Security incidents are spread around the city with a wide range of targets affecting many areas of everyday life (paragraph 193).
  - d. There has been a deterioration in the security situation in Kabul since the withdrawal of international security forces in 2014, and there are increasing protection measures being used, such as a greater number of higher blast walls and road closures (paragraph 194).
  - e. Residents of Kabul have an increasing fear of incidents affecting them and their families (paragraph 195).
  - f. The frequency of security incidents is not at such a high level as to make Kabul unsafe for internal relocation (paragraph 196).
  - g. Conflict-related violence affects the entire population of Kabul and returnees do not face a greater risk of being a casualty of a security incident than the general population of Kabul (paragraph 197).
  - h. The security situation in Kabul is not significantly worse than the situation prevalent throughout the majority of Afghanistan and is better than some areas (paragraph 198-9).
  - i. There are no issues with a returnee safely accessing Kabul since they would be returned directly to it (paragraph 200).
  - j. Although social networks are important in terms of employment and accommodation and a single person living alone is outside of the social norm in Afghanistan, it is not essential for a person to have an existing support network in Kabul for them to be able to access housing or employment (paragraphs 204 – 213).
  - k. A single male in Kabul would have limited housing options but would nonetheless be able to find some sort of accommodation which is

comparable to that available for the majority of the city's population, even without a support network (paragraphs 214 - 219).

- l. Although there is high unemployment, low skilled jobs, such as day labouring, portering and taxi driving, are available (although precarious) to a person without a family network and a single man could survive much better on irregular work than a person who was supporting a family (paragraphs 222 - 223).
  - m. Kabul remains a destination of choice for returnees, IDPs and economic migrants (paragraph 225).
  - n. The evidence does not show that there is a real risk that a single man will feel compelled to join an armed gang for economic survival in Kabul (paragraph 226).
  - o. There is a basic level of support to returnees, including an offer of temporary accommodation, travel expenses and either cash on return or support in kind that makes a material, even if only marginal, difference to a returnee (paragraph 227).
13. Having found, based on the factors listed above, that internal relocation is not generally unsafe or unreasonable for a single healthy man, the Upper Tribunal proceeded to consider the following specific factors that need to be considered when assessing reasonableness of relocation on a case-by-case basis for a particular person:
- a. Minors have a greater risk and vulnerability (paragraph 231).
  - b. The older a person was when they left Afghanistan, the more likely they are to be familiar with employment opportunities and living independently (paragraph 232).
  - c. A person will be in a better position if they have connections depending on where they are and the financial resources, status and connections of the family/support network. At paragraph 233 it is stated that the availability of a support network may counter a particular vulnerability of an individual returnee.
  - d. Poor physical or mental health would need to be carefully considered (paragraph 234).
  - e. Speaking the local language, as well as educational and vocational skills, will strengthen a person's prospects in Kabul (paragraph 235).

### **C. The Appellant's Claim and Preserved Findings of Fact**

14. The appellant, who was born in January 1986 and entered the UK on an unidentified date which is accepted to be "towards the end of 2008", made a protection and human rights claim on 29 January 2014. In summary, his claim is that he is at risk from the Taliban in his home area of Laghman Province, having been abducted and detained following the murder of his father and brother, and it would not be safe or reasonable for him to relocate to Kabul. He also claims that removing him to Afghanistan would breach Article 8 of the ECHR.
15. On 12 February 2015 the appellant's asylum and human rights application was refused by the respondent. The appellant appealed to the First-tier Tribunal.
16. In a decision promulgated on 30 July 2015, Judge of the First-tier Tribunal Bradshaw dismissed the appeal on the basis that even though the appellant would be at risk in his home area from the Taliban, he could relocate to Kabul. The First-tier Tribunal also found that removal of the appellant from the UK would not constitute a disproportionate interference with his right to respect for his private and family life under Article 8 of the European Convention on Human Rights.
17. The decision of the First-tier Tribunal was set aside by the Upper Tribunal following an acceptance by the respondent that the decision contained an error of law. However, the primary findings of facts made by the First-tier Tribunal were preserved, as was the conclusion that the appellant would be at risk of persecutory treatment in his home area.
18. The preserved findings of fact from the First-tier Tribunal are summarised at paragraph 8 of the 2018 UT decision, and are as follows:
  8. For the purposes of the present appeal and, in particular, the letter of instruction to the experts, the following are agreed facts.
    - a) The Appellant (dob 1 January 1986) is a single man from Kardai village, Laghman province, Afghanistan. He is thus 31 years of age.
    - b) The Appellant's father was the imam of the local mosque and well-known in the village, where the Taliban have a presence. He refused to cooperate with them or propagate for them and was labelled a government agent. In 2006 the Taliban killed him.
    - c) The Appellant's brother reported their father's murder to the authorities and 10 days later there was an attack on the local Taliban by government forces. The Taliban suspected the Appellant's brother of spying for the government and killed him in 2007.

- d) Sometime later the Taliban abducted the Appellant from his house and detained him away from the village along with others. While detained, he was not fingerprinted or photographed by the Taliban. A week later, the Appellant escaped during a night raid by government forces and returned to Kardai village, whereupon his maternal uncle passed him to a friend and then to an agent to take him out of Afghanistan.
- e) The Appellant fled Afghanistan clandestinely in 2008 and entered the United Kingdom towards the end of that year, having passed through other countries en route. The Appellant's mother, younger brother and maternal uncle remained in Kardai village.
- f) The Appellant would be at risk of persecution if returned to his local area.

19. It was also assumed in the 2018 UT decision, for the purpose of instructing experts, that:

- a. the appellant attended school for 9 years and thereafter worked with his brother in farming;
- b. he has not had contact with his family in Afghanistan since arriving in the UK; and
- c. he has no family or support in Kabul.

#### **D. The Legal Framework - Internal Relocation**

##### **(a) Overview**

20. Article 8 of the Qualification Directive (QD) concerns internal relocation. It provides:

1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.
2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.
3. Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin.

21. Article 15 QD gives a definition of the term "serious harm". It provides:

Serious harm consists of:

- (a) the death penalty or execution; or

- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

22. The effect of Article 8 QD is substantially reproduced in the Immigration Rules at Rule 339O(i), which provides:

- (i) The Secretary of State will not make:
  - (a) a grant of refugee status if in part of the country of origin a person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or
  - (b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.
- (ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making a decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.
- (iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return.

23. There are two limbs to Article 8(1) QD. The first limb concerns whether the person seeking protection will be exposed to a real risk of serious harm or persecution in the place of the proposed internal relocation. If he or she will, the second limb (reasonableness of internal relocation) will not need to be considered. As stated in *Secretary of State for the Home Department v SC* [2018] WLR 4004, [2017] EWCA Civ 2112 at [39]:

The tribunal only reaches the [reasonableness] stage of the test if it is satisfied that the person would not be exposed to a real risk of serious harm.

24. The second limb of Article 8(1) QD provides that there will be no need for international protection if a person can reasonably be expected to stay in another part of his country of origin.

25. UNHCR structures its approach to internal relocation by distinguishing between "relevance" (which substantially corresponds to the first limb of Article 8(1) QD) and "reasonableness" (which corresponds to the second limb of Article 8(1) QD). The 2003 UNHCR Guidelines state:

[T]he assessment of whether or not there is a relocation possibility requires two main sets of analyses, undertaken on the basis of answers to the following sets of questions:

I. The Relevance Analysis

a) Is the area of relocation practically, safely, and legally accessible to the individual? If any of these conditions is not met, consideration of an alternative location within the country would not be relevant.

b) Is the agent of persecution the State? National authorities are presumed to act throughout the country. If they are the feared persecutors, there is a presumption in principle that an internal flight or relocation alternative is not available.

c) Is the agent of persecution a non-State agent? Where there is a risk that the non-State actor will persecute the claimant in the proposed area, then the area will not be an internal flight or relocation alternative. This finding will depend on a determination of whether the persecutor is likely to pursue the claimant to the area and whether State protection from the harm feared is available there.

d) Would the claimant be exposed to a risk of being persecuted or other serious harm upon relocation? This would include the original or any new form of persecution or other serious harm in the area of relocation.

## II. The Reasonableness Analysis

a) Can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue hardship? If not, it would not be reasonable to expect the person to move there.

### **(b) The first limb: real risk of serious harm**

26. In the 2018 UT decision, the Upper Tribunal's consideration of the first limb of Article 8(1) QD was limited to the question of whether the appellant had a well-founded fear of persecution in Kabul. Having concluded that he did not, the Panel proceeded to consider the second limb: whether it would be reasonable or unduly harsh to expect the appellant to internally relocate to Kabul.

27. The Panel did not address, in the context of considering the first limb of Article 8(1) QD, whether Kabul is practically, safely and legally accessible (the question identified at paragraph I(a) of UNHCR's Relevance Analysis in the 2003 UNHCR Guidelines) as this was not disputed. It has also not been raised by the appellant before us. Plainly, this is not an issue, as the appellant will be returned to Kabul by plane.

28. Nor did the Panel consider whether the appellant would be at real risk of suffering serious harm for reasons other than persecution in Kabul when assessing the first limb of Article 8(1) QD. This is because the appellant did not claim that the situation in Kabul met the threshold in either Article 15(c) QD or Article 3 ECHR. The Panel did, however, in the context of considering the second limb (reasonableness of relocation) make the finding (at paragraph 196) that the security incidents in and around Kabul City were not at such a high level so as to make internal relocation to Kabul unsafe and that the evidence before them fell very far short of the Article 15(c) QD threshold.

29. The absence of consideration of whether the appellant would be at real risk of serious harm in Kabul because of the security situation and generalised violence for the purposes of assessing whether the first limb of Article 8(1) QD was engaged (as opposed to considering this in the context of assessing reasonableness under the second limb of Article 8(1) QD) was not challenged by the appellant and it is apparent from Underhill LJ's judgment in the 2019 Court of Appeal decision that the issue was not contentious as the only reference to the first limb of Article 8(1) QD was at paragraph 61(1), where he stated:

By way of preliminary, internal relocation is obviously not an alternative where there is a real risk that the applicant for asylum will suffer persecution, or serious harm within the meaning of Article 15 of the Directive (which includes treatment which would be contrary to Article 3 of the ECHR), in the putative safe haven. We are concerned with cases where there is no such risk.

30. Recognising that, because of the security situation in Kabul, the appellant may have wanted to argue that there would be a real risk of serious harm from indiscriminate and generalised violence (in order to establish that the first limb of Article 8(1) QD applied) the Upper Tribunal gave Directions permitting the appellant to argue that removal to Afghanistan would expose him to a real risk of serious harm within the meaning of Article 15(c) QD. However, the appellant declined to make such an argument; or to advance any argument that he would otherwise face serious harm within the meaning of Article 15 QD (which includes treatment which would be contrary to Article 3 of the ECHR) in Kabul. At paragraphs 13-14 of her consolidated written submissions, Ms Naik confirmed that we were not being asked to determine whether there is a real risk of serious harm in Kabul within the meaning of Article 15(c) QD because it is the appellant's case that he is disqualified from subsidiary protection (in the language of the Qualification Directive) or humanitarian protection (in the language of the Immigration Rules) as he qualifies for protection as a refugee.

31. Ms Naik submitted that, notwithstanding the appellant's decision to not argue that he would face serious harm as defined in Article 15(c) QD in Kabul, we should nonetheless consider whether he would face a real risk of serious harm from generalised violence in Kabul. At paragraph 20 of her written submissions, Ms Naik wrote: "the Tribunal must examine whether there is a real risk to the appellant of serious harm from generalised violence."

32. We invited Ms Naik to provide us with an authority (or rationale) to explain why the term "serious harm" in Article 8 QD should not be interpreted in accordance with the definition of that term in Article 15 QD; and if not, what alternative threshold should be applied. Ms Naik was unable to point us to any authorities and did not propose a different, or alternative, threshold for serious harm. She did however submit that in the 2018 UT decision the Panel recognised that a different, and lesser, threshold applied, and that there was no basis for us to depart from

this. This submission has no merit. At paragraph 196 of the 2018 UT decision, when discussing whether the security situation made Kabul unsafe, the Panel stated that it was not necessary to reach the threshold in Article 15(c) QD. However, this was in the context of considering the second limb of Article 8(1) QD (reasonableness), not the first limb. Indeed, it is clear from paragraph 172 that the reason the Panel did not address the serious harm part of the first limb of Article 8(1) QD is that the appellant then - as now - did not pursue the argument that he would face a real risk of serious harm within the meaning of Article 15 QD.

33. Mr Singh's position was that by choosing to exclude Article 15(c) QD from the ambit of the appeal, the appellant has taken the issue of whether internal relocation is not an option because of generalised violence under the first limb of Article 8(1) QD outside the scope of the appeal. In respect of the contention that "serious harm" has, or ought be given, a meaning other than that in Article 15 QD in the context of interpreting Article 8(1) QD, he drew attention to the language used in the 2003 UNHCR Guidelines where, at paragraph 20, the concept of "serious harm" in the context of internal relocation is linked to how risk is assessed in "complimentary forms of protection" (which includes subsidiary protection under the Qualification Directive). Paragraph 20 of the 2003 UNHCR Guidelines states:

20. In addition, a person with an established fear of persecution for a 1951 Convention reason in one part of the country cannot be expected to relocate to another area of serious harm. If the claimant would be exposed to a new risk of serious harm, including a serious risk to life, safety, liberty or health, or one of serious discrimination, an internal flight or relocation alternative does not arise, irrespective of whether or not there is a link to one of the Convention grounds. The assessment of new risks would therefore also need to take into account serious harm generally covered under complementary forms of protection

34. We agree with Mr Singh that the term "serious harm" in Article 8(1) QD should be interpreted consistently with the definition of "serious harm" in Article 15 QD, for the following reasons:

- a. Precisely the same wording is used in Article 8(1) QD and Article 15 QD.
- b. Neither party was able to identify (and we are not aware of) any authorities in which a different meaning has been given to the term serious harm in the context of Article 8(1) QD.
- c. We do not consider there to be any reason, in principle, in order to give effect to the purpose of the Refugee Convention, for the term serious harm to be given a more expansive meaning in Article 8(1) QD than in Article 15 QD because any instance of serious harm not covered by, or falling short of the threshold in, Article 15 QD would not escape



consideration as it would be assessed as part of the broad holistic evaluation of reasonableness in the second limb of Article 8(1) QD.

- d. We make the further observation that the argument as to whether or not a risk of harm from indiscriminate violence falls within the first limb of Article 8(1) QD is liable to be arid and academic as the same evidence and factors will in any event require examination under the second limb of Article 8(1) QD. Both parties were in agreement that, irrespective of its scope, all of the evidence relevant to considering the first limb of Article 8(1) QD would fall to be considered when assessing reasonableness under the second limb.

35. We also agree with Mr Singh that it is misconceived for the appellant to ask us to determine whether he faces a real risk of serious harm in Kabul because of generalised violence such that internal relocation is not an option whilst declining to make any submissions as to whether he faces a real risk of serious harm as defined in Article 15(c) QD, or as to what alternative standard/threshold should be applied. However, given that the substance of the appellant's argument is that internal relocation is not an option because of the serious harm he would face from indiscriminate violence in Kabul – and that the appellant has adduced a substantial amount of evidence on this issue - we consider it appropriate to assess the serious harm element of the first limb of Article 8(1) QD.

36. In order to determine whether the appellant faces a real risk of serious harm in Kabul for the purposes of the first limb of Article 8(1) QD we must assess the categories of serious harm in Article 15 QD. Article 15(a) (death penalty or execution) and Article 15(b) (torture or inhuman or degrading treatment or punishment) are clearly not applicable because, even in a generalised way, the appellant has not argued they are relevant. However, Article 15(c) QD (serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict), although not argued by the appellant in terms, forms the basis for his submission that he would face a risk of serious harm in Kabul such that internal relocation is not an option. We will therefore consider whether the appellant faces a real risk within the meaning of Article 15(c) QD in Kabul.

37. As set out in *Elgafaji v Staatssecretaris van Justitie* (C-465/07); [2009] 2 CMLR 45 at para. 43, and confirmed subsequently on multiple occasions, most recently by the Upper Tribunal in *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG* [2019] UKUT 00400 (IAC), in order for the threshold in Article 15(c) QD to be reached the degree of indiscriminate violence must be at:

[S]uch a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.

38. The source of the threat to an individual need not come directly from the armed conflict. As explained in *HM and others (Article 15(c)) Iraq* CG [2012] UKUT 00409(IAC):

[T]he threat to life or person of an individual need not come directly from armed conflict. It will suffice that the result of such conflict is a breakdown of law and order which has the effect of creating the necessary risk.

39. In addition, the assessment of risk is not limited to civilian casualty rates. At para. 114 of *HM*, in a paragraph cited with approval in *SMO*, it is stated:

One aspect of the inclusive approach is an appreciation that there are threats to the physical safety and integrity of civilians beyond those measured in the civilian casualty rates. As put by Michael Knights of the Washington Institute for Near East Policy in a report of 16 February, 2012 entitled "A Violent New Year in Iraq, The National Interest (cited at n. 217 of the May 2012 UNHCR Guidelines), "[m]ass casualty attacks tell only part of the story of violence in Iraq, and mortality statistics overlook the targeted nature of violence in today's Iraq, where a high proportion of victims are local progovernment community leaders. For every one person of this kind who is killed, an exponential number of others are intimidated into passive support for insurgent groups". Whilst our principal focus when examining levels of violence is physical harm causing death or injury, it is important that we also take account of indirect forms of violence such as threats, intimidation, blackmail, seizure of property, raids on homes and businesses, use of checkpoints to push out other factions, kidnapping and extortion. To adopt Mr Fordham's metaphor, these factors mean that most Iraqis (outside the KRG) I continue to "live under the shadow of violence".

40. Article 15(c) QD encompasses a "sliding scale" whereby, as set out in paragraph 39 of *Elgafaji*:

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.

41. We did not hear any submissions in relation to the "sliding scale" under Article 15(c) QD and both parties only addressed the personal circumstances of the appellant in submissions regarding reasonableness of relocation. We consider this the correct approach. Whilst the "sliding scale" will clearly be relevant in a case concerning subsidiary protection under Article 2(e) QD, in appeals concerning internal relocation the sliding-scale considerations are subsumed within the assessment of reasonableness.

42. We remind ourselves that the threshold in Article 15(c) QD is relevant only to the question of whether, because of the risk of serious harm in Kabul, internal relocation is not an option. It has no applicability to the evaluation of reasonableness under the second limb of Article 8(1) QD. The same evidence will, however, be relevant to both limbs.

43. Although we are considering Article 15(c) QD risk for the purpose of assessing the availability of internal relocation, and not in order to evaluate whether the appellant is eligible for subsidiary protection under Article 2(e) QD, we recognise that our analysis will be relevant to those considering the latter.

**(c) The second limb: reasonableness**

44. The 2019 Court of Appeal decision includes a careful consideration and summary of the second limb of Article 8(1) QD. We see no benefit to either expanding upon or seeking to summarise further the Court of Appeal's summary and therefore we set out in full paragraphs 61 – 68 of Underhill LJ's judgment:

61. I start by summarising the essential points, so far as relevant to this appeal, established by the authorities about the nature of the exercise required by article 8 of the Directive. I emphasise that this is not intended as a comprehensive analysis of all the issues raised by the authorities to which I have referred.

(1) By way of preliminary, internal relocation is obviously not an alternative where there is a real risk that the applicant for asylum will suffer persecution, or serious harm within the meaning of article 15 of the Directive (which includes treatment which would be contrary to article 3 of the ECHR), in the putative safe haven. We are concerned with cases where there is no such risk.

(2) The ultimate question is whether in such a case "taking account of all relevant circumstances pertaining to the claimant and his country of origin, ... it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so". That is the formulation of Lord Bingham in *Januzi*, repeated in *AH (Sudan)*. It pre-dates the Directive and is not identically worded: in particular, the reference to whether relocation would be "unduly harsh" is not present in article 8 but derives from the UNHCR 2003 Guidelines (see *Januzi*, para. 20). But it was common ground before us that it states the test required by article 8. When in doubt it is to that question that tribunals should return.

(3) The test so stated is one of great generality (save only that it excludes any comparison of the conditions, including the degree of respect for human rights, between those obtaining in the safe haven and those of the country of refuge – this being the ratio of *Januzi*). It requires consideration of all matters relevant to the reasonableness of relocation, none having inherent priority over the others (*AH (Sudan)*, para. 13). This is the same as Lady Hale's description of the necessary assessment as "holistic" (*AH (Sudan)* paras. 27-28).

(4) One way of approaching that assessment is to ask whether in the safe haven the applicant can lead "a relatively normal life without facing undue hardship ... in the context of the country concerned". That language derives from the UNHCR Guidelines and is quoted by Lord Bingham with approval in *Januzi* (para. 20) and also used by Lord Hope (para. 47); but it does not appear in the Directive or in Lord Bingham's formulation of the test, and it should not be treated as a substitute for the latter. Rather, it is a valuable way of approaching the reasonableness analysis – "one touchstone", as Lord Brown puts it (*AH (Sudan)* para. 42). Its value is because if a person is able to

lead in the safe haven a life which is relatively normal for people in the context of his or her own country, it will be reasonable to expect them to stay there (*AH (Sudan)*, para. 47).

(5) It may be reasonable, and not unduly harsh, to expect a refugee to relocate even if conditions in the safe haven are, by the standards of the country of refuge, very bad. That is part of what is decided by *Januzi* itself, and the passages quoted at paras. 34 and 35 above reinforce it. It is also vividly illustrated by the outcome of *AH (Sudan)*, where the House of Lords upheld the decision of the AIT that it was reasonable for Darfuri refugees to be expected to relocate to the camps or squatter slums of Khartoum. That may seem inconsistent with the suggested approach of asking whether the applicant would be able lead a "relatively normal life" in the safe haven; but the reconciliation lies in the qualification "in the context of the country concerned".

