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NO REASON FOR RETURNS TO AFGHANISTAN

ECRE'S RECOMMENDATION FOR A SUSPENSION OF RETURNS TO
AFGHANISTAN DUE TO THE SECURITY SITUATION THERE AND THE
UNFAIRNESS OF ASYLUM DECISION-MAKING IN EUROPE.

I. INTRODUCTION

Afghan nationals were the second highest group to seek international protection in Europe in 2018. According to the European Asylum Support Office (EASO) on average the recognition rate for Afghan nationals in 2018 increased to 43% at first instance, up 11% on 2017 (with other cases concluded with positive decisions at appeal or review stage). However, Afghan nationals also faced the largest variation in recognition rates in Europe, with the rate varying from 6% to 98%, depending on the country, with no apparent reason for the divergence lying in the nature of the cases.

According to analysis from ECRE's AIDA database, Afghan nationals were among the top three countries of origin of people claiming asylum in Germany, France, Greece, Turkey, Belgium, Bulgaria and Slovenia in 2018. Recognition rates varied from 98.4% in Italy to 24% in Bulgaria. Slovenia (77.7%), Finland (73.4%) and Greece (70.9%) had high rates, contrasting with 33% in Sweden, 50.6% in Belgium and 52.2% in Germany. There was an interesting shift in Nordic countries with a significant rise in the recognition rate in Finland (up from 45.4% at the end of 2017) and Norway (35.7% at the end of 2017). Sweden on the other hand saw a fall in the recognition rate (down from 38% at the end of 2017).

This persisting divergence and the risk of human rights violations that results has prompted an increasing

number of courts to **suspend** Dublin transfers of asylum seekers to countries where they would be at risk of onward deportation. In 2018, for example, domestic courts – mainly in France – ruled against transfers of Afghan asylum seekers to Germany, Austria, Belgium, Sweden, Finland and Norway.

This policy note looks at the treatment of applications for international protection from Afghan nationals, considering recent policies and guidelines and the approach of national courts. A particular focus is the internal protection alternative. It gives an update on returns to Afghanistan from Pakistan and Iran and on the situation in Afghanistan, before providing recommendations for EU Member States and other policy makers. ECRE argues for a halt to returns to Afghanistan until there are significant changes in the situation in Afghanistan and until ECRE's three **prerequisites for return** are in place in Europe, specifically, fair and consistent asylum decision-making, dignified return procedures, and partnerships with third countries that are transparent and respect fundamental rights.

II. ANALYSIS

GUIDELINES AND PROCEDURES

In 2018, EASO published its first country guidance note: '**Country Guidance: Afghanistan**'. These notes aim to foster convergence in the application of criteria for qualification for international protection, and develop common analysis to assist in the examination of applications from the main countries of origin of applicants for international protection in the EU. As an important country of origin, and the one with greatest divergence in recognition rates, Afghanistan is a key country.

Of interest is EASO's position on the Internal Protection Alternative or IPA (which is also known as the Internal Flight Alternative or the Internal Relocation Alternative). In **EU legislation** Member States may determine that an applicant is not in need of international protection if he or she has no well-founded fear of being persecuted or is not at real risk of suffering serious harm in a part of their country of origin, can safely and legally travel to and gain admittance to that part of the country, and can reasonably be expected to settle there.

The EASO report looks at Kabul, Herat and Mazar-e Sharif in Afghanistan and concludes that in general these cities could be considered as a reasonable location for an IPA for single, able-bodied adult men and for married couples of working age with no children, i.e. persons with these profiles from elsewhere in Afghanistan could be transferred to these cities, regardless of whether they have a support network there.

In August 2018 the **UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan** were published. These guidelines focused on Kabul for the assessment of the IPA and in contrast concluded that, after considering the negative trends in the security situation, the overall situation of conflict and human rights violations, and the adverse impact on the broader socio-economic context, an IPA is generally not available in Kabul.

