

EU Migration Policy and Returns: Case Study on Afghanistan

SUMMARY AND ECRE'S RECOMMENDATIONS

Analysis

With higher numbers of refugees and migrants arriving in Europe in 2015 and 2016, the European Commission (EC) and Member States became concerned about the low numbers of people who left Europe compared to the numbers of return decisions issued. This low rate of return was judged to be due to factors including obstacles to return at Member State level, difficulties in cooperation with third countries and documentation, and non-compliance by individuals. The European Union (EU) has tried to tackle these obstacles and made increasing returns a primary policy aim. This case study looks at how this shift has been implemented in the case of returns to Afghanistan. It looks at how the EC and Member States have interpreted the new policy direction, and the effect on EU-Afghan relations, on refugees and asylum seekers from Afghanistan in Europe, on return to Afghanistan, and on the fate of those returned.

1. EU-Afghan relations

The EU and its Member States have had wide and varied relations with Afghanistan for many years. They have supported Afghanistan, its institutions and people as a strong partner since 2001, including as one of its main donors in spheres such as education, health and the rule of law, tackling the root causes of displacement and migration in Afghanistan and neighbouring countries. More recently, the EU has tried to use cooperation agreements to increase returns. The Joint Way Forward signed by the EU and Afghanistan in 2016 is the embodiment of this approach. It directly addresses obstacles to return, for example, by placing a time-limit of four weeks for the Afghan authorities to identify Afghan nationals and issue a travel document, after which time a European travel document can be issued instead. There are concerns about the agreement including that it bypassed parliamentary scrutiny, unlike more formal readmission agreements, and at least some parts of the Afghan government have concerns about its provisions. The EU is attempting a difficult balance as Afghanistan battles for security and to support hundreds of thousands of returnees from neighbouring countries and internally displaced people across Afghanistan. Although the Joint Way Forward supports the government and communities in the reintegration of returnees, the EU risks being too focused on its own "crisis", concentrating disproportionate efforts on removing the relatively small numbers of Afghans who have made it to Europe to seek protection. There may also be damage to the EU and Member States' diplomacy and dialogues on issues such as human rights with Afghanistan and regionally.

2. Returns to Afghanistan from Europe

It is legitimate for states to return people whose applications for international protection have been rejected. The prerequisite is that fair and coherent asylum systems are in place that properly examine whether a person will face a well-founded fear of persecution or serious harm if returned, that return procedures respect fundamental rights and are seen as fair by individuals and third countries, and that partnerships with third countries are open to scrutiny and based on a shared observance of fundamental rights. At the moment in the case of Afghanistan, recognition rates and types of protection diverge to such an extent across Europe that the fairness and quality of asylum procedures that are being conducted must be questioned. In addition, some Member States have altered their policy guidelines on how to deal with applications from Afghan nationals since 2015, including on which areas are safe for an internal protection alternative making it more difficult for protection to be granted. At a time when security in Afghanistan is worsening, policy changes seem to be a reaction to the migration situation of Member States rather than to the objective security situation in Afghanistan. There is recognition of the divergence of practice and the European Asylum Support Office (EASO) is undertaking a pilot Country Guidance exercise to assist Member States to harmonise decisions on Afghanistan. As of November 2017 decisions still diverge widely. In addition, harmonised decision-making does not always mean quality decision-making; care should be taken that decisions are in-line with international refugee law.

Member States have struggled to cope with higher numbers of people arriving and seeking international protection in 2015-2016, but some of the solutions to the challenges this brought have caused undue hardship, including the hotspots approach in Greece. Although restrictions introduced as part of the response are not always aimed at Afghans alone, measures for refugees in key countries have been introduced, sometimes temporarily, to prioritise specific groups. The situation has led to frictions between refugee groups and Afghan refugees in Europe are increasingly vocal about perceived discrimination. This has not been aided by anti-refugee rhetoric and by narrowly conceived security interests being inserted in protection debates.