(6) Point (5) does not mean that it will be reasonable for a person to relocate to a safe haven, however bad the conditions they will face there, as long as such conditions are normal in their country. Conditions may be normal but nevertheless unduly harsh: this is the point emphasised by Lady Hale in *AH (Sudan)* and is exemplified by *AA (Uganda)*.

(7) The UNHCR Guidelines contain a full discussion of factors relevant to the reasonableness analysis. These are described by Lord Bingham as "valuable" and partly quoted by him (*Januzi* para. 20); and at para. 20 of her opinion in *AH (Sudan)* Lady Hale endorses a submission made in that case by UNHCR which summarises the factors in question. A decision-maker must consider those factors, so far as material, in each case (though it does not follow that everything said in the detailed discussion in the Guidelines is authoritative).

(8) The assessment must in each case be conducted by reference to the reasonableness of relocation for the particular individual.

62. In his written submissions Mr Fordham identified "UNHCR's core submission". He said:

"The correct approach when assessing the reasonableness of a proposed internal relocation, flight or protection alternative ("IFA") is to carry out a single, holistic assessment which focuses upon the circumstances of the individual. That assessment:

2.1 may, as one factor, consider what is 'a relatively normal life' in the context of the country concerned; but

2.2 must consider the conditions in the place of relocation against certain objective 'baseline standards'; and

2.3 must consider the impact of the proposed relocation on the particular individual, having regard to that individual's characteristics, personal circumstances and past experiences."

63. Although I have ranged wider, it will be seen that my summary is essentially consistent with that submission. I would, however, sound a note of caution about the reference to "certain objective 'baseline' standards". I would accept that the point made at para. 61 (6) above requires an objective judgment by the decision-maker, and also that it does imply some concept of a threshold below which it will not be reasonable to expect the individual to stay in the safe haven – that indeed is the burden of the passage from Dr Storey's article approved by Lord Bingham in *Januzi* (see para. 38 above). But the particular terminology of "objective baseline standards"

is to my mind rather too suggestive of the Hathaway/New Zealand approach which the House of Lords has disapproved.

64. It is convenient to deal here with one central theme of Ms Naik's submissions. She contended that, because the exercise required by article 8 of the Directive required the application of objective norms applicable to the conditions which a returnee would experience in the safe haven, comparison with the conditions experienced by others was irrelevant. That goes too far. Any assessment of reasonableness must be, in one sense, objective; but that does not preclude the comparison of the conditions which a returnee would enjoy in the safe haven with those that apply generally in the country in question, and the authorities positively require that such a comparison form part of the assessment.

65. Against that background, I turn to the effect of para. 42 in the speech of Lord Brown in *AH (Sudan)*. As already indicated, I agree entirely with the passages which I have quoted from the decision of the UT in *AAH*: see paras. 52-55 above. In particular, I agree that Lord Brown cannot have been intending to enunciate a "significant minority test" in the sense which Mr Singh was understood to have been advancing in that case: that is, he was not saying that if it was established that a significant minority of people in the country in question lived in conditions of great hardship it necessarily followed that it was reasonable to expect a returnee to live in those conditions. Such a conclusion would have been contrary not only to what Lady Hale said in *AH (Sudan)*, as argued by Ms Naik, but to the basic approach enunciated by Lord Bingham in both that case and *Januzi* and accepted by the other members of the House in both cases. As we have seen, Lord Brown said in terms that he endorsed every word of Lord Bingham's opinion.

66. It seems to me clear, rather, that, instead of veering so inexplicably off-piste, Lord Brown was making a more limited point. The subject of para. 42 is, avowedly, a challenge by the applicants to a finding by the AIT that "people in Sudan generally live [at subsistence level]". He does not in fact spell out what the challenge was, but it appears to have been that the evidence did not support the finding that a majority of people in Sudan lived at subsistence level. His point was that, even if that was so, it did not mean that living at subsistence level could not be regarded as relatively normal in the context of Sudan. All that he was doing was to elaborate a little on what "relatively normal" – or its cognate, "prevailing generally" – entailed: conditions can be normal/general even if they apply to less than half the population.

67. So understood, what Lord Brown says in para. 42 of his speech seems to me, with respect, right; and my conclusion is reinforced by the fact that the speech as a whole was agreed with by Lord Hope and that this particular passage was endorsed by Buxton LJ in *AA (Uganda)*. As the UT puts it in *AAH*, the lived lives of the population of any country will "entail a diversity of experience". Or, as the Tribunal put in the present case:

"There is no single standard or set of conditions which apply throughout a country, but a range of examples of 'normal' or conditions which are experienced either in particular parts of the country, or throughout it by groups of people."

It would be arbitrary and unworkable – and, more to the point, contrary to the whole nature of the required exercise – if the question of what was "relatively normal" in the context of a given country depended on having to show that the conditions in question were experienced by 50%+1 of the population.

68. I wish to make one other point before leaving this part of the discussion. In my view it is contrary to the message of *Januzi*, as repeated in *AH (Sudan)*, to pick on particular statements or phrases in any of the speeches in either case – or indeed in the UNHCR Guidelines, valuable though they are – and subject them to minute examination as if they had quasi-statutory effect, still less to treat them as giving rise to distinct "tests". Lord Bingham went out of his way in *AH (Sudan)* to emphasise that the assessment of reasonableness was "one of great generality": see para. 13 of his opinion. What is essential is that the decision-maker should conduct the kind of holistic assessment, encompassing all relevant considerations, which is required.

45. In considering the evidence before us, we have kept at the forefront of our mind these passages from Underhill LJ's judgment and that what is required is a holistic assessment, encompassing all relevant considerations pertaining to the appellant in Afghanistan.

#### **(d) Burden and Standard of Proof**

46. The burden of proof is on the appellant to establish that he is entitled to protection as a refugee, and the standard of proof is lower than in civil claims (often expressed as "reasonable chance", "serious possibility", "substantial grounds for thinking" or "real risk").

47. With regard to whether the appellant would face a real risk of serious harm in Kabul, the burden is on the appellant. See *SMO* at para. 206.

48. In respect of whether it is reasonable for him to internally relocate, an evaluative and holistic assessment is required, as explained in *Secretary of State for the Home Department v SC (Jamaica)* [2017] EWCA Civ 2112 at [36] and by the Upper Tribunal in *MB (Internal relocation – burden of proof) Albania* [2019] UKUT 00392 (IAC), where it was stated:

The burden of proof remains on the appellant, where the respondent has identified the location to which it is asserted they could relocate, to prove why that location would be unduly harsh, in line with *AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia* CG [2011] UKUT 445 (IAC), but within that burden, the evaluation exercise should be holistic. An holistic approach to such an assessment is consistent with the balance-sheet approach endorsed later in *SSHD v SC (Jamaica)* [2017] EWCA Civ 2112, at paragraphs [40] and [41]. *MM v Minister for Justice, Equality and Law Reform, Ireland (Common European Asylum System – Directive 2004/83/EC)* Case C-277/11 does not impose a burden on the respondent or result in a formal sharing of the burden of proof, but merely confirms a duty of cooperation at the stage of assessment, for example the production of the country information reports.

49. We remind ourselves that, as stated in *MB* at [25]:

An over-emphasis on the overall burden of proof can be a distraction from that holistic assessment.

## **E. Evidence**

### **(a) Overview**

50. When considering the evidence, we have kept in mind that Kabul is the name of both a city and province. The appellant will be returned to Kabul City (and is likely to live in its environs) but most of the evidence before us refers to Kabul Province, of which the city forms a part. Population estimates vary considerably. Estimates for Kabul City range from 3 to 6 million and those for Kabul Province are between 4 and 8 million. Unless specified otherwise, when we refer to Kabul (or cite a document that refers to Kabul) we are referring to Kabul Province.
51. We were provided with, and have carefully considered, a large number of reports and other documents concerning the current circumstances in Afghanistan and Kabul. In Appendix A, we have summarised those documents which we have found most helpful to our assessment. However, we stress that we have considered all of the evidence that was before us and omission from Appendix A does not mean a document was not reviewed and considered. Similarly, although the summaries in Appendix A only refer to parts of the evidence, we have considered – and taken into account – the entirety of the documents before us.
52. We note that, prior to the final day of the hearing, we were provided with several documents that were not in the initial bundle. In addition, we drew to the attention of the parties a report (EASO COI Report: Afghanistan Networks, dated February 2018) that was not in the bundle. All of these documents have been considered.
53. In addition, on the evening before the last day of the hearing the appellant served the 2019 UNHCR Submissions and 2019 COI UNHCR Report (discussed above). We gave permission for these documents to be relied upon and directed the parties to make written submissions on them after the hearing (which they have done).
54. The parties provided detailed written submissions (in addition to the further submissions on the 2019 UNHCR Submissions and 2019 COI UNHCR Report), which we have carefully considered.
55. We also note that, following the conclusion of the hearing, the respondent provided a copy of the 2019 UNAMA Report, published in February 2020. As we had informed the parties that we would not consider any further evidence following the conclusion of the hearing, we have not had regard to this report.
56. We heard expert evidence from two experts: Dr Lisa Schuster and Dr Ayesha Ahmad.

**(b) Dr Lisa Schuster**

57. Dr Schuster is a Reader in the Department of Sociology at City University of London with extensive experience researching, writing about, and living in Afghanistan. Amongst other things, she has published articles about the experience of returnees to Afghanistan. She gave evidence on the current circumstances in Kabul, and how the city has changed in the last several years, based not only on her research but also on her personal experience of living in and visiting Kabul since 2001 (most recently in February/March 2019).
58. This summary is based on Dr Schuster's report dated 23 September 2019, her response to questions posed by the respondent dated 15 October 2019, her report dated 26 July 2017 in the previous Upper Tribunal case, and her oral evidence given at the hearing.
59. Much of Dr Schuster's evidence focused on the security situation in Kabul. She stated that there has been a significant deterioration between her first visit to Kabul (in 2011) and her most recent visit (in 2019), when she felt unable to move around the city and limited herself to her friend's home and the University.
60. She stated that there has been a failure of the Afghanistan state to control territory and the Taliban are openly active in 70% of the country. She cited a report that the Taliban are able to tax businesses in areas not considered to be under their control; and noted that ISIS have increased their attacks in Kabul.
61. She cited UNAMA statistics on the total number of civilian deaths in Afghanistan, noting an upward trend, and highlighted casualties arising in Kabul. She stated that Kabul is the province in Afghanistan with the highest number of casualties. In cross-examination, she acknowledged that although Kabul is the province with the highest number of casualties, it does not have the highest number as a proportion of the population.
62. Dr Schuster noted UNAMA's casualty figures in Kabul Province for 2017 and 2018 (1,831 and 1,866, respectively) and stated that this is likely to remain unchanged in 2019. She highlighted that the figures are conservative and that the underestimating of civilian casualties is well established. She referred to the work of an Australian journalist she is familiar with (Andrew Quilty) whose (as yet unpublished) analysis shows civilian casualties are higher in reality than the reported figures. She noted a report of 85,477 trauma-related consultations between January and September 2018 in Afghanistan.
63. Dr Schuster contrasted the risk of being killed by a security incident in Afghanistan to Britain, stating that the chance of being killed by a terrorist is a thousand times greater in Kabul.



64. Dr Schuster stressed that casualty figures do not give the full picture, as a death or injury will often have very wide repercussions for family members in a society without social security. She stated that the frequency of attacks is such that there will rarely be a moment when one is not experiencing or recovering from the fear engendered by such an attack. She also talked about the reluctance of the population to travel within Kabul for unnecessary journeys and a decline in voting numbers attributable to fear of security incidents during an election. She described the UNAMA figures as “sterile”, as they failed to convey the huge level of trauma and fear in the population. She stated that she does not know anyone who has not lost or had injured a family member and subjectively she felt that a casualty rate of one in 900 was too low. She cautioned against over reliance on statistics which do not give the full or complete picture of the severity of the situation. She also expressed the view that the statistics underestimate the risk to men, given that men are more likely to be in public spaces than women; as well as the risk to people without a network who are new to Kabul, as such people would lack insight into how to minimise risk.
65. She drew attention to the survey of the Afghan people by the Asia Foundation 2018, noting that more than 60% of the population believe the country is going in the wrong direction and insecurity is the most frequently cited reason for this.
66. She expressed the view that a young man looking for work and accommodation who was unfamiliar with Kabul and lacked a social network to offer guidance and support would be particularly at risk of getting caught up in attacks.
67. She noted that although there is some targeting of Shia and Hazara, all civilians are at risk from the indiscriminate violence, or of being killed or injured even if they are not part of the target group.
68. Dr Schuster noted the prevalence of human rights abuses and corruption; and that this contributes to the high level of fear and anxiety in society. She stated that the authorities are unlikely to be a source of protection for civilians, and that this is a particular problem for people who do not have a social network to protect them. She stated that access to protection depends on belonging to whichever ethnic group is dominant in that area.
69. She considered there to be a risk of forcible recruitment to anti-government elements, particularly for people who suffer from destitution. She also considered there to be a heightened risk of kidnapping of returnees because they are perceived as having access to a network abroad.
70. Dr Schuster described physical violence as being “normal” in Kabul, and expressed concern that a returnee such as the appellant would be at risk of experiencing violence because he would be unaccustomed to the ways in which such violence can erupt and of how to avoid it. She also commented that the “gait

and comportment” of a returnee would attract negative attention. She stated that returnees would stand out in areas they do not belong to ethnically.

71. With respect to living conditions and economic survival in Kabul, Dr Schuster cited and relied upon data found in the OCHA reports, stating that the number of people in humanitarian need in November 2018 (6.3 million) had doubled since December 2017 (3.3 million). These figures are for all of Afghanistan. She attributed this to a deterioration in security, the prolonged drought, and the number of returnees from Iran. Dr Schuster commented that returnees from Iran are a vulnerable population.
72. Dr Schuster referred to there being 2,580,000 IDPs by the end of 2018 in Afghanistan, contrasting this to 2012 when there were only around half a million. She noted that more than a million documented and undocumented Afghans returned in 2016, more than 610,000 in 2017, and 673,000 in 2018, many of whom were unable to return to their homes because of conflict, drought and land disputes, swelling the number of IDPs. The vast majority of the returnees are from Iran and Pakistan. She stated that even though the current number of returnees per year is not as high as 2016, cumulatively returnees now account for a large part of the population in Afghanistan. She also stated that because the number of Afghans in Iran and Pakistan is now significantly reduced (because so many have already returned), the pool of potential returnees is now substantially smaller, meaning that there are unlikely to be such large numbers of returnees in the future.
73. Dr Schuster stated that there is no independent, durable support available for returnees in Kabul. IOM is involved in providing assistance but this is very limited. There is a maximum grant of £900, but it is in kind (not cash) and is difficult to access as a returnee must have a bank account and documents must be provided to show it is for a small business, to sign a lease or augment a salary. She also stated that this sum would in any event not last more than a few weeks. Dr Schuster added that returnees receive 12,500 Afs (£125 approximately) on arrival at the airport, and can stay at the (cheap) Spinzar hotel in central Kabul for up to two weeks. Dr Schuster considered there to be serious problems with the support packages available, with uptake very low due to practical difficulties and ignorance of what is available.
74. Dr Schuster noted the high unemployment and prevalence of insecure work, and expressed the view that without a network the appellant would be unlikely to obtain employment (and that even day labour would be sporadic) with the likely consequence that he would be destitute. She commented that the appellant could find himself competing with 100-150 men waiting for, say, only 10 day-labour jobs; and those with a network/connections would be more likely to obtain the work. She stated that speaking English would be of little benefit for the type of work available to the appellant.

75. She also thought that the appellant would have significant difficulties finding accommodation, both due to the cost and because he would not be welcome as a single young man. His only realistic option would be a dormitory room in a cheap hotel. She described such hotels as resembling dosshouses, being dirty and having no privacy or security. They were places where he would be vulnerable to exploitation and violence. Dr Schuster provided 5 photographs that were taken by a colleague on 18 December 2019 of such a dormitory room and cheap hotel.
76. In regard to a Tazkera, Dr Schuster's evidence was that the document is easily forged and there is not a huge impact in day-to-day life of not having one; but it is required for official purposes. She thought that, with the assistance of a family member, it could be possible for one to be issued in Kabul.
77. Dr Schuster's opinion is that the appellant would not be able to have a "relatively normal" life in Afghanistan without family support, and in the absence of support he would either be recruited by anti-government elements or criminals; or become destitute. She stated that the only people who have been successful, to her knowledge, in making a life for themselves in Kabul are those who have friends or family and some resources.
78. The Panel in the 2018 UT decision described the evidence of Dr Schuster as clear, comprehensive and well researched; and significant weight was attached to it. We reach the same conclusion. Mr Singh advanced several criticisms of her evidence. He argued that she failed to take into account (or was unaware of) important objective evidence about the level of risk in Kabul relative to Afghanistan as a whole, greatly overstated the actual inflow of IDPs and returnees to Kabul, did not appear to have a good knowledge of the economic circumstances in Kabul and presented information selectively. We accept that there were gaps in Dr Schuster's knowledge. However, given the huge amount of information available about Afghanistan it is not surprising that Dr Schuster had not read (and was not aware of) all of the material evidence. We found Dr Schuster to be conscientious and careful – and to be clear about what she knew and did not know.

**(c) Dr Ayesha Ahmad**

79. Dr Ahmad is a lecturer in global health at St George's University of London who researches mental health and conflict with a country focus on Afghanistan. She has spent one week in Afghanistan, in 2017. She does not have medical qualifications and is not a psychiatrist or psychologist. Her opinion is based on academic research and not on a clinical assessment of the appellant. She explained that her contribution was to provide an academic and theoretical perspective on mental health and trauma.
80. In her report, Dr Ahmad gave an opinion, based on academic literature, on the impact on a person's mental health of living in a conflict zone. She maintained that living in a war zone has a significant negative effect on a person's mental

health. She stated that this has been gravely underestimated due to poor reporting and diagnostic tools.

81. She stated that, in the case of the appellant, the mental health impact of being in a war zone will be exacerbated because he will be without a support network, has spent a significant time period in a non-conflict setting, will be in a city with which he is not familiar, is unfamiliar with the current social/cultural environment, has a poor socio-economic situation and had traumatic experiences in his childhood. She emphasised the significance of having had an adverse and potentially traumatic experience in childhood, stating that this would make him significantly more vulnerable.
82. Dr Ahmad cited a World Health Organisation estimate in June 2019 that one in five people in post-conflict settings have depression, anxiety disorder, post-traumatic stress disorder, bipolar disorder or schizophrenia. She added to this that the appellant can (and she believes he will, based on the academic literature and her research) suffer psychologically in a war zone even without a diagnosed psychiatric disorder.
83. Dr Ahmad also expressed an opinion on mental health care provision in Afghanistan. She stated that public healthcare is of poor quality and medication is frequently counterfeit. She referred to attacks on medical staff and security concerns affecting access to healthcare in Afghanistan. She commented on there being inadequate psychiatric services and only one mental health hospital in Afghanistan, which is located in Kabul and has only 60 beds for in-patients and 40 in a separate facility for drug addicts. Dr Ahmad expressed the view that in Afghanistan there is little understanding of mental health and people with mental health conditions are stigmatised and socially ostracised.
84. Dr Ahmad was a conscientious witness who tried to assist the Tribunal. We accept, as argued by Ms Naik, that it was within her expertise to express an opinion, as a general matter, on how people in general respond to living in a conflict zone and the relevance to this of experiencing trauma as a child. We also accept that Dr Ahmad was able to provide information about the availability of mental health treatment in Afghanistan. To that extent, Dr Ahmad's report is helpful and we note that her opinions are consistent with the view expressed by UNHCR and others about the prevalence of mental health problems in Afghanistan as a result of the prolonged conflict and the lack of available treatment. However, Dr Ahmad has not assessed the appellant or considered his medical records and history. Her report is not the equivalent of, and cannot be treated as a substitute for, a report by a psychiatrist or psychologist based on an assessment of an individual. There is no such report – indeed, there is no evidence of any sort – before us to indicate that the appellant suffers from a mental health condition or is vulnerable to do so.

#### **(d) Safety and security**

85. We were provided with a considerable amount of up-to-date evidence, emanating from reputable sources, about the violence faced by civilians in Kabul Province whilst going about their day-to-day activities, as well as the general security situation. In addition, we have considered evidence (and heard evidence from both Dr Schuster and Dr Ahmad) about the psychological impact of living in (and of being returned from Europe to) an environment with widespread indiscriminate violence.
86. The consistent view expressed by UNHCR, OCHA, UNAMA and others is that Afghanistan (and Kabul) has been, and continues to be, profoundly affected by continual and widespread violence that significantly impacts civilians. The 2019 EASO Guidance describes the conflict in Kabul City as being characterised by asymmetric tactical warfare involving suicide bombers and IEDs. Reference is made to an average of 4.8 incidents per week related to insurgents being reported between January 2018 and February 2019 (although it is not said what these incidents involved). UNAMA's 2018 annual report refers to Kabul as the Afghan province most affected by IEDs (mainly suicide).
87. A report by the Swedish Migration Agency dated 4 December 2018 describes the security situation in Kabul City as being characterised by increased violence and frequency of suicide bombings. It is stated that although the incident level in Kabul is relatively low, each individual attack can potentially claim a large number of casualties; and although Kabul is under stable government control, the frequent attacks have a great impact on people's perceived security and many residents limit their movement in the city to only necessary travel. This is reflected in the findings of the Asia Foundation Afghanistan survey which, in both 2018 and 2019, found that a substantial majority of the population in Kabul thought Afghanistan was moving in the wrong direction, and the most frequently cited reason for this in the Central/Kabul region was insecurity/crime.
88. A similar observation was made by the Finnish Immigration Service, following an Afghanistan fact-finding mission to Kabul in April 2019, where the security situation was described as the biggest concern for returnees and civilians in general, with the random nature of the violence meaning that everyone is at risk. It is said that life tends to return to normal very quickly after a security incident.
89. Since 2009 UNAMA has been systematically documenting civilian casualties attributed to the conflict in Afghanistan. When UNAMA refers to casualties they include both deaths and injuries. A person is only counted as a civilian casualty in its statistical reporting if there are at least three different and independent types of sources. UNAMA does not presume fighting age men are either civilians or fighters but assesses claims on the facts available in relation to each casualty and where insufficient information is available such casualties will not be included in

the statistical reporting. UNAMA acknowledges that there is a possibility of under reporting of civilian casualties because of their methodology.