THE SITUATION IN AFGHANISTAN

Ongoing conflict, the worst **drought** in decades, and deepening poverty have all contributed to a deteriorating humanitarian situation in Afghanistan. The latest UNAMA **reports** show sustained and extreme levels of harm to civilians in 2018. According to **OCHA** 349,794 people were verified as displaced by conflict in 2018. Pro Asyl has produced an **interactive map** showing 100 attacks in different provinces from 1 November 2018 to 15 January 2019. The Afghanistan Living Conditions Survey released **data** that over the half of the population now live below the national poverty line. In a **press briefing** the Internal Labour Organisation (ILO) said unemployment in Afghanistan was the highest in the world.

EU AND MEMBER STATE POLICY ON RETURNS TO AFGHANISTAN

Returns from Europe to Afghanistan can be undertaken on the basis of bilateral readmission agreements or the **Joint Way Forward on migration issues between Afghanistan and the EU**. ECRE's 2017 **Case Study on Afghanistan** highlights concerns including a lack of oversight and transparent monitoring of the impact

on fundamental rights of the Joint Way Forward. In 2018, the [Council of the European Union](#) reiterated the importance of the EU-Afghanistan Joint Way Forward and Member States' bilateral arrangements on migration, as "indispensable tools" to ensure effective returns and combat trafficking.

The release of the UNHCR guidelines led to Finland pausing returns to Afghanistan while it [updated](#) its guidelines on return. Its latest position is that internal protection in Kabul will only be applied in limited cases, and after an individual assessment, for healthy able-bodied unmarried men who are not particularly vulnerable, of working age, and healthy, and for childless married couples who are not particularly vulnerable and who have a safety net in Kabul.

Meanwhile, since 2016 Norway has not applied the "reasonableness test" when it decides on the IPA. This means it looks solely at questions of safety and access and not whether it is reasonable for a person to relocate to another part of their country of origin, by considering whether a person could reasonably be expected to settle and make a living there. A recent [article](#) on the application of the IPA by Norwegian decision-makers looks at the impact that removing the reasonableness criteria in decisions has had, particularly on Afghan families and children.

In 2018, Denmark and Norway re-[floated](#) an idea that had previously been quashed for return centres for children in Kabul. In more positive developments, Sweden passed a [law relating to upper secondary school education](#) that should mean some young [Afghans](#) will receive a residence permit to continue studies. The UK extended eligibility for a [Redundancy Scheme](#) that allows for the resettlement of former national staff who lost employment after the drawdown of UK armed forces in Afghanistan, whilst several municipal councils in the Netherlands [called](#) for a halt to returns to Afghanistan.

THE COURTS

ECRE has published a non-exhaustive compilation of recent [case law](#) on returns to Afghanistan from 10 EU+ countries in 2017-2018. Many decisions refer to either the EASO or the UNHCR guidelines. For example, in a case in the Netherlands, [the Administrative Chamber of the Court of Amsterdam](#) considered it important that EASO stated that the violence in Kunduz is at a level so as to fall within the meaning of Article 15c of the Qualification Directive. However, the [Administrative Court Aachen](#) observed that the UNHCR eligibility guidelines did not contain new information such as to lead to a different assessment of the security situation in Afghanistan or of whether there was a serious and individual threat to returnees.

On the IPA, case law from France and Switzerland includes decisions which place greater weight on protection. The Federal Administrative Court in Switzerland (E-1775/2016) ruled that the Afghan security forces were not able to guarantee effective protection for individuals at an elevated risk, including in Kabul, as the Taliban operate on the whole territory of Afghanistan and have become well organised, gaining influence and power. The Swiss Federal Administrative Court [denied](#) an IPA in Kabul in the case of a young man who had only ever spent a short time (days) in Kabul stating it could not be certain that he could ensure his existence based on his professional experience outside Kabul (in a mine) or on the presence there of his uncle, a carpenter who already takes care of his mother and sister. Another [ruling](#) denied an IPA being considered in Herat or Mazar-e Sharif as "irrelevant" because the applicant had no links to the two cities.