3. Increasing numbers

The Commission recommendation to make returns more effective from March 2017 encourages Member States to take the necessary measures to ensure swift return, increase cooperation and up the rate of return. While many of the recommendations were still in development last year, Member States and other European countries entered into their spirit in implementing returns to Afghanistan. European states, including Germany, Finland, Norway and Sweden, have openly promoted increasing returns to Afghanistan. Deportations started in December 2016 with Member States using joint, chartered and ordinary flights. Ongoing security issues, however, have meant delays and suspensions. For example, the 50 seat allocation for non-voluntary returns on each flight for the first six months of the Joint Way Forward was not filled on the flights for which information is in the public domain. Two cases, one from Finland and one from the UK, have highlighted problems of implementing swift returns to countries in conflict such as Afghanistan as in both cases people returned to Afghanistan had to be brought back, due to a residence permit to work being awarded in one case and an ongoing asylum appeal in the other. This could have had extremely serious consequences for the individuals concerned. Amnesty International has detailed serious cases including that of a man who was killed upon return.

Voluntary return is not being prioritised. The ever-shrinking space for individuals to look at their options for return, the threat of deportation, inhumane conditions for refugees in some European countries, for example Greece, and worsening security in Afghanistan all lead to doubts as to whether any truly voluntary return to Afghanistan is taking place. There is rather a sliding scale of forced returns. Added to this, despite the provision in the Joint Way Forward that vulnerabilities should be taken into account, there are multiple reports of children and families, the elderly and other vulnerable groups being returned to Afghanistan.

European policies on returns and towards Afghanistan have had a profound effect on Afghans in Europe, both for new arrivals and those who have settled here and become citizens. The Afghan diaspora has played a crucial role in supporting new arrivals to Europe and their host countries, particularly during the recent period of higher arrivals. With experience in Europe and a deep knowledge of Afghanistan or transit countries, they have the skills and insights to act as a bridge between newcomers and hosts in Europe, as well as providing input into policy developments.

4. Approaches to return and impact on returnees to Afghanistan

Approaches to return and reintegration are being shaped by the migration debate in Europe and so focus on European concerns. There is a danger the debate will shift away from sustainability of returns for individuals, and from development and support with rebuilding in countries of origin to a more simplistic focus solely on numbers returned. This leaves no room for discussion of what durable solutions may mean for specific individuals within the specific context of Afghanistan.

The lack of thinking on tailored approaches to individual support is regrettable and potentially unworkable as, when returnees arrive back in Afghanistan, apart from any individual risk they may face, they face growing conflict, little or no services, often only short term assistance and destitution. Reintegration support packages for returnees differ among European Member States and between people returning from Pakistan, Iran and Europe. Not all returnees from Europe are eligible for reintegration assistance in Afghanistan and not all those who are eligible claim it. Harmonisation of reintegration packages through the European Reintegration Network and other initiatives should make implementation easier for service providers and the system more transparent for returnees. However, the focus should be on making support easier to access for individuals and returns more sustainable, rather than restricting unproven “pull factors”. Additional support for communities and the government is welcome as part of the “whole of community approach” but this should complement and not replace assistance to individuals.

Programmes such as the Return of Qualified Afghans and Connecting Diaspora use approaches that could be built upon as pilot projects for more sustainable returns when it is judged safe for individuals to return, such as: (1) tailored assistance and preparation in the host country in Europe, (2) cooperation with countries of origin to identify employment needs and gaps, (3) the possibility of temporary returns to trial how sustainable return is for individuals and families, and (4) links between institutions in Afghanistan and Europe, and training for Afghan professionals in Europe.

5. Monitoring effectiveness of returns

There are no common concepts, tools, structures or indicators to measure the success of return or how reintegration programmes support this process. Important indicators of successful (re)integration in Afghanistan must include whether returnees are safe, that they feel safe in their communities and outside the home, that they can return to a place where they have networks and assistance, that they are able to support themselves and their families, and feel able to stay in their country of origin when they want to do so.