90. UNAMA statistics are referred to in most assessments of Afghanistan (and Kabul) that we have seen, including the 2018 UNHCR Guidelines; and we consider them to be the most reliable source for estimating the number of injuries and deaths in Kabul occurring because of the conflict, and in identifying casualty trends. That said, we consider it likely that, because of the (robust) methodology used, UNAMA’s figures understate the number of casualties.

91. We have extracted from the documents before us casualty figures, as documented by UNAMA, for Kabul Province and Afghanistan for years where the information is available. It is important, in order to contextualise the figures, to have regard to the relevant population size (between 4-8 million for Kabul Province and 35-38 million for Afghanistan). The 2019 EASO Guidance states that the majority of victims in Kabul Province are in Kabul City. The population of Kabul City is approximately 3 - 6 million.

Year	Number of casualties (deaths and injuries attributed to the conflict) recorded by UNAMA	
	Kabul Province (population 4-7m)	Afghanistan (population 35-38m)
2013	Not available	8,638
2014	Not available	10,535
2015	Not available	11,035
2016	1,758	11,452
2017	1,831	10,459
2018	1,866	10,993
2019 (until 30.9.2019)	1,491	8,239

92. In the 2019 EASO Guidance, it was stated that in 2018, based on the UNAMA casualty figure of 1,866, there were 38 civilian victims per 100,000 inhabitants in Kabul Province.

93. An alternative source for casualty numbers in Kabul is the Special Inspector General for Afghanistan Reconstruction (SIGAR) Quarterly Report to the United States Congress dated January 30, 2019, where it is stated that the number of casualties in Kabul Province between 1 January and 16 November 2018 was 1,703, corresponding to 0.31 per thousand (or 31 per 100,000) based on a population of 5,452,652.

94. The SIGAR report provides comparable figures for other provinces in Afghanistan, showing that many have significantly higher rates of casualties than Kabul, such as Nangarhar (0.81 per thousand), Kunar (0.52 per thousand), Uruzgan (0.51 per thousand) and Paktiya (0.48 per thousand). Langhman Province, from where the appellant originates, is recorded as having a casualty rate of 0.34 per thousand. In absolute terms, Kabul has the highest number of

casualties (1,703). The only other province where there were more than 500 casualties is Nangarhar, where the total is 1,517. The population in Nangarhar, however, is only 1,864,582 (approximately one third of Kabul).

95. A comparison of provinces, based on UNAMA figures, can be extracted from the 2019 EASO Guidance, which, like the SIGAR report, shows that several provinces have a substantially higher casualty rate than Kabul. The rate in 2018 for Nangarhar, for example, was recorded as 111 per 100,000 inhabitants and in Kunar was 82 per 100,000 inhabitants. This compares to 38 per 100,000 inhabitants in Kabul.
96. The casualty figures do not take into account individual characteristics that might make one person more at risk than another. The 2020 OCHA Humanitarian Needs Overview issued in December 2019 states that women and children accounted for 41% of casualties in Afghanistan in the first three quarters of 2019. This is consistent with the evidence of Dr Schuster, which is that those who are economically active, and need to travel around Kabul, are at greater risk than those (mostly women) who do not.
97. Dr Schuster argued that returnees (especially those without family support and guidance) may face a greater risk than the general population because they lack experience of and familiarity with Kabul that may, in some circumstances, enable a person to avoid a situation that would put them at risk. She maintained that the UNAMA statistics do not reflect the (higher) risk from indiscriminate violence a person with the appellant's profile (an economically active male returnee without family support, and who lacks familiarity with Kabul) would face.
98. Dr Schuster also emphasised that the statistics do not convey the impact of the violence beyond the individual victim. She highlighted the impact on the families of casualties, particularly where the casualty provided an income for his wider family. She also pointed to the psychological impact of the violence. She described the population in Kabul as living under the shadow of an ever present and constant threat of conflict-related violence. This is consistent with the view expressed by UNHCR. In the 2018 UNHCR Guidelines it is stated:

UNHCR notes that civilians who partake in day-to-day economic and social activities in Kabul are exposed to a risk of falling victim to the generalized violence that affects the City. Such activities include travelling to and from a place of work, travelling to hospitals and clinics, or travelling to school; livelihood activities that take place in the City's streets, such as street vending; as well as going to markets, mosques and other places where people gather.
99. In the 2019 COI UNHCR Report, UNHCR referred to a Swedish study published in December 2018 finding that many residents of Kabul limit their movement in the city to only necessary travel because of a fear of violence. This is consistent with the 2019 Asia Foundation Survey where it was found that 74.5% of Afghan respondents in Afghanistan as a whole (data was not provided for Kabul) stated that they often fear for their personal safety (the highest rate since the survey began). OCHA, in its 2019 Humanitarian Needs Overview, referred to a report

stating that (in Afghanistan as a whole, rather than Kabul specifically) 70% of men do not feel safe travelling to work, the mosque, health and education facilities or the market, and that people have restricted their movements as a consequence of the violence.

100. There is evidence before us that (at least some) Afghans consider Kabul safer than other parts of Afghanistan. EASO, in its April 2019 “Key socio-economic indicators” report stated that “many returnees end up in Kabul because of relatively higher security than in their regions of origin, and because of expectations of more job opportunities and support facilities for returnees.”

101. The 2019 Asia Foundation Survey of Afghan People asked respondents to name up to two of the biggest problems in their area. In the Central/Kabul region, 35% cited insecurity/crime. Significantly higher percentages were given for insecurity/crime in some other regions (e.g. 45% in South East and 48.2 in West). Insecurity and crime was the second highest identified problem in Kabul, after lack of utilities/public services, which was identified by 41% of respondents.

102. We have been provided with a considerable amount of evidence concerning the security situation in Afghanistan as a whole. We approach this evidence with caution given that Afghanistan is a large country with very significant differences in the security situation throughout. However, some observations about Afghanistan as a whole are relevant to the security situation in Kabul. In particular:

a. UNAMA repeatedly expresses concern about the unacceptably high number of civilian casualties in Afghanistan. In the 2017 UNAMA annual report, expressing a sentiment repeated in their 2018 annual report and their 2019 quarterly reports, it stated:

UNAMA remains extremely concerned by the continued increase in civilian casualties from suicide and complex attacks. The impact of such indiscriminate or targeted attacks, typically occurring in urban civilian populated areas, disproportionately affects the civilian population.

b. In August 2017 the United Nations Secretary General changed its assessment of Afghanistan, for the first time since before the Taliban regime in 2001, from a country in a situation of “post-conflict” to “a country undergoing a conflict that shows few signs of abating” and OCHA stated in December 2017 that (in respect of Afghanistan as a whole) “what was once a low intensity conflict has now escalated into a war”. The report of the Secretary-General to the General Assembly Security Council on the situation in Afghanistan dated 3 September 2019 states that the security situation remains volatile, with a high number of security incidents causing harm to civilians and fighting continuing at consistently high levels.



- c. OCHA, in its Humanitarian Needs Overview 2019, emphasised that there is a chaotic and unpredictable security situation in Afghanistan and stated:

the invisible toll of the conflict has been no less severe. With the ever-present threat of violence turning daily activities into a potentially life-threatening affair, increased anxiety levels can be seen across much of the Afghan population. According to a recent Whole of Afghanistan (WoA) Assessment, 70 per cent of men do not feel safe when travelling to work, the mosque, health and education facilities or the market.

103. Also relevant to the security risk in Kabul is the prospect that the Afghan authorities will lose control of the province. Both the 2018 report by the Swedish Migration Agency and the 2019 Report by the Ministry of Foreign Affairs of the Netherlands state that Kabul is under government control. In the 2018 UNHCR Guidelines it is stated that although the Taliban have intensified their attacks on Kabul, the Afghan National Defence and Security Forces have proved generally adept in defending major urban centres. This is also the view of EASO, who state, in the 2019 EASO Guidance, that although the Taliban are active, and there are frequent security incidents from different groups, Kabul is considered as “under government control or undetermined.”

104. The 2019 COI UNHCR Report refers to the Taliban remaining present – and visible – in Kabul, and to a perception that the central authorities are “staying safely behind closed doors”. UNHCR also refers to the presence of ISIL, who have been responsible for terrorist attacks in Kabul. OCHA, in the 2019 Humanitarian Needs Overview, considers that ISIL is unlikely to be fully eradicated and can be expected to retain the capacity to carry out spectacular mass casualty incidents in major urban centres such as Kabul.

#### **(e) Population growth and absorption capacity**

105. The June 2019 EASO Country of Origin Report states that Kabul City is the fifth fastest-growing city in the world with an average annual growth rate of 4.74%. EASO states that population estimates vary from 3.5 to 5.5 million, and the population has increased fourfold since 2001.

106. The 2019 COI UNHCR Report records, inter alia, that:

- a. IOM’s assessment in October 2019 was that the total inflow of returnees and IDPs into Kabul Province since 2012 stood at 443,238 as of 30 June 2019, with returnees and IDPs representing more than 8% of Kabul Province’s total population; and that Kabul is:

“potentially susceptible to social instability induced by large influxes of returnees and IDPs, who face limited access to basic services and livelihoods, jeopardizing reintegration prospects and fueling secondary displacement”.

- b. OCHA's 2019 Humanitarian Needs Overview reported that as many as two thirds of all people displaced outside their province are moving towards the five regional capitals including Kabul.
- c. The Vienna Institute for International Dialogue and Cooperation reported in November 2018 that since 2002 Kabul, Nangarhar and Kunduz provinces have become the top destinations for returning registered refugees, while 52% of unregistered refugees returned to Nangarhar and Kabul.
- d. The World Bank reported in June 2019 that "Kabul and Nangarhar alone account for one third of all returnees; and returnees who do not settle in their province of origin move to relatively urban areas".
- e. An article published by Afghan Analysts Network in January 2019 reported that the growth of Kabul has compounded the problems with housing and sanitation, property and other factors.
- f. A report by the Norwegian Refugee Council in June 2019 stated that the influx of IDPs and returnees to Herat, Jalalabad and Kabul has put a strain on resources and public services while increasing the number of unemployed.

107. The 2018 UNHCR Guidelines state that Kabul City region has seen the largest population increase in Afghanistan, with rapid growth following returns from Iran and Pakistan. Concern is raised that population growth in the city is outpacing the capacity to provide necessary infrastructure, services and jobs; with 70% of the population living in informal settlements. A report is cited stating that 55% of households in Kabul's informal settlements were severely food insecure in January 2017.

108. In a February 2017 report on Afghan returns from Pakistan, Human Rights Watch reported that UNHCR estimated that at least 25% of refugees returning from Pakistan will try and settle in Kabul, where new arrivals are putting tremendous pressure on the city. The report quotes the head of IOM in Kabul stating in November 2016:

"with all these returns from Pakistan and Iran as well, and looming returns from Europe, it is a perfect recipe for a perfect storm because that puts a strain on the capacity of the government to respond".

109. Also quoted is a 2016 UNHCR document stating:

"Kabul has been significantly affected by the surge in returns from Pakistan, with almost a quarter... settling in Kabul's overcrowded settlements. In light of the well documented contraction of Kabul's economy following the withdrawal of

international forces in 2014, the City's absorption capacity has been extremely limited due to the low availability of livelihoods... appropriate shelter, and access to basic services, particularly health and education."

110. EASO's report on Afghanistan's security situation dated June 2019 states that as many as two-thirds of Afghans displaced from their province have moved towards the five regional capitals, and Kabul's growth has been particularly significant although the total number of IDPs in Kabul is not known and movement to and within the city is fluid. It is said that IDPs often settle in the outskirts and frequently mingle with other vulnerable groups such as the urban poor, returnees and economic migrants. Due to lack of adequate land and affordable housing, most new and protracted IDPs in Kabul reside in one of the 60 to 70 informal and illegal settlements around the City.

111. Similar observations are made by EASO in its country of origin information report dated April 2019, where, inter alia, it is said that Kabul is a "magnet" for labourers as it is the major trade and employment hub in the country, with salaries being generally higher than in other provinces.

112. The attraction of Kabul for returnees is emphasised in the Afghanistan country of origin report by the Ministry of Foreign Affairs of the Netherlands dated 1 March 2019, where it is stated that most returnees settle in urban areas such as Kabul.

113. OCHA, in its 2020 Humanitarian Needs Overview, gives figures for the number of returnees to Afghanistan from Iran and Pakistan, as well as from Turkey. They state that in 2019 (up to the end of November) a significant number (430,000) of Afghans returned from Iran. There were also 25,000 from Pakistan and 16,000 from Turkey. The report provides figures for the number of returnees from Iran and Pakistan by year, as follows:

<b>Year</b>	<b>No. of cross border returnees from Iran and Pakistan</b>
2013	522,000
2014	563,000
2015	722,000
2016	1,064,000
2017	617,000
2018	821,000
2019	453,000

114. These figures are for Afghanistan as a whole. They show a significant peak in 2016.

115. According to IOM (as reported in the 2019 COI UNHCR Report), as of June 2019, since 2012 the total number of returnees and IDPs who have moved to Kabul is 443,238. This is consistent with the IOM Displacement Tracking Matrix for October to December 2018, which recorded a total inflow of returnees and IDPs to Kabul from 2012 to 2018 of 369,841. Only four provinces had a higher total inflow of returnees and IDPs than Kabul during this period: Nangarhar (798,563), Herat (636,306), Helmand (434,173) and Jawzjan (424,949). However, the vast majority of provinces had a higher number of returnees and IDPs than Kabul as a percentage of the population. IOM reported that returnees accounted for 7% of Kabul's population. This contrasts to, for example, 41% in Badghis, 33% in Nangarhar, 42% in Jawzjan, 24% in Herat and a national average of 18%. IOM comments that Nangarhar Province is the province most critically affected, hosting 15% of returnees, nationwide.

116. Although IOM provides data which facilitates a comparison between provinces, neither the IOM reports nor the other evidence before us provides a qualitative assessment of how the influx of IDPs and returnees compares between provinces. That said, the consistent view of EASO, UNHCR and others is that the impact of IDPs and returnees in Kabul has been significant. EASO's 2019 Key socio-economic indicators (focus on Kabul city, Mazar-e Sharif and Herat City) report dated April 2019 considered Kabul alongside Herat and Mazar-e Sharif, both of which have a greater number of returnees and IDPs as a percentage of the population. There is nothing in the report to indicate that the impact on Kabul has been less significant than it has been in Mazar-e Sharif and Herat City, and the view expressed by EASO is that the large number returnees to Kabul has challenged the absorption capacity of the government and NGOs.

#### **(f) Poverty and humanitarian conditions**

117. The most up to date evidence before us concerning the humanitarian situation in Afghanistan is OCHA's 2020 Humanitarian Needs Overview of Afghanistan, issued in December 2019. This states that almost a quarter of the country's population is estimated to be in need of humanitarian assistance and describes the outlook as bleak.

118. The report gives a breakdown of people in need by region. In Kabul, 1.07 million people are said to be in need (of which 0.24 million are in severe need) out of a total population of 7.98 million. Mr Singh made the observation that the proportion in need (13%) is lower than any other region, and the proportion in severe need (3%) is substantially lower than any other region. In fact, even though Kabul has the highest population of any region, it has the lowest number of people in severe need of any region.

119. In 2018 Afghanistan experienced an extended period of drought. OCHA reported that it affected more than two thirds of the population. The 2019 Special Inspector General for Afghanistan reconstruction (SIGAR) report refers to the

significant drought in 2018, followed by flooding. The UN Deputy Special Representative of the Secretary General is quoted as describing the level of suffering in 2018/9 as being as bad as he has ever seen, following the drought and in light of the high levels of violence and general poverty level. Most Afghan households are said to face acute food insecurity.

120. In the 2019 EASO Guidance it is recorded that the Famine Early Warning System labelled Kabul as “stressed” in December 2018, meaning that even with humanitarian assistance at least one in 5 households had minimally adequate food consumption but was “unable to afford some essential non-food expenditures without engaging in irreversible coping strategies”.
121. The 2019 EASO Guidance describes Kabul as being regarded as one of the world’s most water stressed cities, with only 10% of residents receiving potable water, and the majority of shared water points are said to be contaminated, posing grave health concerns. It is reported that only about half of the population have basic sanitation services. The 2017 Asia Foundation Survey records that over 23% of Afghans in the Central/Kabul region report issues with drinking water as one of their biggest local problems.
122. EASO’s report on Afghanistan’s security situation dated June 2019 refers to worrying indications of rising poverty in informal settlements, contributing to street begging, overcrowded accommodation and heightened risk of gender-based violence; and perceived isolation of IDP families from surrounding host communities. IDPs arriving and residing in Kabul are described as adding pressure to the community, basic services and social infrastructure, strongly affecting the absorption capacity of the city. Reference is made to a Norwegian study published in January 2018 in which more than 80% of the Kabul IDP respondents listed access to food and water as a major challenge in their daily lives. It is noted that Kabul is facing a severe water shortage, which seriously affects already vulnerable groups like displaced people.
123. Challenges said to face displaced persons include limited job opportunities, few or no social protection nets, poor shelter/housing conditions, impeded access to education and healthcare, and continuous fear of eviction. IDPs are said to mostly work as unskilled day labourers, competing for low-paid and precarious jobs in the construction sector and to a lesser extent in agriculture.
124. EASO records that 54.5% of Afghans live in poverty. The World Bank, in 2019, reported that poverty is likely to have been exacerbated by drought conditions, slower growth, and continued displacement during 2018.
125. UNHCR’s 2018 Returnee and IDP Monitoring Report noted that 27% of returnees in 2017, and 39% in 2016, reported skipping a meal in the past week, which is a strong indication of food insecurity.

126. EASO, in its 2019 COI report on key socio-economic indicators, comments on the high number of households living below the poverty line in Kabul. It is noted that the cost of living is significantly higher than in other provinces, and that Kabul's inhabitants tend to be more reliant on credit than people in other areas.

### **(g) Family and other networks**

127. A consistent theme in the evidence about Afghanistan is the importance of social networks.

128. Dr Schuster's opinion is that without a social network there is a real risk of destitution, as without family or other support it is, in her view, almost impossible to obtain work (even casual labour) or permanent accommodation.

129. In the 2018 EASO Country of Origin Information Report: Afghanistan – Networks, it is stated that some networks are family or clan-based, whereas others are built and developed, and Afghans in general are good at building networks. A report is cited stating that there was a consensus among the people spoken to that it is difficult to imagine an Afghan who is completely alone, who is not in contact with his or her family, or who does not have any other network.

130. EASO, in its 2019 COI report on Key socio-economic indicators, states that it is common for new settlers in Kabul to settle according to their place of origin, allowing them to benefit from social networks. However, EASO has also recorded, in its June 2019 COI Report on the Afghanistan Security Situation, that in central areas of Kabul movement of residents is more common with a disruptive effect on social networks and it is now common to hear the complaint "one does not know one's neighbours any more".

### **(h) Accommodation**

131. The Afghanistan Living Conditions Survey 2016 – 17, published in 2018, states that 72.4% of Afghanistan's urban population live in slums, informal settlements or inadequate housing. In its 2019 report, EASO gives a similar figure for Kabul. Homes in informal settlements tend to lack sewerage systems, waste disposal, and access to drinking water.

132. OCHA, in its 2019 Humanitarian Overview report, refers to 39% of IDPs and returnees living in makeshift shelter conditions.

133. The evidence of Dr Schuster is that the only realistic option for a single young man in Kabul without family or connections (or independent funds) is to stay in a dormitory room in a cheap hotel, which she characterised as a "doss house". Her evidence was that this type of accommodation is inexpensive, commonplace, and available to a person in the appellant's circumstances. However, she considered

such accommodation substandard as the carpet would be greasy and dirty, there would be no locks on the doors, and there would not be a bed, just a mattress to roll out.

134. In the 2018 EASO Country of Origin Information Report: Afghanistan – Networks, it is stated that there are inexpensive low-quality guesthouses throughout the country that are utilised by single men. The local term is said to be *chai khana* (tea house). It is stated:

In Kabul and other large cities, there are many such *chai khana* and, if one place is full, it is possible to get room and board somewhere else. One does not need to know anyone to be allowed in, and it is not unusual for guests to come alone.

### **(i) Employment**

135. The 2018 EASO Country of Origin Information Report: Afghanistan – Networks highlights the importance of networks to access the labour market. It is stated that even for people who are highly educated and well qualified it is difficult to obtain work without a network, as nepotism is widespread and personal relationships and networks are valued above formal qualifications and other factors. The report also states that most Afghans are unskilled and are part of an informal, unregulated labour market, consisting mainly of manual work. It described how labourers are hired from the street, having congregated at local meeting points for people looking for work. Many people turn up, some bringing their own tools or equipment, and not everyone gets work.

136. Dr Schuster, similarly, explained that without connections it would be very difficult to obtain employment. She considered that even day-labour work is difficult to obtain without a network, as the competition for work is intense. She commented that for the type of work available to a returnee without connections, the ability to speak English would be of little benefit.

137. EASO, in its 2019 Afghanistan: Key socio-economic indicators report, cited a report from Oxfam stating that 30% of returnees faced difficulties finding livelihood opportunities and 18% had challenges in accessing food. Oxfam’s research found that returnees could generally work only from time to time in Kabul as daily wage workers and most could not find jobs everyday making their earnings unstable.