In France, a court [ruled](#) that subsidiary protection must be granted not only to those coming from a region with a generalised level of violence resulting in a serious threat to one's life but also to those who would have to cross such an area in order to reach their region of origin. It found that since the applicant would have to go through Kabul which is exposed to violence in order to reach his region of origin, he ought to be entitled to subsidiary protection. Social and other networks were still considered a factor in deciding on potential IPAs in Austria with a ruling that an IPA for a family with three minor children could only be assumed to exist if they had a family or social network (Constitutional Court E941/2018). In another [case](#), UNHCR's finding that Kabul cannot be considered as an IPA did not apply as the applicant was a Hazara so could expect support from the large Hazara community in Kabul. On the other hand, several cases from Germany and Austria indicated that even if Kabul could no longer be considered as an internal protection alternative according to UNHCR's guidelines, then the person could avail themselves of protection in Herat or Mazar-e Sharif instead.

MONITORING OF RETURNS

There is little post-return monitoring and even less transparent reporting of those returned. It has been recorded that Afghanistan has recently **rejected** a deportee from Germany. The person had a criminal record, but was returned because of his mental health according to Afghan sources. An Afghan father was also reported to have been shot **dead** after the UK returned him to Afghanistan after 16 years. Save the Children has also **reported** on the lack of oversight of returns in general and that children were being returned to a dangerous environment where they face threats including violent attacks and recruitment by armed groups.

RETURNS TO AFGHANISTAN FROM NON-EUROPEAN COUNTRIES

Meanwhile, over 800,000 undocumented Afghans from Pakistan and Iran returned or were deported to Afghanistan in **2018**. With over 770,000 returns, undocumented returns from Iran in particular saw a massive increase, largely driven by political and economic changes in Iran. This has put enormous pressure on the Afghan economy, both in terms of the large number of returnees in need of assistance but also in terms of a reduction of remittances as many had worked in Iran in the informal economy.

III. RECOMMENDATIONS

ECRE will continue advocacy to halt returns to Afghanistan until there are significant changes in the situation in Afghanistan and ECRE's **prerequisites for return** are in place in Europe. It makes the following specific recommendations:

- » States should halt forced returns to Afghanistan due to the security situation there and the challenges with the reintegration of returnees from Europe and the region. Vulnerable groups should not be returned to Afghanistan under any circumstances.
- » Voluntary departure (compliance with an obligation to return) should only take place on the basis of full information, informed consent, conditions in place for a dignified return, real possibilities to reintegrate in Afghanistan, and access to embassy, UNHCR, IOM, NGO assistance in case of difficulties.
- » The continuing extreme divergence of protection rates shows that there are flaws in European asylum systems and that it is likely that Afghans in need of protection are not treated fairly or consistently. EASO should analyse practice in countries with low recognition rates for Afghan nationals taking into account all likely reasons for divergence. It should publish its existing analysis on divergence recognition rates.
- » Divergence in recognition rates should be tackled through improving asylum decision-making and supporting the better functioning of asylum systems in Europe. The focus should be on compliance with EU and international law, rather than a roll-out of the internal protection alternative.
- » The internal protection alternative (IPA) should not be used for Afghanistan. It is not reasonable when UNHCR criteria are taken into account, including vulnerabilities, security, access to travel to safe areas, other forcibly displaced people in the area, access to shelter, and discrimination against returnees.
- » The number of Afghan nationals who are able to be returned to Afghanistan is relatively small, yet disproportionate amounts of time and energy are spent on trying to force returns. Afghanistan has obvious and very serious challenges in keeping safe anyone who returns or providing any support to returnees. Meanwhile we are creating an unwelcoming environment for Afghans in Europe, many of whom will be granted international protection. The European Commission and Member States should put more focus on inclusion in European societies.
- » European actions may provide a green light for other countries outside of the EU to continue to return people to an increasingly fragile Afghanistan. The European External Action Service should assess the impact that return movements have on the conflict dynamics in Afghanistan.
- » The European Commission should ensure that the impact of the Joint Way Forward is monitored transparently, including its implementation by Member States and Afghanistan, and its impact on communities, individuals, and fundamental rights. This should include regular reports on its implementation to the European Parliament.

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