Conclusions

As a prerequisite to returns Europe must have a functioning, consistent asylum system. Thus EU institutions, EASO and Member States must ensure that policies serve the purpose of increasing the quality of asylum systems, country of origin information, decision-making, and establish a high level of protection across the EU in line with international refugee law, as well as creating a welcoming environment for people seeking international protection in Europe. The EU, its institutions and European countries should refocus on promoting an approach to return that aims for support to individuals and communities, sustainable returns and real partnership with countries of origin, rather than a simple increase in numbers. There are multiple serious concerns with the current approach to returns to Afghanistan. Civil society organisations have called for a halt to forced returns and to the return of vulnerable groups, and have questioned if encouraging returns is a viable strategy given security concerns and plans for remigration for many returnees. Ultimately, if Europe wants more people to be able to return to Afghanistan, the EU and Member States need to take a step back from their own concerns, refocus and work with the Afghan government, international organisations, experts, NGOs, diaspora communities and individuals to see what kind of conditions would need to be in place for people to feel safe enough to return. In addition, a genuine assessment is needed of how to make support available longer term so people

feel secure enough to stay and prosper; and how to properly monitor returns and integration so that states are sure they are not in violation of their international obligations. It would include giving potential returnees the time and information they need to consider voluntary return, with personalized assistance to help individuals come to terms with going home and how they will go forward with their lives when they get back.

In the current context there is little to hold people in Afghanistan and research points to a majority of returnees wanting to re-migrate. Second and third generation Afghans are unlikely to be able to (re)integrate into a country that they barely know or have never been to. Many have lost hope that Afghanistan can provide them with security or a dignified life. Asylum seekers and refugees are likely to become disillusioned with European governments too as conditions have become more difficult in Europe and as complex asylum systems are felt to discriminate against them and force them to return to danger. These factors could lead to people taking more dangerous routes to Europe, not applying for asylum, going underground when they have protection needs, or not taking up opportunities for reintegration in Afghanistan. This puts their lives at risk, puts the sustainability of returns in doubt and is the real threat to credible asylum and return policies.

Recommendations

- » EASO efforts to promote convergence of recognition rates for Afghan nationals should take into account the deteriorating situation in Afghanistan and analyse practice in countries with low recognition rates, stressing the need to comply with international refugee law.
- » The internal protection alternative (IPA) should not be used in the context of Afghanistan. It adds an additional criterion to eligibility for refugee status beyond those foreseen in Article 1A of the Refugee Convention. If used, a reasonableness test should always be undertaken. It is clear that the IPA is not reasonable when UNHCR criteria are taken into account, including vulnerabilities of returnees, security, risk of injury, access to travel to safe areas, other forcibly displaced people in the area, access to shelter and reports of discrimination against returnees.
- » Monitoring programmes should be developed to assess the security of returnees, the sustainability of returns and the impact of reintegration policies. Returnees should have access to embassies, UNHCR, IOM and NGOs in Afghanistan in case of problems.
- » The impact of the Joint Way Forward should be monitored openly and transparently, including implementation by Member States, Afghanistan, communities and individuals, and its impact on fundamental rights.
- » The work of the Afghan diaspora in supporting newcomers in Europe and their knowledge of Afghanistan and/or transit countries should be better recognised by the EU and NGOs in policy making and programming. Specific funding should be provided to enable their continued input.
- » 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, unless the prerequisites for return are shown to be in place.
- » Voluntary return should only take place on the basis of full information, go-and-see visits and informed consent.
- » Vulnerable groups should not be returned to Afghanistan under any circumstances. This includes those who have not lived in Afghanistan for long periods and have no family or networks there. European countries should not be “returning” to Afghanistan people who have never been there.



ecre

European Council
on Refugees and Exiles

EU Migration Policy and Returns: Case Study on Afghanistan

Contents

Acknowledgements

Introduction

1. EU-Afghanistan Relations

2. Afghans in Europe

- 2.1. Afghan refugees at the back of the queue?
- 2.2. Asylum lottery for Afghan nationals in Europe
- 2.3. The Internal protection alternative
- 2.4. Recognition rates
- 2.5. Differential treatment and 'mutual trust'

3. Returns to Afghanistan

- 3.1. Numbers of returns
- 3.2. Voluntary vs forced returns
- 3.3. Who is being returned?
- 3.4. Effect on asylum seekers in the EU

4. Post-return

- 4.1. The situation in Afghanistan
- 4.2. (Re)integration of Returnees
- 4.3. The situation for returnees
- 4.4. Post return monitoring
- 4.5. Remigration?