138. The 2019 Finish Immigration Service Fact Finding Mission to Kabul found that “the job market is exhausted” with the economy not keeping pace with the population growth. It is stated:

“there have been so many young Afghan men returning that their chances of accessing employment opportunities are getting more and more reduced. The main problems for people in Kabul are insecurity and joblessness”

## **(j) Afghan Identity Document (Tazkera)**

139. Dr Schuster's evidence was that a Tazkera, which is the main identity document in Afghanistan, is easily forged and there is not a huge impact on day-to-day life of not having one, but it is required for official purposes. She thought that with the assistance of a family member it could be possible for one to be issued in Kabul although normally a person would need to obtain it from his or her home area.

140. The evidence from OCHA, in the 2020 Humanitarian Needs Overview, is that lack of a Tazkera inhibits access to government services. OCHA states that although access to health services and education is not dependent on having a Tazkera many people believe that it is. OCHA also states that a Tazkera is necessary to obtain a registered mobile phone SIM card which, in turn, is required to open a mobile banking account.

141. OCHA has found that households without a Tazkera are particularly vulnerable after displacement as they must rely mostly on income from unskilled, unstable, day labour. In its 2018 Multi Sector Needs Analysis, OCHA states that 80% of households without a Tazkera reported 3 or more unmet needs, compared to 56% of other households. It was also found that households without a Tazkera were the least economically resilient. It was stated that this may be due to the common requirement of an official identification card for many formal employment opportunities.

142. EASO, in its 2019 Report on Key socio-economic indicators, records that a Tazkera is the most important identification document in Afghanistan and is required to access a range of public services such as education, employment, healthcare and official loans provided by banks; and is particularly important in urban areas in order to access basic services and credit. The lack of a Tazkera could increase a person's vulnerability to harassment from the authorities.

143. EASO also reports that, generally, in order to obtain a Tazkera, IDPs need to travel to their district of origin. It is also stated that the Afghan government has recognised the importance of documentation and has been working with international organisations to address it, but that IDPs continue to have to travel back to their places of origin to receive their documents. It is also stated that a Tazkera is necessary to obtain other documents, such as a passport.

## **(k) Mental Health**

144. OCHA's 2020 Humanitarian Needs Overview of Afghanistan, issued in December 2019 states:



Constant exposure to high stress, conflict situations and repeated loss of friends and family members are taking their toll on the mental health of people living in Afghanistan.

145. OCHA also states that:

With extremely low availability of psychosocial support services and repeated exposure to traumatic shocks, recovery opportunities are likely to be minimal, with people instead resorting to negative coping mechanisms.

146. The evidence of both Dr Schuster and Dr Ahmad is that the prevalence of violence combined with the long-standing conflict has resulted in a large number of people suffering from (undiagnosed and untreated) mental health problems. Dr Ahmad expressed the view that individuals returned to a conflict zone would almost inevitably suffer mental health problems as a result.

### **(1) Experience of returnees and returnee assistance**

147. There is a limited amount of assistance available to returnees. Dr Schuster stated that returnees receive the equivalent of approximately £125 in cash on arrival at the airport and can stay for up to 2 weeks at the Spinzar hotel in central Kabul. Additionally, an in-kind grant, to sign a lease, augment a salary or start a small business, of approximately £900 can, if certain stringent criteria are met, be accessed, although this takes a considerable amount of time. She stated that there is a very low uptake of this assistance and for the vast majority of returnees there will be no assistance other than the initial cash payment, which will not last long.

148. The 2019 COI UNHCR Report includes a section on the situation of Afghans who are returned to Kabul. A German report (which we have not seen) is quoted extensively. The report is a study of 55 deported Afghans from Germany. The term “deported” is used but it appears that the report is not limited to deportees, as that term is used in the UK. The findings of the report cited in the 2019 COI UNHCR Report include that (a) nearly all deportees wanted to leave Afghanistan; (b) 90% experienced violence (although it is later said that 25% were affected by criminal violence); (c) they are treated with suspicion, targeted and subject to threats by security forces and by society in general because they are seen as having betrayed their country, being un-Islamic, infidels, or spies and traitors; (d) they are perceived as being serious criminals; (e) they are unable to find work – it is said only one participant in the study was able to make a living from work, which he found through his uncle; and (f) landlords are put in danger by renting a property to deportees because of targeting by the Taliban.

149. UNHCR also states that returnees are targeted by criminal gangs who assume they have money and that impoverished Afghans, including returnees, join the Taliban as part-time fighters.

## **F. UNHCR's Legal Analysis and Recommendations**

### **(a) UNHCR's opinion at the time of the 2018 UT decision**

150. The 2016 UNHCR Guidelines, which were in force at the time of the 2018 UT decision, give an opinion on internal relocation in Afghanistan generally, but are silent on Kabul specifically.

151. In December 2016, UNHCR expressed concern about internal relocation to Kabul to Human Rights Watch, as mentioned in a report cited at paragraph 99 of the 2018 UT decision, where it is stated:

The Human Rights Watch Report "Pakistan Coercion, UN Complicity: The Mass Forced Return of Afghan Refugees", (February 2017) records the UNHCR, in December 2016, cautioning against returning failed Afghan asylum seekers to Kabul on an internal flight alternative basis for the following reasons:

"Kabul faces serious pressures on housing and services, due to years of primary and secondary population displacements ... resulting in large-scale movements to the City, together with a natural (non-conflict-related) process of urbanization from rural areas. In 2016, the situation was made worse by the fact that more than 25 percent of Afghan returnees from Pakistan went to Kabul. This has immediate consequences for the assessment of Kabul as a proposed internal flight alternative, in particular with regards to the [criterion] of "reasonableness." The considerations presenting in the April 2016 [Eligibility] Guidelines remain relevant for assessments of Kabul as an internal flight alternative. In the context of a dramatic increase in competition for access to scarce resources, the availability of an IFA will need to be considered on a case-by-case basis, taking into account the particular circumstances of the individual applicant."

### **(b) The 2018 UNHCR Guidelines**

152. On 30 August 2018 UNHCR published the 2018 UNHCR Guidelines, which replaced the 2016 UNHCR Guidelines.

153. The 2016 and 2018 UNHCR Guidelines give the same opinion on internal relocation within Afghanistan generally. They both express the view that internal relocation is not "relevant" if, inter alia, the proposed area of relocation is an area affected by active conflict or where anti-government elements have effective control. In terms of reasonableness, they both state that internal relocation would generally be unreasonable without a support network (either family or ethnic community who are willing and able to provide genuine support) unless the person being returned is a single able-bodied man (or part of a married couple) of working age without identified specific vulnerabilities as such a person may be able to subsist without family and community support in urban and semi urban areas that are under effective government control.

154. In contrast to the 2016 UNHCR Guidelines, the 2018 UNHCR Guidelines contain a distinct assessment of Kabul and state the following conclusion at page 10:

“Against the background of the considerations relating to the relevance and reasonableness analysis for Kabul as a proposed area of IFA/IRA, and taking into account the overall situation of conflict and human rights violations, as well as the adverse impact this has on the broader socio-economic context, UNHCR considers that [internal relocation] is generally not available in Kabul”

155. UNHCR’s reasons for this conclusion are relatively brief. Given that the significance, legal status, and the weight that should be attached to the opinion of UNHCR was a matter of significant contention between the parties, we set out its reasoning, at pages 112-114 of the 2018 UNHCR Guidelines, in full:

*Internal Flight or Relocation Alternative in Kabul*

In addition to the general guidance provided in Sections III.C.1 and III.C.2 above, and against the background of the additional information provided in Section III.C.3, UNHCR offers the following specific guidance relating to the two limbs of an IFA/IRA assessment for Kabul. In line with the guidance provided in Sections III.C.1 and III.C.2, an assessment of the possibility of relocation to Kabul requires an assessment of both the relevance and the reasonableness of this proposed area of relocation. In addition, if an IFA/IRA to Kabul is considered in asylum procedures, all relevant general and personal circumstances regarding the relevance and reasonableness of Kabul as a proposed area of relocation for the particular applicant must be established to the extent possible and must duly be taken into account. The applicant must be given an adequate opportunity to respond to the purported relevance and reasonableness of Kabul as the proposed IFA/IRA.

*The relevance of Kabul as an IFA/IRA*

To assess the relevance of Kabul as a proposed IFA/IRA, and in particular the risk that the applicant would face a real risk of serious harm, including a serious risk to life, safety, liberty or health, or one of serious discrimination, decision-makers must pay due regard to the negative trends in relation to the security situation for civilians in Kabul. UNAMA reported 993 civilian casualties (321 killed and 672 injured) in Kabul province during the first six months of 2018. In 2017 UNAMA “continued to document the highest levels of civilian casualties in Kabul province, mainly from indiscriminate attacks in Kabul city. Of the 1,831 civilian casualties (479 deaths and 1,352 injured) documented in Kabul province, 88 per cent resulted from suicide and complex attacks carried out by Anti-Government Elements in Kabul City.” As also noted in Section II.B.1 above, UNAMA reported that the number of civilian casualties in Kabul city caused by suicide and complex attacks in 2017 represented 70 per cent of all civilian casualties in Afghanistan in 2017 caused by such attacks. UNHCR notes that civilians who partake in day-to-day economic and social activities in Kabul are exposed to a risk of falling victim to the generalized violence that affects the city. Such activities include travelling to and

from a place of work, travelling to hospitals and clinics, or travelling to school; livelihood activities that take place in the city's streets, such as street vending; as well as going to markets, mosques and other places where people gather.

*The reasonableness of Kabul as an IFA/IRA*

In accordance with the guidance provided in Section III.C.2 above, to assess whether Kabul provides a reasonable IFA/IRA, it must be established that the applicant will have access in Kabul to: (i) shelter; (ii) essential services, such as potable water and sanitation, health care and education; (iii) livelihood opportunities, or proven and sustainable support to enable access to an adequate standard of living. Relevant information to be taken into account by decision-makers in this regard includes the grave concerns expressed by humanitarian and development actors about the limits of Kabul's absorption capacity. Since the fall of the former Taliban regime in 2001, Kabul city Region has seen the largest population increase in Afghanistan. Official population estimates indicate that by early 2016 Kabul city Region had 5 million residents, 60 per cent of which were in Kabul city. The city's population has seen further rapid growth in the wake of the large-scale returns to Afghanistan from Iran and Pakistan (see Section II.F). The International Growth Centre noted in January 2018, "Kabul has been undergoing rapid urbanisation for the last three decades. Population growth in the city is outpacing the city's capacity to provide necessary infrastructure, services and jobs to citizens, resulting in the emergence of widespread informal settlements that house an estimated 70% of the City's population. "Against a background of general concerns about rising poverty levels in Afghanistan, the Asia Foundation's 2017 Survey of the Afghan People found that perceptions of a worsening financial situation was most common in the Central/Kabul region, at 43.9 per cent. In January 2017 it was reported that 55 per cent of households in Kabul informal settlements were severely food insecure.

OCHA's 2018 Humanitarian Needs Overview ranks Kabul among the 10 provinces (out of a total of 34 provinces) that are "the most conflict-affected". In addition, the Humanitarian Needs Overview notes that "needs are particularly pronounced in large urban centres, including Kabul and Jalalabad City, where both IDP and returnee populations have congregated in search of income and livelihoods opportunities as well as access to basic and essential services. Humanitarian needs in these two provinces [Kabul and Nangarhar] comprise 42 percent of all those relating to internal displacement and cross-border influxes."

*Conclusion on the Availability of an IFA/IRA in Kabul*

UNHCR considers that given the current security, human rights and humanitarian situation in Kabul, an IFA/IRA is generally not available in the City.

156. We make the observation that although UNHCR evaluated the "relevance" and "reasonableness" of internal relocation, the conclusion it reached was that internal relocation was "not available". The 2018 UNHCR Guidelines do not explain whether internal relocation is "not available" because it is not relevant or not reasonable, or whether "not available" means something else.

### **(c) The 2019 UNHCR Submissions**

157. UNCHR made submissions about relocation to Kabul, dated 6 December 2019, in the case of *MJ v Netherlands* (application no. 49256/18) before the ECtHR.

158. After reiterating key points made in the 2018 UNHCR Guidelines, the 2019 UNHCR Submissions state that since the issuance of the 2018 UNHCR Guidelines the security situation for civilians, including returnees, in Kabul has further deteriorated. It is stated that the number of civilian casualties between 1 January and 30 September 2019 (1,491) is unprecedented. The unprecedented level of violence is attributed to the presence of Taliban and Islamic state, the absence of visible central authority, and violent crime. It is also stated that:

Given the deterioration of the socio-economic situation in Kabul, the absorption capacity in terms of infrastructure and housing is even more limited than in 2018. This is notably due to the population increase since the fall of the Taliban regime and the number of returnees and IDPs, representing more than 8% of Kabul Province's total population...

159. The 2019 UNHCR Submissions express concern that the large influx of returnees in Kabul is putting a strain on resources and public services, while increasing the number of unemployed. Reference is made to a 2018 World Bank study and a 2019 report by the Norwegian Refugee Council about the strain on resources and public services in Kabul, and the pressure due to the large influx of returnees.

160. The 2019 UNHCR Submissions refer to a 2019 German report documenting the (negative) experience of 55 deportees from Germany. It is stated that they encounter suspicion, hostility and violence, as well as significant difficulties accessing the labour market.

161. The 2019 UNHCR Submissions reaffirm, in their conclusion, the opinion given in the 2018 UNHCR Guidelines that internal relocation is "generally not available" in Kabul. However, they also, at paragraph 4.9, state that "Kabul is still not a relevant IFA". This is the only occasion, of which we are aware, in which UNHCR has stated in terms that Kabul is not "relevant".

### **(d) The 2019 COI UNHCR Report**

162. The 2019 COI UNHCR Report is a document dated December 2019 that is intended to provide decision makers with country of origin information for assessing internal relocation in Kabul.

163. The report is divided into three sections. The first section of the report considers the security situation for civilians. It starts by stating that UNAMA's Quarterly Report covering 1 January to 30 September 2019 documented the highest number

of civilian casualties that it has recorded in a single quarter since it began systematic documentation in 2009. It also states that civilian casualties were higher in Kabul Province than in any other Province; and that, according to a report by Action on Armed Violence, the month July 2019 saw the highest number of casualties since it began monitoring in 2010 and Kabul was the city most impacted “with almost a third of all civilian casualties occurring in the capital”. The report highlights the activities of the Taliban and ISIL in Kabul and the prevalence of violent crime.

164. The second section of the report discusses the socio-economic situation in Kabul. Kabul is described as being the main gravitational centre for migrants in the country, with IOM reporting an inflow (as of 30 June 2019) of 443,238 returnees and IDPs into Kabul Province since 2012, with returnees and IDPs representing more than 8% of Kabul Province’s total population. OCHA’s 2019 Humanitarian Needs Overview Report is cited, as reporting that as many as two thirds of people displaced outside their province are moving towards the 5 regional capitals including Kabul. Reference is made to infrastructure problems, poverty, pressure on basic services, unemployment, insecurity of property ownership and lack of water and food supplies. The report also discusses that many residents limit their movement because of security concerns and the prevalence of (undiagnosed and unsupported) mental health problems.

165. The third section of the report discusses the situation of Afghans who are returned to Kabul. Reliance is placed on the same German report cited in the 2019 UNHCR Submissions. Concern is expressed about returnees being recruited by insurgents. It is also said that there is a negative perception of returnees, and returnees fear being targeted as alleged infidels. Returnees are said to be particularly vulnerable when accessing the labour market.

166. The 2019 COI UNHCR Report recalls the position in the 2018 UNHCR Guidelines that internal relocation is “generally not available” in Kabul. Like the 2018 UNHCR Guidelines, but unlike the 2019 UNHCR Submissions, it is silent on whether the non-availability of internal relocation is because it is considered that internal relocation is not “relevant” or not “reasonable”.

**(e) The legal status of UNHCR’s legal analysis and recommendation on internal relocation**

167. The appellant submits that there must be a “substantial countervailing reason” to justify the Upper Tribunal reaching a different conclusion to that of UNHCR, as set out in the 2018 UNHCR Guidelines and subsequently confirmed in the UNHCR 2019 Submissions and COI Report.

168. The respondent’s position is that UNHCR’s recommendation does not have a presumptively binding status and the weight to be given to it is for the Tribunal to determine. Mr Singh submitted that the Tribunal should consider all the evidence,

including the UNHCR Documents, and give each piece of evidence the weight it thinks fit.

169. Mr Singh argued that the appellant's position is contrary to the Court of Appeal's judgment in *HF (Iraq) v SSHD* [2013] EWCA Civ 1276, [2014] 1 WLR 1329. One of the issues in *HF* was whether UNHCR guidance on Article 15(c) risk, as set out in UNHCR's Guidelines for Assessing the International Protection Needs of Iraqi Asylum Seekers, should be followed unless there were cogent reasons for not doing so. This contention was rejected by Elias LJ, who gave the lead judgment and with whom Fulford LJ and Maurice Kay LJ agreed. Elias LJ stated as follows:

"43...In my judgment, there is no justification for requiring the court in this context to approach its task any differently from other cases where it has to draw conclusions from primary findings of fact. The court must assess all the evidence affording such weight to different pieces of evidence as it thinks fit. No principle of international or domestic law dictates any different approach. The authorities which demonstrate the considerable respect which the courts afford to UNHCR material are entirely consistent with the conventional view that questions of weight are for the court...

44. There is, in my view, no justification for conferring this presumptively binding status on UNHCR reports merely because of their source. Frequently the court is faced, as in this case, with a raft of reports from various international, state and non-governmental organisations, and although the guidance enunciated in a UNHCR report will typically command very considerable respect...it will do so because of its intrinsic quality rather than the status of its author. Ultimately each piece of evidence has to be put into the balance but the relative weight to be given to the different reports is for the decision-maker."

170. Ms Naik submitted that there are two Supreme Court decisions post dating *HF* that are authority for the proposition that absent a good reason the opinion of UNHCR should be followed. The cases are *IA v SSHD* [2014] UKSC 6, [2014] 1 WLR 384 and *R (EM (Eritrea)) v SSHD* [2014] UKSC 12, [2014] AC 1321.

171. *IA* concerned an appellant who had previously been granted refugee status by UNHCR. The issue before the Supreme Court was the effect of a grant of refugee status to an individual by UNHCR. Lord Kerr (with whom the other judges agreed) stated that there needed to be substantial countervailing reasons to justify a different conclusion to that of UNHCR. He made the following findings at paragraphs 48 – 49:

48. The circumstance that the weight to be given to the UNHCR decision cannot be articulated in an exact way must not be allowed to detract from the influence that it wields. Quite apart from the respect that is due to such a decision by reason of the unique and matchless experience and expertise of UNHCR, considerations of comity, legal diplomacy and the need for consistency of approach in international protection of refugees demand no less. The United Kingdom's obligation to cooperate with UNHCR also impels this approach. Moreover, as a general rule, the UNHCR decision will have been taken at a time more proximate to the circumstances which caused the claim to have been made.

Frequently, it will have been made with first-hand knowledge of and insight into those conditions superior to that which a national adjudicator can be expected to possess.

49. All of these factors require of the national decision-maker close attention to the UNHCR decision and considerable pause before arriving at a different conclusion. The approach cannot be more closely prescribed than this, in my opinion. The UNHCR conclusion on refugee status provides a substantial backdrop to the decision to be made by the national authority. A claimant for asylum who has been accorded refugee status by UNHCR starts in a significantly better position than one who does not have that status. But I would be reluctant to subscribe to the notion that this represents "a starting point" in the inquiry because that also hints at the idea of a presumption. Recognition of refugee status by UNHCR does not create a presumption, does not shift the burden of proof and is not a starting point (if by that one implies that it is presumptively assumed to be conclusive) but substantial countervailing reasons are required to justify a different conclusion.

172. The difficulty with Ms Naik's submission is that, whereas the circumstances in *HF* are analogous to those in this case (both concern the approach that should be taken to UNHCR eligibility Guidelines), *IA* concerned something completely different: the effect of a grant of refugee status by UNHCR. UNHCR "guidance" about a country is not the same as a UNHCR "decision" about an individual whose particular circumstances have been specifically considered, and the requirement for there to be "substantial countervailing reasons" to justify a different conclusion to UNHCR about whether an individual should be granted refugee status does not mean that there must also be substantial countervailing reasons to reach a different conclusion to UNHCR about the much wider and more general level of risk in a part of a country.

173. *EM* concerned deficiencies in Italy's asylum procedure, the issue being whether removal of the appellant to Italy would be contrary to Article 3 ECHR. UNHCR submitted a report containing recommendations in relation to Italy. Lord Kerr, in passages highlighted by Ms Naik, stressed the "particular importance" that should be attached to the view of UNHCR, who he described as having "unique and unrivalled expertise". At paragraphs 71 - 72, he stated:

71. The Court of Appeal recognised that particular importance should attach to the views of UNHCR and noted that ECtHR in *MSS* had treated UNHCR's judgment as "pre-eminent and possibly decisive". At para 41 Sir Stephen Sedley said this:

"It seems to us that there was a reason for according the UNHCR a special status in this context. The finding of facts by a court of law on the scale involved here is necessarily a problematical exercise, prone to influence by accidental factors such as the date of a report, or its sources, or the quality of its authorship, and conducted in a single intensive session. The High Commissioner for Refugees, by contrast, is today the holder of an internationally respected office with an expert staff (numbering 7,190 in 120 different states, according to its website), able to assemble and monitor information from year to year



and to apply to it standards of knowledge and judgment which are ordinarily beyond the reach of a court. In doing this, and in reaching his conclusions, he has the authority of the General Assembly of the United Nations, by whom he is appointed and to whom he reports. It is intelligible in this situation that a supranational court should pay special regard both to the facts which the High Commissioner reports and to the value judgments he arrives at within his remit."

72. I fully agree with this assessment. In a recent decision of this court, the unique and unrivalled expertise of UNHCR in the field of asylum and refugee law was acknowledged. In *IA (Iran) v Secretary of State for the Home Department* [2014] UKSC 6 this court said at para 44:

"Although little may be known about the actual process of decision-making by UNHCR in granting refugee status in an individual case, the accumulated and unrivalled expertise of this organisation, its experience in working with governments throughout the world, the development, promotion and enforcement of procedures of high standard and consistent decision-making in the field of refugee status determinations must invest its decisions with considerable authority."