5. Recommendations

Acknowledgements

This paper was written by Claire Rimmer with input from Aspasia Papadopoulou, Kris Pollet, Minos Mourarakis at ECRE and experts from within and outside the ECRE network. Desk research was conducted between April and September 2017 by ECRE. Information was provided from two round tables held on this subject: one with civil society organised by Pro Asyl in June 2017; and another with different stakeholders from the European Commission, Member States, the European External Action Service and civil society, held by ECRE also in June 2017. ECRE Members, NGOs, refugee activists and refugee-led organisations including Refugees' Ideas and Solutions for Europe (RISE), Generation Outside Afghanistan and Afghanistan Migrants' Advice and Support Organisation (AMASO) in Kabul have also contributed their time and expertise through interviews and comments.

Introduction

In 2015 considerably more people sought international protection in Europe than in previous years. The increased number of arrivals highlighted severe problems in the Common European Asylum System (CEAS) and a lack of solidarity between Member States (MS). This led to a focus on migration by all stakeholders, and more specifically the idea of using increased returns as a tool for migration management. Low rates of return were seen as an urgent problem to be solved, an issue that struck at the very credibility of asylum systems and as a pull-factor for irregular migration. Increasing the return of people whose asylum applications had been rejected became key to re-taking control of migration in Europe. It was decided to attack the problem from all sides, which meant pressuring third countries to take back their own and other third country nationals, increasing the implementation of returns by Member States, increasing EU joint action on returns, and by reducing non-compliance with return decisions by individuals. A chain of new policies and recommendations followed at European Union and Member State level starting from the European Agenda on Migration.

Compliance from third countries was tackled in the Partnership Framework aimed to leverage existing EU and Member State external cooperation instruments and tools to stem migration to Europe and increase returns. This case study looks at how this shift to focus on returns has been implemented in the specific case of returns to Afghanistan. It will look at how the European Commission and Member States have interpreted the new policy direction, as well as the effect that new policies have had on EU-Afghan relations, on refugees and asylum seekers from Afghanistan in Europe, on returns to Afghanistan, on the situation in Afghanistan itself as well as the fate of those returned.

Ahmad Khalil an Afghan asylum seeker in Belgium “Since I heard about the EU-Afghanistan deal, my stress and worrying has doubled that I can’t express it. Yes I would be certainly happy if Afghanistan becomes stable and secure, that I could return to my country, but when I see that security situation is worsening day by day, it is worrying to see such deal. The European Union must find out what are the reason behind increase in number of Afghan asylum seekers and why people are forced to leave their own country. The answer is clear, no one wants to leave his/her motherland, but lack of security and threat to our life forces us to leave our country and exercise our fundamental right to refugee”.

Interview by RISE: Refugees’ Ideas and Solutions for Europe, March 2017

1. EU-Afghanistan Relations

The European Union has had a long-term commitment to Afghanistan in a wide range of areas including governance, development, human rights, trade, health and education. Since 2002 the EU has provided €3.66 billion in development and humanitarian assistance,¹ making it the fourth largest donor to Afghanistan. During the period 2014-2016, the EU strategy for Afghanistan pursued four overall objectives: promoting peace, stability and security in the region; reinforcing democracy; encouraging economic and human development; and fostering the rule of law and respect for human rights. For the period 2014 – 2020 development assistance has been focused on agriculture and rural development, health and nutrition, security reform and rule of law and democratisation and accountability.² Before 2016 EU-supported programmes and actions had already targeted some of the root causes of displacement through improving security, livelihoods and human rights. Where (forced) migration had been specifically addressed it had been through support for projects and programmes for the reintegration of returnees, refugees and IDPs in Afghanistan, neighbouring host countries and the region. For example, since 2004, the EU has funded projects worth some €122 million for the reintegration of returnees, refugees and IDPs in Afghanistan and neighbouring host countries with an additional €25 million provided recently as a continuation³. The EU contributed €40 million to the Refugee Affected and Hosting Ar-

1. https://ec.europa.eu/europeaid/countries/afghanistan_en

2. See the Multiannual Indicative Programme for Afghanistan (MIP 2014-2020) https://ec.europa.eu/europeaid/sites/devco/files/mip-afghanistan-2014-2020_en.pdf

3. https://eeas.europa.eu/delegations/afghanistan/18/afghanistan-and-eu_en

eas (RAHA) programme through the Annual Action Plan in 2009 for Pakistan.⁴ In 2016 the Commission went on to develop a programme to improve the reintegration of returnees in Afghanistan, Bangladesh and Pakistan mobilizing approximately €92 million (of which €78 million has been earmarked for Afghanistan) for the period 2016-2020. The aim of the programme is to ensure that those who return will be equipped with the necessary resources, skills and knowledge to achieve a decent standard of living and contribute to the long-term development of their communities and to improve national migration management systems and policies.⁵ The EU has also supported different fora to strengthen migration management capacities in Afghanistan and neighbouring countries, including the Budapest Process Silk Routes Partnership.⁶

In terms of political dialogue, strengthening international cooperation on migration was included in the 2014 Council conclusions on Afghanistan, although primarily relating to neighbouring countries.⁷ The EU-Afghanistan Cooperation Agreement on Partnership and Development (CAPD)⁸ initiated in 2015 underlined the importance of cooperation on migration including issues affecting asylum, relations between migration and development, regular and irregular immigration, return, readmission, visas, border management, document security, and the fight against trafficking in human beings and migrant smuggling. It included a specific article 28 on increased cooperation on migration and the possibility to conclude a legally binding readmission agreement between the EU and Afghanistan.

The dynamic of EU-Afghan relations on migration began to change more quickly from 2015 with large numbers of refugees and migrants of all nationalities (not only Afghans) arriving in the EU. As the EU and its Member States began to look at which migratory flows they could manage, and which they could not, Afghanistan must have seemed like one option to push forward the new agenda on returns. There were worries that the CAPD process was too slow for the EU to engage quickly on migration issues.⁹ The Partnership Framework from 2016 introduced High-Level Dialogues and country packages for priority countries with Member States, mapping the different interests and listing the tools and incentives available at the EU level to foster cooperation on migration, return and readmission. Afghanistan was included in discussions as “a major source of irregular migrants & refugees”.¹⁰ A joint European Commission and European External Action Service (EEAS) non-paper was floated in March 2016, noting that due to the deteriorating situation in Afghanistan and pressure on Afghans in Pakistan and Iran there was a high risk of further migratory flows to Europe. It was estimated based on arrivals in 2015 that more than 80,000 persons could potentially need to be returned to Afghanistan in the near future.¹¹

Meanwhile security was still the major issue for the government in Afghanistan. 2016 was the deadliest year on record for civilian deaths and injuries,¹² with the dire security situation continuing into 2017. Migration became a more pressing issue due to significant increases in returns, many of them forced, from Pakistan and Iran in 2015 that continued to grow throughout 2016.¹³ This caused concerns not least because of the lack of capacity of the government to assist all the new arrivals.¹⁴ Whilst inward migrations was causing problems, outward migration was also worrying for the government in terms of the loss of expertise, young people and ‘brain drain’.

Several Member States and Norway had previously concluded Memoranda of Understanding with Afghanistan

-
4. https://eeas.europa.eu/delegations/afghanistan/18/afghanistan-and-eu_en
 5. https://eeas.europa.eu/headquarters/headquarters-homepage_en/10740/EU-Afghanistan%20relations,%20factsheet
 6. <http://www.icmpd.org/our-work/migration-dialogues/budapest-process/projects/>
 7. See Implementation Plan, particularly the sub-objective on the regional solution strategy for the reintegration of Afghan refugees, based on principles of voluntary repatriation and sustainability, page 10. http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/143322.pdf
 8. [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22017A0314\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22017A0314(01)&from=EN)
 9. See page 4: <http://statewatch.org/news/2016/mar/eu-council-afghanistan-6738-16.pdf>
 10. COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL AND THE EUROPEAN INVESTMENT BANK on establishing a new Partnership Framework with third countries under the European Agenda on Migration, 7th June 2016, page 8, available here: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf
 11. Joint Commission-EEAS non-paper on enhancing cooperation on migration, mobility and readmission with Afghanistan from 3 March 2016, available here: <http://statewatch.org/news/2016/mar/eu-council-afghanistan-6738-16.pdf>
 12. <https://unama.unmissions.org/release-unama%E2%80%99s-2016-annual-report-protection-civilians-armed-conflict>
 13. <http://www.globaldtm.info/return-of-undocumented-afghans-from-pakistan-and-iran-2016-overview/>
 14. <https://www.rferl.org/a/imf-afghanistan-refugees-displaced-person-return/28265160.html>