174. Lord Kerr concluded that:

74...The UNHCR material should form part of the overall examination of the particular circumstances of each of the appellant's cases, no more and no less.

175. The analysis and conclusion of Lord Kerr in *EM* does not support the proposition advanced by the appellant that there must be substantial countervailing reasons to depart from a conclusion reached by UNHCR about the degree of risk in a (or a part of a) country. Lord Kerr did not find that recommendations by UNHCR must be followed in the absence of significant countervailing reasons. Rather, his conclusion, consistent with *HF*, is clear: UNHCR material, although it must be afforded considerable respect and authority, forms a part of the overall assessment, "no more and no less".

176. We therefore approach the UNHCR's opinion from the perspective that although, because of its unrivalled expertise, as well as its reputation for independence, reliability and objectivity, a legal analysis and recommendation by UNHCR will typically command very considerable weight, the weight that we ultimately decide to attribute to UNHCR's opinion on internal relocation to Kabul will depend primarily on its intrinsic quality rather than its provenance. Moreover, UNHCR is only one source of material and we are required to reach our own conclusion based on the whole body of evidence before us.

#### **(f) Weight given to UNHCR's legal analysis and recommendation on internal relocation**

177. As summarised above, whilst in the 2016 UNHCR Guidelines UNHCR did not express a view, one way or the other, about internal relocation to Kabul (as opposed to Afghanistan generally), in the 2018 UNHCR Guidelines UNHCR expressed the opinion/gave a legal recommendation that internal relocation is

“generally not available in Kabul”. UNHCR subsequently confirmed this opinion in the 2019 COI UNHCR Report and 2019 UNHCR Submissions. Moreover, in the 2019 UNHCR Submissions, UNHCR went further and stated that Kabul is “not a relevant IFA”.

178. Mr Singh submitted that UNHCR’s legal analysis and opinion is not persuasive and should be given only limited weight because UNHCR has failed to explain what has changed in Kabul since 2016 that would justify a different conclusion to that in the 2016 UNHCR Guidelines, and has been selective in the evidence cited and the way the evidence was conveyed.

179. In respect of the 2018 UNHCR Guidelines, Mr Singh made, inter alia, the following observations.

- a. UNAMA casualty figures show a broadly stable trend in the rate of casualties.
- b. OCHA’s comments about the level of armed conflict were similar in 2016 and 2018.
- c. The supporting evidence relied on by UNHCR to show the prevalence of informal settlements did not show a change since 2016.
- d. UNHCR relied, in the 2018 UNHCR Guidelines, on the Asia Foundation’s 2017 Survey finding that 43.9% of respondents in the Central/Kabul region perceived there to be a worsening financial situation but the equivalent survey in 2015 (referred to in the 2016 UNHCR Guidelines) found there to be a higher percentage (55.3%) who considered the financial situation to be worsening.
- e. In the 2018 UNHCR Guidelines reference is made to it being reported in January 2017 that 55% of households in Kabul informal settlements were severely food insecure. However, the evidence indicates that a similar percentage (48%) were severely food insecure at the end of 2015.
- f. The 2018 UNHCR Guidelines refer to rapid growth in population in the wake of large-scale returns from Iran and Pakistan but this was equally an issue in 2016.

180. Mr Singh also submitted that the UNHCR’s opinion is undermined by not considering the availability of returns assistance.

181. With respect to the 2019 UNHCR Submissions and 2019 COI UNHCR Report, he made, inter alia, the following comments.

- a. UNHCR described civilian casualties between 1 January 2019 and 30 September 2019 as being at “an unprecedented number” when (a) the statistics do not support this conclusion as the level of casualties was broadly consistent with previous years; and (b) the footnotes cited to support the conclusion do not justify the use of the word unprecedented. He noted that the UNAMA report cited by UNHCR described violence in Afghanistan generally – not in Kabul – as being at an unprecedented level.
- b. UNHCR failed to take into account Kabul’s population size or acknowledge that other provinces have higher casualty rates.
- c. UNHCR relied on data taken from a report by “Action on Armed Violence” about particularly high casualties in July 2019 without acknowledging that data from a single month is not a reliable basis to discern a longer term trend and without mentioning that in the same report there is a reference to a substantial decrease in civilian casualties in the first half of 2019.
- d. UNHCR did not acknowledge, when describing the population growth in Kabul, that the evidence from IOM shows that the proportion of Kabul composed of returnees and IDPs has barely changed (increasing from 7% to 8% between the 2018 and 2019 IOM Baseline Studies) and that IOM statistics show that 30/33 provinces in Afghanistan received a higher inflow of returnees and IDPs than Kabul province. Mr Singh submits that the evidence from IOM shows that Kabul is one of the least affected provinces in Afghanistan in terms of returnees and IDPs, whereas the impression formed upon reading the 2019 COI UNHCR Report and 2019 UNHCR Submissions is that Kabul is amongst the most affected.
- e. In its assessment of returnees, in the 2019 COI UNHCR Report, UNHCR appears to make significant generalisations from a single study with a very small sample (55 Afghans deported from Germany). Mr Singh noted that he was unable to consider the report, because it is not translated; but even from the limited information that can be gleaned from the UNHCR summary, the report appears inconsistent: reference is made to 90% of studied deportees experiencing violence, but then to only 25% being affected by criminal violence, without any explanation as to the nature of the violence experienced by the other 65%.

182. Ms Naik argued that the 2018 UNHCR Guidelines reflect a negative trend in the security situation for civilians affecting day-to-day life and that the evidence shows that population growth meant that Kabul’s infrastructure is so overstretched that the limits of absorption capacity have been reached. She argued

that the position adopted by UNHCR in 2018 is, in effect, that “a tipping point” has been reached as a result of the cumulative effect of the multifaceted, ongoing and deepening crisis.

183. In respect of the 2019 UNHCR Submissions and COI Report, Ms Naik argued that UNHCR has focused on the particular experience of returnees and that UNHCR is uniquely well-placed to engage with the “immensely complex task” of assessing relocation to Kabul. She highlighted the cumulative effect of violence and inward migration to Kabul; and submitted that it is a fallacy to relativise casualties by population size without regard to geographical size and population density.

184. We agree with Mr Singh that the evidence relied on by UNHCR in the 2018 UNHCR Guidelines – and the 2019 UNHCR Submissions and 2019 COI UNHCR Report – does not show there has been a substantial deterioration in Kabul since 2016. In particular:

- a. The evidence from UNAMA does not show a negative trend, but rather a persistent and stable level of casualties: see paragraphs 91 and 207;
- b. The evidence from IOM does not point to there being an overwhelming influx of returnees and IDPs into Kabul: see paragraphs 115 and 220; and
- c. the documents and reports referred to by UNHCR do not indicate a substantial deterioration in food security, poverty, availability of accommodation, or any other factors relevant to the reasonableness of relocation, occurring since 2016.

185. However, it is not necessary for there to have been a significant change since 2016 for UNHCR to conclude that internal relocation is “not available” in Kabul. The 2018 UNHCR Guidelines are not a comparison between the circumstances in 2016 and 2018 – they are UNHCR’s assessment of Kabul in 2018, no such specific assessment having been made in 2016. Therefore, the fact that the circumstances in 2016 are not significantly different to those in 2018 does not undermine the opinion expressed in 2018 and 2019. In any event, as argued by Ms Naik, even a small change could result in a “tipping point” being crossed.

186. That said, Mr Singh has argued that only limited weight should be attached to UNHCR’s opinion because they have reached conclusions not supported by evidence and have been selective in evidence cited (and in the way it is framed).

187. We recognise UNHCR’s unrivaled expertise and experience, and that they have based their assessment of Kabul on multiple sources, some of which (including individuals “on the ground”) are not available to us. We note, in particular, the

comments made in the 2019 UNHCR Submissions that UNHCR “underlines the significance” of the 2018 UNHCR Guidelines and that they are:

“based on in-depth research, information provided through UNHCR’s network of offices in Afghanistan and material from independent country specialists, researchers and other sources, rigorously reviewed for reliability.”

188. However, whilst this means we approach the UNHCR Documents with the greatest of respect, it does not mean they can escape scrutiny. Mr Singh has made a range of submissions critiquing the UNHCR’s Documents that we find persuasive. The most significant are as follows.

189. Firstly, UNHCR describes Kabul as having the highest level of civilian casualties without acknowledging that, even though, in absolute terms, more civilians die or are injured in Kabul than in any other province, relative to its population Kabul is not the province with the highest rate of casualties. It is striking that whilst EASO and SIGAR both contextualise UNAMA’s statistics on civilian casualties by setting them against the size of the population, UNHCR does not. For example, in the first section of the 2019 UNHCR COI Report it is said that “the highest number of civilian casualties [were] reported in Kabul province [between 1 January and 30 September 2019], namely 1,491” and that “15% of the total civilian casualties in Afghanistan occurred in Kabul province between 1 January 2019 and 31 May 2019”. However, nowhere in the report is it clarified that Kabul has more than 15% of the total population (16% according to the report the 15% figure was taken from), or that there were multiple provinces where, although the absolute number of civilian deaths were below 1,491, the casualty rate (i.e. the number of casualties as a proportion of the population) was significantly higher.

190. Secondly, UNHCR appears to place significant weight on what it describes as “negative trends” in the security situation for civilians. However, review of the UNAMA figures does not support this description, as the figures indicate a relatively stable level of civilian casualties as a proportion of the population in Kabul (see paragraphs 91 and 207). UNHCR has only cited recent data and does not adequately explain why it considers there to be a negative trend. It may be that UNHCR has in mind a longer term trend, which takes into account casualty figures prior to 2016 (which are not available to us). However, there is nothing in any of the UNHCR Documents to indicate this.

191. Thirdly, UNHCR appears to have relied on UNAMA casualty statistics from short periods (such as a single month or a three-month period) when casualty figures were particularly high without taking into consideration that the periods chosen were not necessarily representative. For example, the 2019 COI UNHCR Report states that 2019 saw the highest single quarter of civilian casualties since records began. However, UNHCR did not mention that, as recorded in the UNAMA midyear report dated 30 July 2019, between 1 January and 30 June 2019 UNAMA recorded a 27% decrease in civilian casualties compared to the same

period in 2018 and the lowest total of civilian casualties for the first 6 months of the year since 2012. Similarly, the 2019 COI UNHCR Report highlights a report by Action on Armed Violence describing the high number of civilian casualties in Kabul in July 2019 but does not mention that the same report referred to a decrease in casualties earlier in the year. UNHCR has not explained why it considers a figure for a single month relevant.

192. Fourthly, a significant emphasis is placed on what is described as “rapid [population] growth in the wake of the large scale returns to Afghanistan from Iran and Pakistan” without engaging with the statistics produced by IOM which indicate that IDPs and returnees make up 8% of Kabul’s inhabitants compared to 18% for Afghanistan as a whole.

193. Fifthly, it is unclear from the 2018 UNHCR Guidelines and 2019 COI UNHCR Report if UNHCR’s position is that internal relocation is not an option (i.e. not “relevant”) because of the security situation in Kabul or is not generally reasonable. We are left uncertain because although UNHCR reminds the reader that the assessment of internal relocation should be in terms of relevance and reasonableness, their conclusion says only that it is “generally not available”. The lack of clarity is added to by the 2019 UNHCR Submissions, as these give the conclusion that internal relocation is not “available” but state in the body of the text (at para. 4.9) that the 2019 COI UNHCR Report concludes that “Kabul is still not a relevant IFA”. This is confusing because (a) the 2019 COI UNHCR Report does not in fact contain within it any such conclusion; (b) the statement at paragraph 4.9 of the 2019 UNHCR Submissions does not match the overall conclusion, which is only that internal relocation is not available; and (c) there is no explanation as to the basis upon which it has been found that internal relocation is not relevant. UNHCR has a well established series of conditions, set out in the 2003 Guidance, that must be met for internal relocation to be relevant. See above at paragraph 25 where the conditions of the “relevance analysis” are set out. However, although the conditions are summarised in the 2019 UNHCR Submissions (at paras. 3.2.1 and 3.2.3), the statement that internal relocation is not relevant is made without stating which of the conditions are not met. Mr Singh described this as “opaque”. We agree.

## **G. EASO’S legal analysis and recommendations**

194. EASO has also expressed a view on internal relocation. This is set out in the 2019 EASO Guidance.

195. The 2019 EASO Guidance is described by EASO as representing a common assessment of the situation in Afghanistan by senior policy officials from EU member states in accordance with current EU legislation and jurisprudence of the CJEU, and as being intended as a tool for policymakers and decision-makers. The guidance states that it is the result of the joint assessment by the Country Guidance Network, whose work was supported by a drafting team of selected

national experts and by EASO, with the European Commission and UNHCR providing valuable input in this process.

196. The 2019 EASO Guidance concludes that:

- a. indiscriminate violence is taking place in Kabul, however not at a high level and, accordingly, a higher level of individual elements is required in order to show substantial grounds for believing that a civilian, returned to the territory, would face a real risk of serious harm in the meaning of Article 15(c) of the Qualification Directive;
- b. the general security situation does not preclude consideration of Kabul as an internal relocation alternative but a careful examination of the safety requirement needs to take place;
- c. a person can access Kabul without serious risk;
- d. the general circumstances prevailing in Kabul, assessed having regard to food security, housing and shelter, hygiene (including water and sanitation), basic healthcare and means of basic subsistence do not preclude reasonableness to settle in the city for a single able-bodied man;
- e. when assessing reasonableness of internal relocation for a single able-bodied man, the following individual circumstances should be considered: age, gender, family status, state of health, ethnicity and linguistic background, religion, documentation, local knowledge, professional and educational background and financial means, and support network; and
- f. the circumstances of a single able-bodied man are contrasted to other categories of person, such as families with children and the elderly, in respect of whom internal relocation would not be reasonable unless the returnee has sufficient financial means or a support network in Kabul.

197. Mr Singh submitted that although he agreed with the conclusion reached by EASO we should not give any deference to their opinion on internal relocation as it was for us to decide that issue ourselves based on the up-to-date country evidence itself, including that referred to by EASO. He was critical of EASO's legal analysis as they appear to have conflated Article 3 with reasonableness and to have not compared Kabul with the rest of Afghanistan.

198. Ms Naik agreed that no weight should be given to EASO's opinion because she agreed they conflated Article 3 with reasonableness. Accordingly, whilst we will give consideration to the evidence referred to by EASO in its assessment of the

circumstances in Kabul, we will not give any weight to their legal analysis and recommendation about internal relocation to Kabul.

## **H. Analysis and Decision in relation to Internal Relocation**

### **(a) The first limb: real risk of serious harm**

199. There are several ways in which the first limb of Article 8(1) could be met, depending on the facts. These include a person being exposed, in Kabul, to the original risk of being persecuted; that he or she would be exposed to a new risk of being persecuted in Kabul; that Kabul would not be practically, safely and legally accessible; or that there would be a risk of serious harm for a reason other than persecution in Kabul. It is only the last of these – that he would be at risk of serious harm – which the appellant has argued is relevant to him.

200. Serious harm can take several forms, as set out in Article 15 QD, but it is only one of these (a threat to his life or person by reason of indiscriminate violence) in respect of which the appellant claims to be at real risk in Kabul. Accordingly, our assessment of the first limb of Article 8(1) is limited to the question of whether there is a real risk of there being a serious and individual threat to the appellant's life or person by reason of indiscriminate violence in Kabul.

201. Kabul (both the city and province) is significantly affected by widespread and longstanding conflict-related violence and has been – at a relatively consistent level – since at least 2016. Some of the violence is targeted (e.g. at police, embassies or ethnic groups) but much of it is indiscriminate. Even the targeted violence affects civilians in an indiscriminate way, because people can be killed or injured as bystanders. There is also a significant problem of violent crime.

202. We agree with Dr Schuster (and Ms Naik) that not all inhabitants of Kabul face the same risk. A person who stays at home most of the time will face a lower risk than an economically active person who spends time in crowded locations. Likewise, someone who has an understanding of the culture and society will be more adept at avoiding violence than someone who is ignorant of societal norms.

203. We also agree with Dr Schuster that casualty rates (number of casualties as a proportion of the population) do not convey the full picture of the risk of serious harm in Kabul. In particular, they do not take into account the indirect effect of violence (such as the impact on a family of a breadwinner being killed or injured), the psychological impact on individuals who witness or worry about violence, and the cumulative impact of violence (or the threat of violence) persisting over many years. Whilst we accept these points, we are nonetheless of the view that casualty rates, although they must be treated with caution, provide a good indication of the risk of violence faced by individuals, and enable comparisons to be made over time and between provinces.



204. Both parties estimated the risk of a person with the appellant's profile being injured or killed as a result of conflict-related violence in Kabul, based on UNAMA figures. The respondent proposed that the risk is 37 out of 100,000. This is based on the number of casualties recorded by UNAMA in 2018 (1,866) and an assumed population of 5 million.
205. The appellant, in contrast, proposed a figure of 170 out of 100,000. This figure was derived from 5,000 casualties a year in a population of 3 million. Ms Naik justified using a population of 3 million on the basis that the majority of security incidents occurred in Kabul City (and it is in the city, or its environs, that the appellant would be expected to live). She justified the figure of 5,000 casualties on the basis that this had been used by the respondent before the previous Panel when calculating the risk an individual would face and that it included an appropriate allowance for the under reporting of casualties by UNAMA.
206. It is difficult to draw conclusions from the UNAMA statistics about the risk a person with the appellant's profile will face given (i) the under-reporting by UNAMA, (ii) that relocation will be to Kabul City and we are looking at data concerning Kabul Province, (iii) that there is uncertainty as to the total population in Kabul Province (or City), and (iv) that economically active male returnees without previous experience living in Kabul face an elevated risk. That said, we have reached the conclusion that the risk to an economically active male returnee who has not previously lived in Kabul City of being a casualty of conflict-related violence is in the region of one in a thousand, which corresponds to 100 out of 100,000. This is based on an estimated population of 4 million, which is at the lower end of estimates we have seen for Kabul City, and 4,000 casualties, which is over double the amount recorded by UNAMA in any given year for Kabul Province.
207. We are able, based on the UNAMA figures, to compare casualty rates across Afghanistan and over time. This is because the same methodology is used throughout Afghanistan and has been used by UNAMA over the last several years whilst casualty figures have been collected. The conclusions that we draw from the data are as follows.
- a. There are parts of Afghanistan where a civilian is at substantially higher risk than in Kabul.
  - b. The number of casualties in Kabul has been relatively constant between 2016 (which are the earliest figures we have for Kabul) and 2019 (we have only partial figures for 2019 but these indicate the overall figure for 2019 is likely to be similar to the previous years). The UNHCR data shows an increase of 108 casualties between 2016 and 2018. However, this was a period of substantial population growth in Kabul, and therefore this increase in absolute terms, which in any event is small, may not indicate an increase in the number of casualties as a proportion of the inhabitants of Kabul.

- c. We do not have data prior to 2016 on casualties in Kabul but the total number of casualties in Afghanistan in 2014 and 2015 was similar to 2016-2019. The number of casualties in Afghanistan was significantly lower in 2013.

208. There is not a benchmark, or a scale, against which to decide whether a particular level of risk is high or low. We also recognise that people do not have the same perception of what constitutes a real risk (or tolerance for taking a risk). That said, our assessment, taking everything into account, is that the risk from indiscriminate violence in Kabul is low and that since 2016 the level of risk has remained at a steady level.

209. Although violent crime is prevalent, the evidence does not point to it being at such a high level that the appellant would be at real risk merely on account of his presence in Kabul. We note that the 2019 Asia Foundation Survey recorded that only 15% of respondents in the Central/Kabul region reported that they or someone in their family had suffered from violence or a criminal act in the past year.

210. We recognise that we have reached a conclusion that is different to that expressed by UNHCR in the 2019 UNHCR Submissions where (in contrast to the 2018 UNCHR Guidelines and 2019 UNHCR COI Report) it is stated in terms that UNHCR believes Kabul is not “a relevant IFA”. We have based our assessment on the same statistical evidence relied upon by UNHCR (casualty rates recorded by UNAMA). However, our approach to the UNAMA casualty figures appears to differ to UNHCR in two significant ways.

- a. Firstly, it appears that UNHCR have looked at the total number of casualties, comparing these over time, but have not considered the casualty rate. We note that the approach we have adopted, of relying on the casualty rate rather than the absolute number of casualties, was also used by EASO, who in the 2019 EASO Guidance contextualized the number of civilian casualties in 2018 by noting that the total of 1,866 (as reported by UNAMA) corresponded to 38 per 100,000 inhabitants. In our view, once the total number of casualties in Kabul is set against the size of the population, the conclusion that the risk is at a level where internal relocation is not an option (i.e. not relevant) becomes untenable.
- b. Secondly, UNHCR appears to have interpreted the UNAMA figures as showing an upward trend, over the last several years, in the number of casualties in Kabul. However, as explained above, we do not agree that the data supports such a conclusion, as it appears to us that, since 2016, there has been a relatively steady and consistent number of casualties each year.

## **(b) The second limb: reasonableness**

211. In accordance with the 2019 Court of Appeal decision, we have made new findings on the extent of the risk the appellant will face from security incidents and the relevance of this risk to the reasonableness of Kabul as an internal relocation alternative.

212. The other findings of the Panel in the 2018 UT decision were preserved by the Court of Appeal. We have considered whether developments since December 2017 (which is the date until which evidence was considered in the 2018 UT decision) justify our reaching a different finding. This consideration has involved a review of a very considerable number of reports, articles and other documents (including the UNHCR Documents) as well as the expert evidence, as summarised above.