on returns.¹⁵ Some were bilateral, others trilateral agreements with UNHCR, for example, the MOU between the Netherlands and Afghanistan.¹⁶ These MOU primarily dealt with voluntary returns, although some Member States had managed to do a very limited number of forced returns using the EU laissez-passer. There were mixed views of these bilateral agreements. In Afghanistan Mr. Hussain Alami Balkhi, the Minister for Refugees and Repatriation, had raised several concerns including that people should only be returned if they were from safe provinces, and that women and children should not be returned to Afghanistan.¹⁷ Mr Balkhi spoke out publicly against forced deportations¹⁸ and wrote a letter from the Afghan Embassy in London to the UK foreign office, complaining that people were being returned to unsafe provinces in breach of their agreement. There were demands from the Afghan side to renegotiate the agreements with Member States and include new conditionalities.¹⁹

Against this backdrop the EU found the dialogue on migration “difficult and uneven”.²⁰ The Commission and EEAS non-paper had already clarified that conditionality could not be attached to needs-based humanitarian aid in line with the Humanitarian principles, however, it did outline a number of ‘positive incentives’ and leverage for Afghanistan to cooperate on migration and returns. This included stressing that for financial commitments from the European Union and Member States to stay at or near current levels, it was critical that substantial progress had been made with the Afghan government on migration by the early summer of 2016. This would give Member States and other donors at the upcoming negotiations the confidence that Afghanistan was a reliable partner.²¹ This may not have been conditionality but it was sailing precariously close. It is unclear how pressured the Afghan government felt to sign or what parts were seen as positive developments, but there are reports of divisions with President Ghani and Dr Abdullah backing signing the agreement but Minister Balkhi disagreeing.²² President Ghani has often expressed a preference for Afghan refugees and migrants to return to Afghanistan.²³

On 5 October 2016, the European Union and the government of Afghanistan co-hosted the Brussels Conference on Afghanistan bringing together 75 countries and 26 international organisations and agencies to discuss Afghanistan’s future and agree levels of support from the international community.²⁴ A national development strategy was endorsed at the Conference, in which the Afghan government committed to finding solutions for displaced and returning citizens, making reintegration and durable solutions a central part of development plans, building interventions in favour of returning refugees, migrants and IDPs into existing development programmes and following a “whole of community approach” that complements humanitarian assistance and early recovery support. The whole of community approach had been evaluated positively in the National Solidarity Programme which did not specifically target returnees and IDPs, but has helped to facilitate reintegration through general development within communities that also benefits returnees and IDPs.²⁵ The Afghan government also put a stress on voluntary returns supported in conditions of safety and dignity.²⁶ Participants in the Conference committed US\$15.2 billion (or approximately €13.6 billion) in financial support over the next four years. The EU and its member states committed US\$5.6 billion (approximately €5 billion).

The day before the Conference the Joint Way Forward agreement²⁷ was signed, billed as a “joint commitment of the EU and [...] Afghanistan to step up their cooperation on addressing and preventing irregular migration,

15. Denmark, Finland, France, the Netherlands, Sweden and the UK.

16. See EMN Ad Hoc Query on the Organisation of Return of TCNs from Afghanistan, Algeria and Morocco https://emn.it/old/uploads/files/358_doc_2_143747.pdf

17. <https://kابلblogs.wordpress.com/2015/02/21/afghan-minister-for-refugees-and-repatriation-stop-deportation-to-afghanistan/>

18. <http://www.unhcr.org/561fb2b82.html>

19. See for example, this interview with Minister Balkhi from 2015: <https://kابلblogs.wordpress.com/2015/02/28/afghan-minister-for-refugees-and-repatriation-warns-against-force-returns/>

20. See page 4: <http://statewatch.org/news/2016/mar/eu-council-afghanistan-6738-16.pdf>

21. See page 8: <http://statewatch.org/news/2016/mar/eu-council-afghanistan-6738-16.pdf>

22. <https://www.afghanistan-analysts.org/eu-and-afghanistan-get-deal-on-migrants-disagreements-pressure-and-last-minute-politics/>

23. <http://time.com/4781885/ashraf-ghani-afghanistan-president-interview/>

24. <http://www.consilium.europa.eu/en/meetings/international-summit/2016/10/05/>

25. The Study of NSP’s Impact on IDP/Refugee Returnee reintegration in Afghanistan, The Post-war Reconstruction & Development Unit (PRDU) University of York, UK, Page x: <https://www.york.ac.uk/media/prdu/documents/publications/Study%20of%20NSP’s%20Impact%20on%20IDP-Refugee%20Returnee%20Reintegration.pdf>

26. Afghanistan National Peace and Development Framework, 2017-2021, Page 11. A copy can be found here: <http://www.consilium.europa.eu/en/meetings/international-summit/2016/10/05/>

27. https://eeas.europa.eu/sites/eeas/files/eu_afghanistan_joint_way_forward_on_migration_issues.pdf

and on return of irregular migrants”. It seems to have been a difficult negotiation.²⁸ Although the Joint Way Forward states that it is not intended to create legal rights or obligations under international law, it acts like a readmission agreement. It did not, however, go through the normal procedure of adopting an EU readmission agreement which would require the consent of the European Parliament. This has led to some concerns about shortcuts to avoid parliamentary scrutiny and whether the Joint Way Forward complies with obligations under the Treaty on the Functioning of the European Union (TFEU).²⁹

The Joint Way Forward notes that those who are not recognized as refugees and have no other legal basis to stay in the EU can leave voluntarily but the emphasis throughout is on overcoming barriers to return as per the current overall EU focus. This includes investigating an additional terminal at Kabul airport for facilitating returns. There is more focus on joint return operations although non-voluntary returns were limited to 50 per flight for the first six months.

Information campaigns are included in the agreement too to discourage outward migration. These have been tried before in Afghanistan including the Ministry of Refugees and Repatriation’s “Stay With Me” information campaign from 2015 to discourage brain-drain and show the difficulties of the journey.³⁰ Another information campaign started by a group of young Afghans, “Afghanistan needs you” has tried to encourage young people to stay in their home country,³¹ and has been welcomed by the EU.³² Germany,³³ Denmark, Norway and the UK have all run their own information campaigns to discourage migration to Europe, as did Australia. Whilst information provision is generally a good thing, there is little evidence to show that the campaigns work and UNHCR has cautioned against information campaigns that discourage migration from countries where there are clear protection needs such as Afghanistan. It was in this context that Human Rights Watch and others criticized the German Campaign “Rumours about Germany”. Although the German government denied the campaign was about deterring people from seeking asylum, the tone of the campaign was negative focusing on the dangers and people smuggling, and did not, for example, inform people about their right to seek asylum or any legal routes to Germany.

The Joint Way Forward contains some safeguards for vulnerable citizens. The EU side “will give fair consideration to humanitarian aspects in accordance with international law to unaccompanied minors, single women and women who are head of their families, family unity, elderly and seriously sick people. Special measures will ensure that such vulnerable groups receive adequate protection, assistance and care throughout the whole process”. Unaccompanied minors are not to be returned “without successful tracing of family members or without adequate reception and care-taking arrangements having been put in place in Afghanistan”. These safeguards stop short of ruling out the return of vulnerable groups, including unaccompanied children and single women and the notion of what ‘adequate reception’ could mean for children returned to Afghanistan is unclear. Neither does the agreement rule out returning Afghans from unsafe provinces as had been recommended by the Minister of Refugees and Repatriation. Indeed, as we shall see below, the focus at European level is increasingly on identifying safe areas within Afghanistan and promoting the use of the internal protection alternative for Afghan refugees in their country of origin. This means rejecting applications for international protection as it is judged that there are other areas where they could have sought protection instead of fleeing to Europe.³⁴ This is contested by many stakeholders. Controversially, the Joint Way Forward also includes a provision that if no travel document has been issued by the Afghan government within four weeks – even where identity has not been conclusively ascertained - an EU travel document can be issued. This limits the ability of the Afghan government to oppose the return of individuals it cannot identify.