### Safety and Security

213. The evidence indicates that although Kabul and its inhabitants are affected by armed conflict, in particular as a result of violent attacks by Taliban and ISIS, the city and province are – and are likely to remain – under the control of the Afghan authorities. We therefore do not consider there to be a real risk that Kabul will fall under the control of anti-government elements or become a site of active conflict.

214. As explained above in paragraphs 85 - 104, violence connected to armed conflict is widespread and persistent in Kabul. However, the likelihood of the appellant being killed or injured is small – approximately one in a thousand. See the analysis of the first limb of Article 8(1) QD at paragraphs 199 – 210.

215. The evidence points to there being a problem with violent crime in Kabul. However, we have not been presented with evidence on the number of victims, and the results of the 2019 Asia Foundation Study indicate that the vast majority of Kabul's inhabitants are not affected.

216. We find that safety and security issues in Kabul are highly relevant to the reasonableness of return but are not by themselves determinative.

### Population growth and absorption capacity

217. The Panel in the 2018 UT decision found that there had been a significant increase of population in Kabul in 2016 but since December 2016 the inflow had not continued at the high level seen in that year.

218. Kabul has a fast growing population. It has grown fourfold since 2001 and the annual growth rate of 4.74% makes it one of the fastest growing cities in the world.

219. There has been a huge influx of returnees (primarily from Iran and Pakistan) and IDPs into Afghanistan over the last decade. 2016, in particular, saw a very large number of returnees: over 1 million from Iran and Pakistan.
220. The evidence from IOM shows that the vast majority of returnees and IDPs settle in other parts of the country and that the proportion of Kabul's population who are returnees and IDPs is only 8%, which is significantly less than the national average of 18%.
221. We do not doubt that even 8% is highly significant. UNHCR, EASO, Human Rights Watch and others have all expressed concern about the influx. Their concern, which is shared by Dr Schuster, is that the influx of IDPs and refugees has put a huge strain on Kabul's infrastructure, and that the city is, or is close to being, at the limits of its capacity to absorb any further people.
222. Whilst we recognise the significance of the growth in population, and the cumulative effect of the city growing year on year without the infrastructure keeping pace, the evidence indicates that the influx of returnees peaked in 2016 and Dr Schuster's evidence was that the pool of potential returnees has reduced significantly, as so many Afghans in Pakistan and Iran have already returned.
223. We do not consider that there has been a material change since the 2018 UT decision that would justify a different conclusion being reached.

#### Poverty and humanitarian conditions

224. The Panel in the 2018 UT decision found that much of Kabul's population lives in inadequate informal housing with limited access to basic services such as sanitation and potable water. They noted that healthcare provision, although poor, is better in Kabul than elsewhere.
225. The evidence before us indicates that the position is unchanged. As was the case when the Panel made its findings in the 2018 UT decision, most of Kabul's population is poor, lives in inadequate housing with inadequate sanitation, lacks access to potable water, and struggles to earn sufficient income to sustain itself in a society without any safety net.
226. However, it is also apparent, most notably from OCHA's 2020 Humanitarian Needs Overview of Afghanistan, that, in terms of people in need, the situation in Kabul is significantly better than much of the rest of Afghanistan.
227. The position today is comparable to 2017. A departure from the findings of the Panel in the 2018 UT decision cannot be justified.

## Family and other networks

228. The Panel in the 2018 UT decision found that although support networks are very important – and a returnee with one will be in a significantly stronger position – they are not essential to obtain accommodation or employment. The Panel also found that networks can be reactivated and established, including through a person’s wider community or ethnic connections.

229. The evidence before us is not substantially different from that before the Panel and supports the same conclusion. Networks, whether through family, ethnicity, or other connections, are very important in all aspects of life in Kabul and a person without any network will be disadvantaged. However, as set out in EASO’s COI Report: Afghanistan - Networks, dated February 2018, Afghans are in general good at building networks and networks can be built and developed. A person without family or connections in Kabul may therefore be able to create connections that will, in time, develop into a network. Even a person who is unable to form any such connections, and who must survive without the benefit of a network, will ordinarily be able to find inexpensive accommodation in a “chai khana” and (depending on physical abilities, health and other individual characteristics) be able work as a day labourer in the informal labour market in Kabul.

230. A returnee with a support network or specific connections in Kabul may be in a significantly stronger position than others and in some cases the availability of a network will counter a particular vulnerability of an individual on return.

## Accommodation

231. The Panel in the 2018 UT decision found that around 74% of people in Kabul live in informal settlements which have very limited sanitation, drainage or access to potable water. It found that a single male returnee without support from a network or financial resources would have limited options but would be able to find some sort of accommodation which is comparable to that available for the majority of the population in Kabul.

232. The evidence before us supports the same conclusion, as a single male would be able to reside in a “chai khana” and in due course, once he has established himself, find a more permanent place to reside. Whilst the chai khana would involve sharing a (dirty and unlocked) room and washing facilities– and would lack privacy – a single man without the responsibility of a family would have an adequate place in which to sleep and base himself. The evidence before us is that such accommodation is commonplace, inexpensive and widely available.

233. In these circumstances, we can see no reason to depart from the preserved findings of the Panel about the availability and adequacy of accommodation in Kabul for a returnee in the appellant’s circumstances.

## Employment

234. The Panel in the 2018 UT decision found that unemployment in Kabul is high and that without connections stable and secure employment would be virtually impossible to obtain. However, it found that work as a day labourer, though precarious and without guarantee of regular work, would be available, and would result in earnings sufficient to adequately sustain a single man.
235. The evidence before us is similar to that which was before the Panel and does not justify a departure from the Panel's findings. The evidence indicates that a returnee without connections would be unlikely to find work in the formal economy and would be dependent on the informal sector and in particular manual day labourer work.
236. Whether a particular returnee would be able to earn sufficient income from this type of work will depend on the individual circumstances. As the available work would mostly be manual in nature, it is necessary to consider whether an individual would be capable (e.g. in the light of his age, health, physical capabilities and other factors) of undertaking such work and would be able to present himself in a way that would attract employers, who frequently will be selecting individuals from a pool of men (some bringing their own tools) who congregate at known meeting points.

## Identity Document (Tazkera)

237. The Panel in the 2018 UT decision did not make any findings in relation to Tazkeras. We therefore make our own findings, based on the evidence before us, as to their significance in the assessment of reasonableness of relocation.
238. A person relocating to Kabul will generally be unable to obtain a Tazkera in Kabul and will need to travel to his home area. If travelling to his home area is not safe or possible, there is a real risk that a returnee will not be able to obtain a Tazkera.
239. Lack of a Tazkera in Kabul will prevent a returnee from accessing many government services and obtaining formal employment. It will also leave the returnee more exposed to potential harassment from the authorities. That said, the absence of a Tazkera will not prevent a returnee from obtaining accommodation in a "teahouse" or in informal settlements/slums (which make up most of Kabul's accommodation), and it will not prevent a person obtaining informal work, such as a day labourer. A person will still be able to function, and meet his basic needs, in Kabul.
240. We find that a person without a Tazkera will be disadvantaged, but not to the extent that this, in and of itself, would make internal relocation to Kabul unreasonable.

## Mental Health

241. The Panel in the 2018 UT decision noted that EASO had recorded very high levels of mental health problems in Afghanistan, creating significant needs, but that there was a lack of trained professionals and inadequate infrastructure. It was noted that there was only one dedicated mental health hospital in Kabul.

242. The evidence before us is consistent with the Panel's findings: the conflict has resulted in mental health problems for many inhabitants of Kabul, but there is a lack of facilities (and professionals) available to provide treatment. There is no new evidence on this issue to warrant a departure from the findings of the Panel.

## Experience of returnees and returnee assistance

243. The Panel in the 2018 UT decision found that there was a basic level of support for returnees which included the offer of temporary accommodation, travel expenses and either cash or support in kind for those with a plan to establish themselves in Kabul. They observed, however, that there was a lack of take-up of assistance.

244. The Panel found that even if assistance would last for only 4 to 6 weeks (or less if a person is not astute and lacks knowledge of local prices) it would make a material, even if only marginal, difference to the reasonableness of return for a single healthy male.

245. The evidence before us is similar. A returnee will be able to stay in the hotel identified by Dr Schuster for up to two weeks. Thereafter, he could stay in inexpensive "teahouse" dormitory accommodation utilising the cash (£125) received at the airport. We see no reason to depart from the finding of the Panel that a returnee, generally, will be able to access sufficient assistance and funds so as to be in a position to accommodate and feed himself for the first 4 - 6 weeks in Kabul without earning an income.

246. UNHCR, in the 2019 COI UNHCR Report, cites extensively from a recent German study which found that returnees to Kabul from Germany have faced violence, suspicion and hostility. This study (which we have not seen) was based on only 55 individuals, and therefore caution must be exercised before drawing generalised conclusions from it. We accept that some people in Kabul are suspicious of and hostile towards returnees. However, the evidence before us, considered together and as a whole, points to returnees facing challenging circumstances not because they have returned from the west (risk from westernisation was categorically rejected in the 2018 UT decision (at para. 187) and this finding was not appealed), but primarily because of poverty, lack of accommodation and the absence of employment opportunities, as well as the security situation. The mere fact of being a returnee does not prevent a person accessing accommodation (the evidence is that the "tea house" accommodation is

available to all males) or being taken on for day labour work in the informal market. Nor does it prevent a person establishing, or re-establishing, a network, although care would need to be taken to avoid people who are hostile to returnees.

### Comparison to other parts of Afghanistan

247. The evidence from UNAMA indicates that the security situation, and an individual's risk from indiscriminate violence, is worse in many other parts of Afghanistan than it is in Kabul (see above at paragraphs 94 - 95).

248. The evidence from OCHA and IOM indicates that many other provinces in Afghanistan are hosting a substantially higher number of returnees and IDPs as a percentage of their population than Kabul. However, we do not have sufficient evidence to draw any conclusions about how the impact of refugee/IDP inflows compares between provinces.

249. It is also apparent that, although there is significant poverty in Kabul, it is less prevalent than in many other parts of Afghanistan (see paragraph 118).

250. According to EASO in its 2019 Key socio-economic indicators (focus on Kabul City, Mazar-e Sharif and Herat City), dated April 2019, a significant reason many Afghans are drawn to Kabul is that the city:

“stands out as the main gravitational centre for migrants in the country...[and] Many returnees end up in Kabul because of relatively higher security than in their regions of origin, and because of expectations of more job opportunities and support facilities for returnees”

### Age

251. The Panel in the 2018 UT decision identified that a returnee's age, including the age at which he left Afghanistan, is relevant to reasonableness. We agree. Returnees of any age without a network will face significant challenges establishing themselves in Kabul. A person who left Afghanistan at a young age may, depending on individual circumstances, be less able than someone who spent their formative years in Afghanistan to navigate the challenges of the city by, for example, finding work and accommodation.

### Conclusion on reasonableness

252. Taking a holistic view, and considering all of the circumstances together, we are satisfied that generally it would not be unreasonable for a single healthy man to relocate to Kabul, even if he does not have any family or network in the city and lacks a Tazkera. However, in all cases an individualised case-by-case assessment is required, taking into account an individual's personal circumstances including factors such as his age, health, disability, languages spoken, educational and



professional background, length of time outside of Afghanistan, connections to and experience of Kabul and family situation and relationships.

### **(c) Country Guidance**

253. We give the following country guidance:

#### **Risk on return to Kabul from the Taliban**

- (i) A person who is of lower-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in Kabul.

#### **Risk of serious harm in Kabul**

- (ii) There is widespread and persistent conflict-related violence in Kabul. However, the proportion of the population affected by indiscriminate violence is small and not at a level where a returnee, even one with no family or other network and who has no experience living in Kabul, would face a serious and individual threat to their life or person by reason of indiscriminate violence.

#### **Reasonableness of internal relocation to Kabul**

- (iii) Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout many other parts of Afghanistan) it will not, in general, be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul and even if he does not have a Tazkera.
- (iv) However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above. Given the limited options for employment, capability to undertake manual work may be relevant.
- (v) A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return. A person without a network may be able to develop one following return. A person's familiarity with the cultural and societal norms of Afghanistan (which may be affected by the age at which he left the country and his length of

absence) will be relevant to whether, and if so how quickly and successfully, he will be able to build a network.

### **Previous Country Guidance**

- (vi) The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to Article 15(c) of the Qualification Directive remains unaffected by this decision.
- (vii) The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to the (un)reasonableness of internal relocation to Kabul (and other potential places of internal relocation) for certain categories of women remains unaffected by this decision.
- (viii) The country guidance in AA (unattended children) Afghanistan CG [2012] UKUT 00016 (IAC) also remains unaffected by this decision.

### **(d) The Appellant's Case**

254. The preserved finding of the First-tier Tribunal is that the appellant cannot return to his home area of Laghman Province because he would be at risk from the Taliban.

255. The Panel in the 2018 UT decision found that the appellant would not be at risk from the Taliban in Kabul. This was not challenged. The appellant submits that it would nonetheless be unsafe for him to relocate to Kabul because he would face a real risk of serious harm from indiscriminate violence. For the reasons set out above we reject this argument on the basis that the level of indiscriminate violence in Kabul is not sufficient to meet the threshold in Article 15(c) QD and there is not a real risk of the appellant suffering serious harm within the meaning of the first limb of Article 8(1) QD.

256. We therefore must assess the reasonableness of the appellant's internal relocation to Kabul. The relevant facts, for the assessment of reasonableness, are that:

- a. The appellant is from a village in Laghman Province.
- b. He is a single male with no children, born in 1986, who left Afghanistan in 2008, aged 22.
- c. He has no identified vulnerabilities or health (physical or mental) problems.
- d. He speaks Pashto.

- e. He has lost contact with his family and does not know anyone in Kabul.
- f. He does not have a Tazkera (identity document).
- g. He has 9 years of schooling and worked in farming in Afghanistan.

257. Upon arriving in Kabul the appellant will be able to obtain a modest amount of financial support, which is in general available to returnees from the UK, that will sustain him for several weeks.

258. The appellant will be significantly disadvantaged by the absence of family or other support network, who could be expected to assist him with accommodation, work and navigating an unfamiliar city. It will also be to his disadvantage that he does not have a Tazkera.

259. On the other hand, the appellant has the advantage of having left Afghanistan as an adult. Even though he does not have experience of living in Kabul, he has spent most of his life, and his formative years, in Afghanistan and therefore has a familiarity with the societal norms and culture. He also has the advantage of being healthy.

260. Even without the support of family or a network, and without a Tazkera, the appellant, as a healthy man who is familiar with the culture and norms of Afghanistan and who has no impairments (physical or mental) preventing him from undertaking manual work or forming connections with other inhabitants of Kabul:

- a. will be able to obtain inexpensive accommodation in a chai khana/tea house. The accommodation will be basic (with shared rooms and washing facilities, and a lack of locks) but it will enable him to avoid destitution and provide him with a quality of accommodation that is at a similar level to much of the population of Kabul;
- b. will be able to obtain work as a day labourer. He will not receive a regular or guaranteed income but the evidence indicates that he will earn a sufficient amount to feed and accommodate himself; and
- c. will be able to make connections and create his own network which will, in due course, increase his opportunities for accommodation and employment.

261. The appellant will be living in a city where violence is prevalent but the chance of him personally being a casualty (either of the armed conflict or crime) is small.

262. The evidence indicates that the appellant will be in a better position - in terms of security risk, poverty and availability of accommodation and work - in Kabul than he would be in many other parts of Afghanistan. We do not have sufficient evidence before us to form a view on how circumstances in Kabul compare to those in Laghman Province.

263. Taking a holistic view and having regard to all relevant circumstances pertaining to the appellant in Afghanistan we are satisfied that it is reasonable, and not unduly harsh, to expect him to relocate to Kabul. The appellant's asylum appeal is therefore dismissed.

**(I) Article 8 ECHR**

264. The appellant submits that his removal would breach his rights under article 8 ECHR. Mr Singh argued that this is outside the scope of the appeal as the issue was not remitted by the Court of Appeal. Ms Naik argues that it is within scope because the appellant raised article 8 in his original grounds to the First-tier Tribunal and the only reason the Panel in the 2018 UT decision refused to consider the matter was that it was raised at a late stage in the proceedings.

265. We agree with Mr Singh. The scope of this appeal is as decided by the Court of Appeal and the Court of Appeal did not provide for article 8 to be considered. We therefore decline to do so. However, in case we are wrong, we set out below what we would have decided if we had accepted that article 8 is within the scope of the appeal.

266. We have not been provided with any evidence, or submissions, about the appellant's private and family life in the UK. Ms Naik's written submissions note that over four years have elapsed since the appellant's article 8 rights were considered by the First-tier Tribunal. The submissions do not, however, provide any information about the appellant's life, and the relationships he has formed, during this four year period. In the absence of any evidence to indicate the contrary, we find that the appellant does not have any relationships in the UK that engage article 8 ECHR. However, given he has lived in the UK for over a decade, we are prepared to accept, despite the lack of evidence, that the appellant has a private life in the UK that engages article 8(1) ECHR.

267. The only argument advanced by the appellant as to why his removal would not be proportionate under article 8(2) ECHR is that there would be very significant obstacles to integration into Afghanistan and therefore the conditions of paragraph 276ADE(1)(vi) are met.

268. In *Kamara v SSHD* [2016] EWCA Civ 813 Sales LJ (as he then was) explained that the concept of integration is a broad one. He stated at paragraph 14 that:

“The idea of ‘integration’ calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day by day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual’s private or family life”.

269. We do not doubt that life will be challenging for the appellant given he has not previously lived in Kabul and does not have family or another support network in the city. However, he has spent most of his life in Afghanistan, where he lived until he was 22; he has experience working in Afghanistan; and he does not have any medical problems or vulnerabilities. He has also not identified any beliefs, attitudes or values that would put him outside the norm in Afghanistan. In these circumstances, we are satisfied that the appellant will be an “insider” in the sense that he will have an understanding of how life is carried on, and will be able, over time, to build relationships and participate in the society. The appellant therefore does not meet the conditions of paragraph 276ADE(1)(vi).

270. In considering whether the appellant’s removal is justified under Article 8(2), we have had regard to the considerations listed in Section 117B of the Nationality Immigration and Asylum Act 2002. The appellant’s removal is in the public interest of maintaining effective immigration control (Section 117B(1)) and only little weight should be given to his private life established in the UK (Section 117B(5)). We have not been provided with evidence in relation to a qualifying partner or child and therefore Sections 117B(4) and (6) are not relevant. No evidence in relation to Sections 117B(2) and (3) has been adduced but we will assume, for the purposes of this assessment, that these do not weigh against him.

271. The appellant has not made submissions, or adduced any evidence, to show that, aside from the difficulties he would face in Kabul (which we have found do not meet the threshold of paragraph 276ADE(1)(vi)), his removal would give rise to unjustifiably harsh consequences for him (or anyone else). In the absence of any such evidence – or indeed any evidence about his private life in the UK – and having regard to the considerations in Section 117B – we conclude that the interference with the appellant’s private life arising from his removal is justified under Article 8(2) ECHR.

### **Notice of Decision**

272. The decision of the First-tier Tribunal was set aside by Upper Tribunal Judge O’Connor (Appendix B).

273. We remake the decision and dismiss the appeal.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

274. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

A handwritten signature in black ink, appearing to be 'S.S.', followed by a horizontal line extending to the right.

Upper Tribunal Judge Sheridan

Dated: 28 April 2020

## Appendix A: Summary of Documentary Evidence

### UNAMA Reports

1. We have considered UNAMA annual reports from 2017 and 2018, two 2019 Quarterly Reports, a mid-year report from 2019, and a 2019 report on election-related violence.
2. Since 2009 UNAMA has been systematically documenting civilian casualties attributed to the conflict in Afghanistan. When UNAMA refers to casualties they include both deaths and injuries. A person is only counted as a civilian casualty in its statistical reporting if there are at least three different and independent types of sources. UNAMA does not presume fighting age men are either civilians or fighters but assesses claims on the facts available in relation to each casualty and where insufficient information is available such casualties will not be included in the statistical reporting. UNAMA acknowledges that there is a possibility of under reporting of civilian casualties because of their methodology.
3. The UNAMA Quarterly Report dated 17 October 2019 expressed grave concern about the unprecedented levels of violence harming civilians during the third quarter of 2019. It observed that, although during the first half of 2019 it had documented a decrease in civilian casualties in comparison to previous years, in July, August and September 2019 extreme levels of violence brought the civilian casualties levels back to unacceptably high levels.
4. The 2018 annual report similarly expressed concern about the unacceptably high level of harm to civilians. It noted that there had been a significant increase in casualties from suicide attacks as well as from aerial operations, with Kabul remaining the province most affected.
5. Multiple figures for numbers of casualties are given in the UNAMA reports. The most relevant to our assessment are as follows:

#### Casualty rates across Afghanistan

6. Civilian deaths and injuries by year are documented in the 2018 annual report as follows:

2013	8,638
2014	10,535
2015	11,035
2016	11,452
2017	10,459
2018	10,993

7. The UNAMA Quarterly Report dated 17 October 2019 records that there were 8,239 civilian deaths and injuries between 1 January and 30 September 2019 (of which 923 were women and 2,461 were children). The comparable figures for previous years are 8,240 (2018), 8,084 (2017), 8,540 (2016), 8,487 (2015) and 8,034 (2014)

#### Casualty rates in Kabul Province

8. The 2018 annual report records 1,866 civilian casualties in 2018 in Kabul Province. The report lists 34 provinces in order of number of civilian casualties (in absolute terms). Kabul has the highest number of casualties. The second highest is Nangarhar with 1,015 and the third highest is Helmand with 880.
9. The 2017 annual report records 1,831 civilian casualties in Kabul Province.
10. The UNAMA Quarterly Report dated 17 October 2019 records that there were 1,491 civilian deaths and injuries between 1 January and 30 September 2019 in Kabul Province.

#### **Report of the UN Secretary General on the situation in Afghanistan and its implications for international peace and security, 3 September 2019**

11. The report discusses political developments in respect of the presidential election (for 28 September 2019) and the peace process. The security situation is described as volatile, with a high number of security incidents.
12. The report states that the protracted conflict continues to cause extreme levels of physical and psychological harm and high levels of displacement, further compounded by political instability, drought, sudden onset natural disasters, food insecurity and poverty. Conflict-related displacement (throughout Afghanistan) increased by 2% compared to the same period in 2018 and internally displaced persons living in temporary settlements continue to face difficult conditions, including a lack of basic essential services beyond the initial provision of humanitarian assistance.
13. The report documents that the humanitarian drought response to displaced people ended in June 2019 and that 5.2 million people have been provided with food assistance, agricultural inputs and other forms of humanitarian assistance. It states that the most recent nutrition survey in Afghanistan showed that 22 of the 34 provinces are above the emergency level threshold for acute malnutrition and that through the summer months the ongoing agricultural harvest is expected to improve the nutritional situation, although chronic food insecurity issues will persist in many parts of the country.



14. It is stated that the return of undocumented Afghans from Iran and Pakistan has decreased by more than one third compared with 2018, but that the number of Afghans returning from Turkey has increased.
15. It is noted that in the humanitarian response plan for 2018 – 2021, 6.3 million people were identified as being in need of humanitarian assistance in 2019 and humanitarian partners had been able to reach 2.7 million people with assistance as at the end of March.
16. The report expresses concern about the high level of civilian casualties (although noting the lower amount during the first half of 2019 compared to the same period in 2018) and states that Afghanistan remains one of the most dangerous countries in the world for humanitarian workers, who continue to face unacceptable risks.

**Report of the UN Secretary General on the situation in Afghanistan and its implications for international peace and security, dated 14 June 2019**

17. The report is similar to the report in September 2019.
18. Concern is expressed at the armed conflict continuing to take a high toll on the lives of Afghan civilians. Reference is made to levels of displacement remaining high and being compounded by chronic poverty and lack of basic services and livelihood opportunities throughout Afghanistan.
19. It is stated that between 21 January and 30 April 2019, 140,381 undocumented persons and refugee returnees arrived in Afghanistan.

**Minority Rights International: peoples under threat 2019**

20. This report is not specific to Afghanistan. Amongst other things, it discusses the role of social media in stigmatising target groups and legitimising violence. Afghanistan is ranked as the country with the fourth greatest risk to minorities, with the groups under threat being Hazara, Pushtun, Tajiks, Uzbeks, Turkmen, and Baluchis. No explanation is given for why these particular groups are said to be at risk.
21. A short section on Afghanistan states that the civilian death toll in 2018 reached an all-time yearly high of 3,804 killed and 7,189 injured, with a spike in fighting and government-controlled territory shrinking to its lowest level since 2001.

**EASO country of origin information report: Afghanistan security situation, June 2019**

22. The report includes a section on Kabul.

23. The population of Kabul City is estimated as 4,117,414 inhabitants for 2018/19 but it is noted the figure is disputed, with some sources claiming that it should be almost 6 million.
24. Kabul is described as a melting pot for various ethnic, linguistic and religious groups, with each settled in specific places. It is stated that in the most recently settled areas residents depend mostly on qawmi (a social unit based on kinship, residence and occupation) networks in order to find shelter, jobs and collectively advance their settlement conditions. However, in the central areas of the city the movement of residents is more common with a disruptive effect on social networks.
25. The picture of conflict in Kabul City is said to be characterised by asymmetric tactical warfare with suicide bombers and IEDs. The report states that in 2018 UNAMA documented 1,686 civilian casualties in Kabul City. It is stated that out of 65 suicide and complex attacks across the country in 2018, 28 occurred in Kabul City, an increase of 5% compared to 2017.
26. Between 1 January 2018 and 28 February 2019, there were said to be 288 incidents relating to insurgents in Kabul City with a wide variety of targets.
27. It is stated that as many as two-thirds of Afghans displaced from their province have moved towards the five regional capitals, and Kabul's growth has been particularly significant although the total number of IDPs in Kabul is not known and movement to and within the city is fluid. IDPs often settle in the outskirts and frequently mingle with other vulnerable groups such as the urban poor, returnees and economic migrants. Due to lack of adequate land and affordable housing, most new and protracted IDPs in Kabul reside in one of the 60 to 70 informal and illegal settlements around the city.
28. The report refers to worrying indications of rising poverty in informal settlements, contributing to street begging, overcrowded accommodation, heightened risk of gender-based violence and perceived isolation of IDP families from surrounding communities.
29. IDPs arriving and residing in Kabul are described as adding pressure to the community, basic services and social infrastructure, strongly affecting the absorption capacity of the city. Reference is made to a Norwegian study published in January 2018 in which more than 80% of the Kabul IDP respondents listed access to food and water as a major challenge in their daily lives. It is noted that Kabul is facing a severe water shortage, which seriously affects already vulnerable groups like displaced people.
30. Challenges said to face displaced persons include limited job opportunities, few or no social protection nets, poor shelter/housing conditions, impeded access to

education and healthcare, and continuous fear of eviction. IDPs are said to mostly work as unskilled day labourers, competing for low-paid and precarious jobs in the construction sector and to a lesser extent in agriculture.

31. The report notes that Kabul City sees large inflows of refugees returning from Pakistan and Iran, putting further strain on the city's services. Reference is made to an Oxfam study among returnees in Kabul City which found that most depend on relatives for accommodation and other in-kind support and report a deterioration in the situation for returnees.
32. The report states that the World Bank reports about 80% of Kabul inhabitants living in informal settlements and that returnees find it hard to integrate in the city and find stable employment.

**EASO country of origin information report: Afghanistan Key socio-economic indicators: focus on Kabul City, Mazar-e Sharif and Herat City, April 2019**

33. An estimate for the population of Kabul City is given as being from 3.5 to 5.5 million and Kabul is described as being one of the world's fastest growing cities, its population increasing fourfold since 2001.
34. It is stated that Kabul is a destination for a large number of Afghans returning to the country, with many returnees ending up in Kabul because of relatively higher security than in their regions of origin, and because of expectations of more job opportunities and support facilities.
35. More than one third of residents of Kabul Province were born abroad or elsewhere in Afghanistan, with most returnees living outside the centre, often in remote areas, where recent immigrants from the same regional background perpetuate a village society.
36. The large number of returnees has challenged the absorption capacity of the government and NGOs. According to IOM data until June 2018, Kabul Province has 178,835 returnees.
37. The total number of IDPs in Afghanistan in September 2018 was at least 2 million, and Kabul is a destination for many regardless of their place of origin in Afghanistan. One third of Kabul residents were born abroad or elsewhere in Afghanistan.
38. In 2016 there were about 60 recognised informal settlements in Kabul housing 65,000 registered returnees and IDPs, with residents living in partial or whole mud houses. Nearly half of settlements were provided for free by the government, but these small sites were no longer able to expand, driving

households arriving after 2010 to rent properties in the host community. Many IDPs without family connections or the ability to rent a house ended up in camps.

39. The report describes the role of a Tazkera, which is said to be the most important identification document in Afghanistan. It is required to access a range of public services, such as education, employment, healthcare and official loans provided by a bank; and is particularly important in urban areas in order to access basic services and credit. The lack of a Tazkera could increase a person's vulnerability to harassment from the authorities. Generally, in order to obtain a Tazkera IDPs need to travel to their district of origin.
40. Kabul is a "magnet" for labourers as it is the major trade and employment hub in Afghanistan. Salaries are generally higher than in other provinces, particularly for those working for foreign organisations.
41. It is stated that according to a report from Oxfam, extended family networks are vital for returnees in finding employment and housing. Oxfam recorded Kabul having a total inflow of 628,260 returnees and IDPs by June 2017 with most living outside the City centre, often in remote areas and camps. Oxfam's research noted that returnees can generally work only from time to time in Kabul as daily wage workers and most cannot find jobs everyday making earnings unstable.
42. The report comments on the high number of households living below the poverty line in Kabul - noting that even though there may be a better job market, the cost of living is significantly higher than in other provinces, particularly for housing but also for some food items. Residents of Kabul tend to rely more on credit than other urban areas, given the expense of food and accommodation.
43. Food insecurity is highlighted as a problem in Kabul, particularly for IDPs and returnees. In December 2018, the Famine Early Warnings Systems labelled Kabul as "stressed" meaning that at least one in five households had minimally adequate food consumption but was unable to afford some essential non-food expenditures. Herat, in contrast, was categorised as being in "crisis", meaning that at least one in five households had food consumption gaps or above usual acute malnutrition or was only marginally able to meet minimum food needs.
44. Kabul is ranked as the fifth fastest growing city in the world with an average annual growth rate of 4.74%.
45. An estimated 70% of the population live in informal settlements and most new construction is in this category. The growth in informal settlements has prevented a major homelessness crisis, but has worsened existing problems such as lack of sewerage system and inefficient waste disposal.
46. In 2017, the price of formal housing in Kabul was around 35,000 - 500,000 USD whilst average monthly household income was estimated at 208 USD. Renting is

on the increase in urban areas, and is considered common practice in Kabul, where 27.6% of households rent the unit where they live. It is common for new settlers in Kabul to settle according to their place of origin, allowing them to benefit from social networks in order to occupy and enclose land, and many urban households accommodate extended family members from rural areas.

47. The report records a 2017 Asia Foundation's survey recording that 23.7% of Afghans living in Kabul and other central areas reported issues with drinking water as one of the biggest local problems.
48. Kabul City is one of the world's few national capitals without a central sewerage system, and as a result there are health problems which are compounded by the increase in population and various types of pollution.
49. Kabul is regarded as one of the world's most stressed cities. The majority of shared water points and wells are contaminated, posing grave health concerns. It is estimated that only 32% of the population has access to running water, and only 10% receive potable water.

**Country of Origin Report by the Department for Country of Origin Information Reports, Ministry of Foreign Affairs of the Netherlands, dated 1 March 2019**

50. The report discusses the political and military situation, stating that, at the end of July 20, 65% percent of Afghanistan's population lived in areas under the Afghan government's control or influence, which is unchanged since October 2017. Kabul is an area under Afghan government control. The report noted that even areas under government control suffer security incidents.
51. The report refers to the continued high-level of civilian casualties, relying on UMAMA figures. It states that citizens of Kabul City were hit relatively hard by suicide and complex attacks.
52. The report cites casualty figures reported by SIGAR showing civilian casualties between January and August 2018 of 1,225 in Kabul province, corresponding to 0.22 casualties per thousand (on the basis of the population being 5,452,652). Nine provinces had higher casualty rates per thousand, the highest being Nangarhar with 0.50 per thousand and Kunar with 0.39 per thousand.
53. The report notes that, out of an estimated population of 32.5 million, at the end of 2017 there were more than 2 million internally displaced persons, and in January 2019 10.2 million Afghans were affected by the food crisis brought about by drought. It is stated that nearly 16 million Afghans live in poverty and an estimated 10 million have little or no access to essential healthcare.

54. It is stated that around Kabul City there are more than 50 slums with an estimated 55,000 displaced Afghans living in them and that Kabul attracts the most migrants in the country.
55. The report states that in 2018 nearly 806,000 undocumented Afghans returned from Pakistan and Iran, with most of those returning travelling via border crossings in Herat Province and Nimroz Province. Most returnees settle in urban areas such as Kabul, with many facing problems such as housing, inadequate access to water, food and healthcare, and lack of regular work and income. The report states that returnees are almost entirely dependent on extended family networks and international assistance on arrival.

### **Special Inspector General for Afghanistan Reconstruction (SIGAR) reports**

56. SIGAR reports to the United States Congress on the status of reconstruction in Afghanistan, the focus being on the risk to the United States reconstruction investment in Afghanistan. We reviewed several 2019 quarterly reports as well as a 2019 “high risk list” report.
57. The reports discuss, amongst other things, the widespread insecurity in Afghanistan in the light of the ongoing and resilient insurgency, the inadequacy of civil policing, the endemic corruption, and the sluggish economic growth.
58. Reference is made to the significant drought in 2018, followed by flooding. The UN Deputy Special Representative of the Security General is quoted as describing the level of suffering in 2018/9 as being as bad as he has ever seen, following the drought and in light of the high levels of violence and general poverty level. Most Afghan households are said to face acute food insecurity.
59. SIGAR states that Afghanistan is notably insecure and that the US State Department advises against travel to the country as all areas are unsafe. The 30 January 2019 report states that SIGAR and US embassy staff are forbidden to travel in the country without armed escorts and cannot even get to the international airport from the centre of Kabul except by taking an embassy helicopter.
60. When discussing civilian deaths and injuries, SIGAR refers to figures reported by UNAMA (summarised above) as well as “RS [Resolute Support] civilian casualty data”, whose methodology is described as relying upon operational reports from RS’s Train, Advise, and Assist Command, the Coalition force headquarters, and ANDSF reports from the Afghan presidential information command centre to collect civilian casualty data.
61. RS reports cited in the SIGAR report state the following in respect of civilian casualties between 1 January – 16 November 2018:

- a. Total casualties in Afghanistan of 8,260, corresponding to 0.25 casualties per thousand (based on a population of 33,329,050).
- b. Total casualties in Kabul Province of 1,703, corresponding to 0.31 casualties per thousand (based on a population of 5,452,652).
- c. There are several provinces with casualty rates higher than Kabul, such as Nangarhar (0.81 per thousand), Kunar (0.52 per thousand), Uruzgan (0.51 per thousand) and Paktiya (0.48 per thousand).
- d. In absolute terms, Kabul has the highest number of casualties (1,703). The only other province where there were more than 500 casualties is Nangarhar, where the total is 1,517. The population in Nangarhar is 1,864,582 (in contrast to over 5 million in Kabul province), which explains why the casualty rate per thousand of the population is higher than Kabul.

62. The report compares the number of enemy initiated attacks in different provinces between 1 January and October 2018. The figure in Kabul is 556. There are 11 provinces with a higher figure (including 8 where it is over a thousand).

### **Human Rights Watch: Afghanistan, Events of 2018**

63. The report refers to more than 10,000 civilians being killed or injured in 2018, as well as a sharp escalation in attacks in urban areas by IS, particularly targeting the Shia population. It also notes that the Taliban, despite claiming to target only government and military facilities, uses indiscriminate means that have killed and injured hundreds of civilians in 2018.

### **Report by the Swedish migration agency, dated 4 December 2018 (English summary only)**

64. The report provided to us is in Swedish, but the summary is in English, and we refer only to this.

65. The summary states that in July 2018 the government of Afghanistan had control/influence over approximately 65% of the population. It also states that there has been no significant change in the situation in the country as a whole in 2018 but violence between conflicting parties has intensified and the Uppsala conflict data programme has recorded significantly more conflict-related deaths (civilians and combatants) in the first 8 months of 2018 than in the corresponding period of 2017. The report also states that the number of new conflict-related internally displaced persons as well as the number of security incidents has decreased in 2018 in comparison to 2017, but this cannot be explained by improved conditions for civilians.

66. The report states that there is an increased risk for civilians to suffer from targeted violence and the Shia minority has increasingly become a target of

attacks, with Shi'ites in the western the parts of Kabul particularly affected by targeted violence.

67. The security situation in Kabul City is described as being characterised by increased violence and increased frequency of suicide bombings. It is stated that although the incident level in Kabul is relatively low, each individual attack can potentially claim a large number of casualties, and although Kabul is under stable government control the frequent attacks have a great impact on people's perceived security and many residents limit their movement in the city to only necessary travel.

### **The Asia Foundation: Afghanistan in 2018: A Survey of the Afghan People**

68. The Asia Foundation Survey is based on a total of 15,012 face-to-face interviews with Afghans over 18 years old. Most of the figures given in the report are for Afghanistan generally, rather than Kabul. We have highlighted in this summary data specific to Kabul where this is given in the report.

69. 32.8% of respondents stated that they were optimistic about the direction of the country (which is the same as the previous survey); and 61.3% were pessimistic (which is almost the same as the previous year, where the figure was 61.2%). The proportion who were optimistic was higher amongst Pashtuns (42.5%) than other ethnic groups. It was also higher amongst those living in rural areas (34.8% for rural areas compared to 26.5% for urban areas). Over two thirds of respondents (70.2%) in the Central/Kabul region reported a pessimistic outlook.

70. Respondents were asked to give two reasons why they thought the country was either moving in the right, or the wrong, direction.

a. For the 32.8% who thought the country was moving in the right direction, the most frequently given reasons were improved security and rebuilding/reconstruction.

b. For the 61.3% who thought the country was moving in the wrong direction, the most frequently cited reason, by a significant margin, (both in Kabul and in Afghanistan generally) was insecurity.

71. When asked about local problems, the most common response was concern about utilities and public services, in particular the lack of drinking water and problems with electricity. In the Central/Kabul region, 47% of respondents cited lack of utilities/public services as their biggest problem, 30% cited lack of employment opportunities, and 28% cited security/crime issues.

72. In response to a question asking about personal safety and security, 71.1% of respondents (and 75.3% in urban areas) said that they always, often, or sometimes fear for their or their family's safety.



73. 12.5% of respondents in the Central/Kabul region reported that they or their family had suffered from an act of violence or criminality in the past year. The figure was 18.6% for Afghanistan as a whole. Across Afghanistan, physical attacks or beatings were the most reported violent or criminal act (41.3%), and this was higher for males (43.5%) than females (39.1%)
74. The survey shows that a frequent reason for pessimism about Afghanistan is unemployment and a poor performing economy. 75.2% of respondents in Kabul stated that their employment opportunities have gotten worse.
75. The survey notes that, according to the Central statistics organisation, the current unemployment rate in Afghanistan is 23.9% (18.3% for men). Respondents in the Central/Kabul region were the least likely to report earning income (41.6%, compared to 46.3% for Afghanistan as a whole).
76. 62.2% of households report an average monthly income between AFN 5,001 and 20,000.
77. Nationally, 29.3% of respondents reported having access to electricity 16 - 24 hours a day. The figure was 54.6% for urban respondents, and those in the Central/Kabul region and in the north-west were the most likely to report 16 - 24 hours of electricity per day.
78. The survey observes that water is of greater concern today than at any time in the past. It states that respondents in the Central/Kabul region and in particular in Kabul City had experienced a sharp drop in groundwater levels, and scientists are becoming increasingly concerned about underground water reserves in the next 10 years. 46.6% of respondents in central/Kabul reported that access to clean drinking water for their household had gotten worse in the last year.
79. 36.8% (38.4% in central/Kabul) of respondents stated that they would leave Afghanistan if given the opportunity. Amongst those who said they would leave if given the opportunity, the most frequent reason given was insecurity. Further, when asked what the government could do to make them want to stay, the most frequent response was to improve domestic security/ prevent crime.

### **The Asia Foundation: Afghanistan in 2019: a survey of the Afghan people**

80. Most of the figures given in the report are for Afghanistan generally, rather than Kabul. We have highlighted in this summary data specific to Kabul where this is given in the report.
81. From a survey sample of 17,812 Afghan respondents, 36.1% stated that they were optimistic about the direction of the country (an increase from the previous survey, where the figure was 32.8%); and 58.2% said the country is going in the

wrong direction (down slightly from 61.3% in the 2018 survey). In the central/Kabul region, 30.3% were optimistic.

82. The most common reason given for being optimistic about the future was improved security. Insecurity/crime was the most common reason given by those who think the country is moving in the wrong direction.

83. In the Central/Kabul region, lack of utilities/public services was given most frequently as the biggest problem in the local area, closely followed by insecurity/crime issues.

84. The report states that 74.5% of respondents stated that they often fear for their personal safety, which is the highest rate since the survey began. It is recorded that 84.6% of respondents in Kabul reported some or a lot of fear when travelling from one part of the country to another.

85. The report found that 15% of respondents in the Central/Kabul region reported an experience of violence or crime, which was 2.5% higher than in 2018.

86. Across Afghanistan, 55% of respondents said that employment opportunities for their household had worsened. The figure in Kabul was significantly higher than this, at 71.7%.

87. Most respondents in Kabul/Central region reported an income of between AFN 5000 and 20,000.

#### **Human Rights Watch: "No Safe Place" - Insurgent Attacks on Civilians in Afghanistan, May 2018**

88. The report states that since 2016 insurgent groups have sharply increased attacks in Kabul. The report states that the cost to civilians is far greater than the numbers killed or injured, due to the psychological trauma for relatives, the devastating financial impact for families who lose a breadwinner, the social consequences for women who become widows, and the impact on children who often need to leave school to supplement family income. The problems are compounded because many of those who are injured are unable to access suitable treatment or medication, and there is inadequate state support for victims and their families.

#### **Internal Displacement Monitoring Centre webpage printout on Afghanistan, 21 October 2019**

89. It is reported that there were 435,000 new displacements due to disasters and 372,000 new displacements due to conflict and violence in 2018; and that the total number of IDPs from conflict and violence as of 31 December 2018 was 2,598,000.

It states that there were a further 319,000 new displacements in the first half of 2019, of which 213,000 were associated with conflict and 106,000 associated with disasters.

90. It is stated that more than a million Afghans returned in 2016, mostly from Iran and Pakistan, and 610,000 returned in 2017. In 2018 the number of returnees from Iran reached an all-time high of over 750,000 but the returns from Pakistan were at an all-time low.

### **Weekly situation reports in 2019 from the IOM concerning return of undocumented Afghans**

91. A report for 6 – 12 October 2019 records total returns from Iran and Pakistan since 1 January 2019 of 384,136. 367,175 were from Iran and 16,961 from Pakistan.

### **IOM Displacement Tracking Matrix Afghanistan, Baseline Mobility Assessment October – December 2018**

92. This report notes that between 2012 and 2018 there were 3,225,380 returnees from abroad and 3,529,971 IDPs.

93. Between 2012 and 2018, 192,278 returnees from abroad and 177,563 IDPs moved to Kabul Province, resulting in a total inflow (returnees plus arrival IDPs) of 369,841. This is recorded as being 7% of the population. The percentage of the population who are returnees and IDPs is significantly higher in other parts of the country, such as Badghis (41%), Nangarhar (33%), and Jawzjan (42%) and Herat (24%). 31 out of a total of 33 provinces had a greater percentage increase in population than Kabul as a result of returnee and IDP inflows.

### **IOM Community-Based Needs Assessment May – June 2018**

94. This report recorded that the greatest proportion of the population affected by safety and security in the last 3 months was in Takhar (17%) and Nangarhar (15%). A comparison of fatalities and injuries due to the conflict in the last 3 months showed 1,579 in Nangarhar, 604 in Kunduz and 151 in Kabul.

95. The report showed average monthly household income in Kabul of AFN 5,599, average monthly expenses of AFN 7,405, and average household debt of AFN 5,506.

96. The report referred to the unemployment rate for men in Kabul being 59%, and to 18% of households in Kabul being unable to afford rent in the last 6 months.

## **OCHA Afghanistan weekly and monthly humanitarian updates, and bulletins**

97. The weekly report for 7 – 13 October 2019 records that, during 2019 until 5 October, there were 373,700 returnees from Iran, 21,120 from Pakistan and 16,730 from other countries. The total number of IDPs in 2019 until 13 October were 314,200.
98. The monthly update for August 2019 notes the grave impact on civilians of the highly unpredictable and politicised situation in Afghanistan, and that there has been a marked increase in airstrikes and complex attacks. The update describes how years of continuous hostilities have caused extreme levels of physical and psychological harm; and that poverty and high levels of debt have reduced people's ability to cope with sudden shocks. Rapid population growth and continued displacement is said to further compound the stress on urban centres and increase competition for local resources. A further point raised is that substantial returns from Iran and Pakistan are likely to continue due to the political and economic situation in those countries along with the perceived durability of peace in Afghanistan.
99. The humanitarian bulletin 1 April – 30 June 2019 observes that Afghanistan is recovering from the worst drought in a decade. The World Food Programme assisted 2.7 million people in 2018 and 1.9 million in the first 3 months of 2019. However, in April 2019 the programme began scaling down and people have high hopes for the next harvest season. There has also been flooding, killing 147 people and destroying over 24,653 homes between 3 January 2019 and 23 June 2019.
100. The humanitarian response plan (2018 – 2021) dated 3 May 2019 refers to Afghanistan being susceptible to recurrent, extreme climatic shocks and highlights the devastating impact of the drought in 2018. Even with the drought, ongoing hostilities and the conflict remained the largest driver of humanitarian need throughout 2018. Conflict induced displacement in 2018 is recorded as affecting 382,627 people, whereas in 2017 the figure was 483,946 people. Humanitarian need was exacerbated in 2018 by the large number of returnees from Iran (775,000) and the chronic poverty, lack of development and access to quality basic services, with an estimated 55% of Afghans living below the national poverty line in 2016/17.

## **Food and Agriculture Organisation of the United Nations: Afghanistan Emergency Livelihoods Response Plan 2019**

101. This report states that the lengthy conflict and recurrent natural disasters have debilitated institutions and weakened the resilience of the population, making it nearly impossible for communities to adequately cope with further shocks. The 2018 drought was the most severe in decades, and compounded by conflict, economic downturn, pests, animal diseases, and internal and cross-border

movements. Afghanistan is described as experiencing a major food security and livelihoods crisis, with an estimated 13.5 million people facing severe acute food insecurity, an increase of 6 million over the previous year. 14.3 million Afghans (out of 35.7 million) are said to live below the poverty line. The report notes that Afghanistan is ranked 8 out of 170 countries for vulnerability to the impact of climate change over the next 30 years.

### **Finnish Immigration Service: Afghanistan Fact-Finding Mission to Kabul in April 2019**

102. This report follows a fact-finding mission to Kabul in April 2019 to collect information on the living conditions of returnees in Kabul City.

103. The population of Kabul is estimated as being between 3.5 and 5 million. It is stated that almost one third of residents have lived parts of their lives somewhere else.

104. The security situation is described as the biggest concern for returnees and civilians in general, with the random nature of the violence meaning that everyone is at risk. It is said that life tends to return to normal very quickly after a security incident. It is also noted that Kabul is affected by criminal gangs, with kidnapping being a major concern for many citizens of the city.

105. The report describes high levels of urbanisation in Kabul without proper planning resulting in multiple problems, such as air pollution and inadequate access to clean water and waste management. In 2016/17 55% of the population were living below the national poverty line, a significant increase from 2007/8 when it was 34%.

106. Migrant returns have been increasing in 2018 and 2019, with over 770,000 undocumented returnees from Iran (along with about 2000 refugees) and 32,000 undocumented returnees from Pakistan (along with about 13,600 refugees) in 2018. The top provinces for refugee returns were Kabul, Nangarhar and Kunduz. For undocumented returnees from Pakistan, the top destinations were Kandahar, Nangarhar and Kunduz, and for those from Iran were Herat, Takhar and Ghor.

107. Many of those returning to Kabul are not from the City and do not have a safety net or extended family. Such people become lost in the environment as there are no governmental services on which they can rely.

108. The report describes a circular migration occurring from Iran, as people are repeatedly deported and then the same people migrate back to Iran. It is suggested that the number of returnees is extremely high from Iran because the same people come and go dozens of times.

109. The report states that there are hardly any places available to rent for people living on their own, as landlords require connections to people they trust; and Afghanistan is all about networks based on relatives and extended family ties.
110. The report states that the most common job in Kabul is casual or day labourer, where there is very high job insecurity.
111. Many returnees from Europe have problems with their family because the family has sold all their resources to send the family member to Europe and if he fails, the family are unable to pay their debts. Return can also be perceived as a kind of shame or indication that the person committed a crime (and therefore was deported).

#### **OCHA Afghanistan Humanitarian Needs Overview 2018, issued December 2017**

112. This report records a total population of 34.5 million, of which 3.3 million have acute humanitarian needs. Further statistics about the population of Afghanistan include: 1.9 million are conflict affected, 405,000 are conflict displaced, 944,000 are food insecure and 286,000 are affected by natural disaster. (The categories are not identical to those in the 2019 UNOCHA overview).
113. In respect of Kabul, the report states that there are 0.6 million people with acute humanitarian needs and 1.7 million with chronic needs. 21,000 are conflict displaced, 394,000 are conflict affected, and 20,000 natural disaster affected.
114. The report states that because of the deepening conflict, the UN recently reclassified Afghanistan from a country in post conflict to one in active conflict. Afghanistan is said to be in a protracted crisis suffering from deep-rooted poverty and decades of conflict. The report highlights the huge impact of the conflict/insecurity, natural disasters and population influx.

#### **OCHA Afghanistan Humanitarian Needs Overview 2019, issued November 2018**

115. The security situation is described as chaotic and unpredictable, with the ongoing hostilities causing extreme levels of physical and psychological harm to the population.
116. The report states that out of a population of 35.7 million:
- a. 6.3 million have acute humanitarian needs.
  - b. 1.4 million are conflict affected.
  - c. 700,000 are internally displaced.
  - d. 270,000 are returnees and refugees.
  - e. 140,000 suffer from sudden onset natural disasters.
  - f. 3.9 million suffer from slow onset natural disasters.
  - g. 2.6 million lack access to basic services
  - h. 4 million are food insecure

117. The report compares need across the country. In Kabul, it is said that there are 0.4 million people in need. This is broken down as 0.15 million conflict affected, 0.02 million conflict displaced, 0.05 million returnees, 0.01 million suffering sudden onset natural disasters, 0.004 million slow onset natural disasters, and 0.24 million lacking access to basic services.
118. Afghanistan is described as being in a pervasive protection crisis, causing extreme levels of physical and psychological harm. It is estimated that in 2019 as many as 250,000 Afghans will require emergency medical treatment as a result of continued conflict.
119. Population movement and enforced displacement is expected to increase due to the uncertain political climate in Pakistan and Iran, where most Afghans return from, and it is estimated that 1 million displaced people will require life-saving humanitarian assistance in 2019.
120. Returning flows have accelerated since 2014, with a surge from Iran of more than 670,000 in 2018. It is noted that there is a higher prevalence of especially vulnerable individuals among returnees, but limited funding for IOM programs means that only 4% of returnees from Iran have been assisted this year. In previous years, a significant proportion of returnees would leave again shortly afterwards, but the trend on this seems to be changing with recent data showing a net return rather than a circular migration pattern.
121. The drought in 2018 is described as affecting more than two thirds of Afghanistan and exacerbating problems in already impoverished communities.
122. The report describes the invisible toll of the conflict being as severe as the physical, with the ever present threat of violence turning daily activities into a potentially life-threatening affair. A report is cited stating that 70% of men do not feel safe travelling to work, the mosque, health and education facilities or the market, and that people have restricted their movement as a consequence.
123. The report records that in October 2018 healthcare workers estimated that 41% of trauma cases were caused by events related to active conflict.

#### **OCHA Afghanistan Humanitarian Needs Overview 2020, issued December 2019**

124. We note that in this report a revised, broader, definition of humanitarian action was used. This makes some comparisons with the earlier humanitarian overview reports difficult.
125. The report describes Afghanistan as the scene of the deadliest conflict on earth, with mass displacement choking the country's unstable economy. It states that the

political and security environments have become more unstable over the past year.

126. The report records a total population of 37.6 million, with 6.3 million people in need in 2019, and states that poverty is climbing, especially among the IDP population.

127. It is said that in 2018 and 2019 drought affected more than two thirds of Afghanistan, devastating the agricultural sector and leaving 3.9 million people in need of food and livelihoods support.

128. The report states that ownership of identity documents is a key determinant of a person's ability to access the limited government services which do exist. IDPs and returnees are said to be especially disenfranchised due to either their loss or lack of appropriate civil documentation. That said, the report also states that a Tazkera (identity document) is not required for accessing services such as health and education although is necessary to get a registered mobile phone which, in turn, is required to open a mobile banking account.

129. It is reported that in 2019 (up to the end of November) a significant number (430,000) of Afghans returned from Iran. There were also 25,000 from Pakistan and 16,000 from Turkey. The report provides figures for the number of returnees from Iran and Pakistan by year, as follows:

<b>Year</b>	<b>No. of cross border returnees from Iran and Pakistan</b>
2013	522,000
2014	563,000
2015	722,000
2016	1,064,000
2017	617,000
2018	821,000
2019	453,000

130. The report highlights the extent of mental health issues arising from the conflict, which is compounded by lack of support services. It states that people's capacity to cope with repeated shocks has continued to be eroded.

131. The report gives a population of "the Capital" as 7.98 million, with 1.07 million people in need (representing 13% of the population). The percentage of the population in need is substantially lower in the Capital than in the country as a whole (where it is 25%).



## **Afghanistan Living Conditions Survey 2016 – 17**

132. This report was prepared by the Central Statistics Organisation, funded by the European Commission.

133. The report records numerous indicators, including:

- a. unemployment rate: 23.9%
- b. population living below the national poverty line: 54.5% (this is an increase from 34% in 2007/8). The percentage of the population living below the poverty line is higher in rural areas (58.6%) than urban areas (41.6%).
- c. food insecure: 44.6% (increasing from 30% in 2011/12)
- d. severely or very severely food insecure: 27.5%
- e. adult literacy rate: 34.8%
- f. urban population living in slums, informal settlements or inadequate housing: 72.4%

134. The report states that it would be a serious misunderstanding to think that unemployment is the only, or even the main, problem of the labour market. It highlights the generally poor quality of work, characterised by vulnerable, low productivity and low-paid jobs that prevent households from escaping poverty. 80% of all jobs are classified as vulnerable employment and only 13% of the working population can be considered to have decent employment.

135. Access to clean water and adequate sanitation and hygiene have improved, but only 36% of the population use safely managed drinking water and 41% use safely managed sanitation services.

136. In Kabul, 27.6% of households are renting the units in which they live. The report describes this as “showing a more ‘modern’ attitude than in other provinces”.

137. Kabul is described as a gravitational centre for migrants – both those moving internally and returning from abroad.

### **2018 and 2019 Global Peace Index**

138. In both the 2018 and the 2019 reports Afghanistan was the lowest ranked country in the world for safety and security, and the second lowest (after Syria) for ongoing conflict.

## **World Bank: Afghanistan Development Update, July 2019.**

139. The report states that Afghanistan had slow growth of 1.8% in 2018, reflecting the impact of severe drought and intensifying insecurity. Although real GDP growth is expected to have accelerated during the first half of 2019, mainly driven by the easing of drought conditions and improved agricultural production, intensifying political uncertainties are expected to have continued to dampen private sector confidence and investment.
140. Poverty has increased and deepened, with the drought negatively impacting livelihoods. From 2007/8 to 2011/12 the poverty rate increased only slightly (from 34 to 38%). However, it surged between 2011/12 and 2016/17 to 54.5%, driven by declining income in both rural and urban areas. Poor agricultural production has forced migration to urban centres looking for employment opportunities, further stressing limited urban employment opportunities.
141. 805,850 undocumented Afghans returned from Iran and Pakistan in 2018; and growing numbers of returning refugees and internally displaced people have increased pressure on services, employment opportunities, and available humanitarian assistance.
142. The report states that political uncertainties have intensified, compounded by uncertainty about international security support and the uncertainty of peace negotiations with the Taliban.
143. GDP per capita has declined, from US\$559 in 2016 to (projected) US\$485 in 2019.
144. Employment of working age males between 25 and 50 is recorded as 84.3%.

## **Afghanistan Statistical Yearbook 2017 - 18, from the Islamic Republic of Afghanistan National Statistics and Information Authority**

145. The population of Kabul Province is listed as 4,679,648, of which 3,984,343 are urban and 695,305 rural.

## **Access to Tazkera and Other Civil Documentation in Afghanistan, Norwegian Refugee Council, June 2012**

146. This report explains that a Tazkera is the primary personal identification document and is needed, inter alia, to access government services as well as to obtain other identity documents. It states that whilst progress has been made to allow IDPs to obtain their Tazkera in Kabul, in many cases the procedure requires travel to the province of origin, and the process can be made more complicated where records have been lost.

## **Washington Post article dated 21 May 2018**

147. This article, as do several others, paints a picture of the population of Kabul living in fear of terrorist attacks, and highlights the mental health impact of the violence, and in particular of not knowing where the next attack will be. It is said that people are changing their habits to avoid attack-prone locations.

## **International Growth Centre: Policy Options for Kabul's Informal Settlements, January 2018**

148. This report refers to population growth outpacing capacity to provide necessary infrastructure, services and jobs, resulting in widespread informal settlements housing an estimated 70% of the population.

149. The report estimates that Kabul City has a population of 6 million.

150. The report states that informal settlements represent a vital source of housing and their dense social and economic networks can offer important mechanisms of urban integration for rural - urban migrants. The report explains, however, that the illegality of the settlements in the absence of planning has resulted in problems of poor infrastructure and weak land rights.

## **Human Rights Watch: Pakistani Coercion, UN Complicity: the mass forced return of Afghan refugees, February 2017**

151. The report documents that in the second half of 2016 565,000 Afghans (365,000 refugees and 200,000 undocumented) returned to Afghanistan from Pakistan. It notes that UNHCR warned that the massive number of returns from Pakistan could "develop into a major humanitarian crisis".

152. The report documents that many returnees from Pakistan have been unable to return to their home areas due to lack of security, work opportunities and basic social services, and become IDPs. It is stated that, based on its interviews in Afghanistan, UNHCR estimates that at least 25% of refugees returning from Pakistan since early July 2016 will try to settle in Kabul.

153. It is stated that Kabul is one of the world's fastest-growing cities, with population increasing at an estimated annual rate of 10%, and with new arrivals putting tremendous pressure on the city.

154. The report quotes the head of IOM in Kabul stating in November 2016: "with all these returns from Pakistan and Iran as well, and looming returns from Europe, it is a perfect recipe for a perfect storm because that puts a strain on the capacity of the government to respond".

155. Also quoted is a 2016 UNHCR document stating: “Kabul has been significantly affected by the surge in returns from Pakistan, with almost a quarter... settling in Kabul’s overcrowded settlements. In light of the well documented contraction of Kabul’s economy following the withdrawal of international forces in 2014, the city’s absorption capacity has been extremely limited due to the low availability of livelihoods... appropriate shelter, and access to basic services, particularly health and education.”

### **EASO Country of Origin Information Report: Afghanistan Networks, February 2018**

156. The report discusses the importance, and prevalence, of networks. Networks can be based on extended families, tribes, clans and local communities, as well as professional and political connections. Networks are said to be important for gaining access to the labour market. The report states that “Afghans in general are good at building networks, and those who settle in a place in which they do not already have existing networks need to develop them.” The report cites a study where it is stated that the consensus among people spoken to was that it was difficult to imagine an Afghan who is completely alone, who is not in contact with his or her family and does not have any other network.

157. The report notes the influx of Afghans from Pakistan (600,000) and Iran (400,000) in 2016, with only a small number returning to their place of origin.

158. It is said that Afghans abroad usually maintain close contact with relatives in Afghanistan. The report describes a study of 25 Afghans returned from the UK. Of these, 8 were not successful in getting in touch with extended family.

159. The process of obtaining day-labour work is not said to depend on networks. It is described as involving going to certain meeting points in specific areas early in the morning where unskilled manual labour work can be obtained. Many people turn up and not everyone gets work. The salary is about AFN 300 (approximately USD 4.3) for unskilled workers, and skilled workers can earn up to AFN 1000 (USD 14.5) per day.

160. The report describes inexpensive “tea rooms” that provide accommodation at a cost of AFN 30- 100 (USD 0.4 -1.4) a night being commonplace in Kabul and it not being necessary to know anyone to get in. These tea rooms are described as an important meeting point and arena for socialisation.

Appendix B: Error of law decision



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: AA/03491/ 2015

THE IMMIGRATION ACTS

Heard at: Field House, London

on 27 April 2017

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Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

AS

[ANONYMITY DIRECTION MADE]

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr T Gaisford, instructed by J D Spicer Zeb solicitors

For the Respondent: Mr I Jarvis, Senior Presenting Officer

Anonymity Direction

I make an anonymity order, pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Unless the Upper Tribunal or other appropriate Court or Tribunal orders otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant. This prohibition applies to, amongst others, the parties and their representatives.

**DECISION AND REASONS FOR**  
**SETTING ASIDE THE FIRST-TIER TRIBUNAL'S DECISION**

**Introduction**

1. The appellant is a national of Afghanistan, born in Kardai village, Laghman Province, in 1986. For the purposes of this decision I need not set out the circumstances of the appellant's time in Afghanistan, save to say that they are accurately reflected in paragraphs 2 to 7 of the grounds of appeal to the Upper Tribunal.
2. The appellant arrived in United Kingdom on an unidentified date accepted to be "*towards the end of 2008*". He was detained by immigration officers on 24 January 2014 and claimed asylum five days later. In a decision of 12 February 2015 the respondent refused such application concluding, in the same decision letter, that: (i) the appellant had not shown there to be substantial grounds for believing that he faces a real risk of suffering serious harm upon return to Afghanistan such as to qualify for humanitarian protection; and, (ii) the appellant's removal would not breach article 3 or article 8 ECHR. On the 13 February 2015 the respondent made a decision to remove the appellant.
3. The appellant's subsequent appeal to the First-tier Tribunal was dismissed in a decision promulgated on 31 July 2015. The appellant now appeals to the Upper Tribunal with the permission of Upper Tribunal Judge Taylor, granted on 2 October 2015.

**Decision and Reasons**

4. At the outset of the hearing before the Upper Tribunal, Mr Jarvis accepted that the First-tier Tribunal's decision contains an error of law such that it should be set aside. Given this concession, I do no more herein than summarise why I concur that it is appropriate to set aside the First-tier Tribunal's decision.
5. The First-tier Tribunal accepted, *inter alia*, that there exists a real risk that the appellant would suffer persecutory treatment from the Taliban if he were to return to his home area in Afghanistan [27]. It thereafter considered the issue of internal relocation, in the context of the Refugee Convention, at [33] of its decision.

6. In both written and oral submissions made on behalf of the appellant to the First-tier Tribunal, albeit made within the context of internal relocation viewed through the lens of Article 15(c) and not the Refugee Convention, it was submitted to be of significance, when assessment was being given to the question whether relocation of the appellant would be unduly harsh, that the “assistance and reintegration” packages (“assistance packages”) previously provided to refused asylum seekers upon return to Kabul had been withdrawn and would not be available to the instant appellant. Paragraph 224 of the country guidance decision of AK (Afghanistan) [2012] UKUT 00163 was prayed in aid of such submission.
7. This feature of the appellant’s case is not explicitly addressed by the First-tier Tribunal, and it cannot be ascertained from its decision whether its conclusion at [33] was correctly premised on the fact of the appellant not having have access to such an assistance package.
8. Furthermore, in my conclusion it cannot be inferred from the fact that FtT found, in [36], that “*there is nothing cogent or compelling before [it] to suggest that AK (sic) no longer valid and (sic) regarding removal to Kabul*”, that it was therein seeking to address the relevance of the withdrawal of assistance packages to the application of the guidance given in AK. In any event, such consideration was itself flawed by legal error in that (i) the First-tier Tribunal failed to direct itself to, or lawfully apply the Upper Tribunal (IAC) Practice Direction (paragraphs 12.2 and 12.4) and the Upper Tribunal (IAC) Guidance Note 2011 No. 2 (paragraphs 11 and 12); and, (ii) there is no indication in [36] that the First-tier Tribunal lawfully addressed itself to the correct threshold applicable to a consideration of internal relocation under Article 15(c) of the Qualification Directive.

## Decision

9. For these reasons, I set aside the decision of the First-tier Tribunal.
10. The Decision on this appeal will be re-made by the Upper Tribunal. The findings of primary fact made by the First-tier Tribunal have not been the subject of challenge and are preserved, as is the conclusion at [27] that the appellant would be at risk of suffering persecutory treatment in his home area.

Signed:



Upper Tribunal Judge O'Connor