Finally reintegration support in the Joint Way Forward is to be provided separately to development assistance

28. EU and Afghanistan Get Deal on Migrants: Disagreements, pressure and last minute politics, by the Afghanistan Analysts Network, 6th October 2016, available here: <https://www.afghanistan-analysts.org/eu-and-afghanistan-get-deal-on-migrants-disagreements-pressure-and-last-minute-politics/>

29. See parliamentary question: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+OQ+O-2016-000123+0+-DOC+XML+V0//EN>

30. <https://www.theatlantic.com/international/archive/2015/09/afghanistan-brain-drain-migrant-crisis/406708/>

31. <http://afghanistannedstyou.af/founder-message/>

32. https://eeas.europa.eu/delegations/afghanistan/18379/node/18379_mn

33. <http://www.aljazeera.com/news/2015/11/germany-campaign-refugees-leaving-afghanistan-151124131156428.html>

34. See for example this report from Norway: <http://norwaytoday.info/news/norway-strictest-class-afghan-asylum-seekers/>

and be made up of support to the government, programmes run by IOM³⁵, investment in local communities and developing employment opportunities - the 'whole of community approach' that has also been underlined by the Afghan government. Community, family and other networks have been shown to be vital to those who return to Afghanistan. Support to communities is welcome and should help ease the reintegration process. There needs to be proper monitoring of any new approach, however, and individuals should not lose their individual support.

As the Joint Way Forward process was being finalized, several Member States renewed their bilateral Memoranda of Understanding with Afghanistan, including Germany, Finland³⁶ and Sweden.³⁷ The Swedish agreement, which had been amended to reflect the tone of the Joint Way Forward, was later overwhelmingly rejected by the Afghan parliament after Members of Parliament expressed concerns that people could be forcibly returned, but also that there could be returns of people who had not had their identity verified by the Afghan government. The Swedish government reportedly have just used the Joint Way Forward agreement instead.³⁸ The German 'agreement' had not been called an agreement at the request of the Afghan government specifically to avoid this problem.³⁹

The EU believes that regional actors have a role to play in stabilizing Afghanistan⁴⁰ and has taken a regional approach to Afghan displacement including support to neighbouring countries Iran and Pakistan who have hosted the highest number of Afghan refugees for decades. Over the last few years the Pakistani and Iranian authorities have been increasingly pushing for the return of Afghan refugees back to Afghanistan. Although regional politics are complex and involve many actors, the focus of the EU on returning the relatively small numbers of Afghans who reach Europe, must have some effect on Pakistani and Iranian attitudes to hosting Afghan refugees and presumably, the EU's ability to intervene.

The pace of EU-Afghan cooperation in this field has not slowed in 2017. A Joint Working Group on migration⁴¹ is monitoring the progress of the Joint Way Forward. It aims to facilitate the implementation of the agreement and rather than monitor its impact, including on fundamental rights. The second meeting of this group took place in March 2017 and discussed information campaigns for Afghanistan and reintegration packages particularly for vulnerable groups. However, there is little information in the public domain about the meetings. In reply to a freedom of information request for a full agenda for the November 2016 meeting the Commission noted that Afghanistan and Member States had decided that documents and records from meetings would be treated confidentially.⁴² In February 2017 the Cooperation Agreement on Partnership and Development was signed between the EU and Afghanistan,⁴³ was ratified by the Afghan parliament in July,⁴⁴ and includes a special working group on good governance, human rights and migration.⁴⁵ A new Special Envoy of the European Union to Afghanistan was appointed in June in addition to the new Ambassador.⁴⁶ The EU strategy on Afghanistan was adopted in October 2017.⁴⁷ It sets out four focus areas: Promoting peace; Strengthening democracy the rule of law and human rights; Supporting economic and human development; and Addressing challenges related to migration. On migration it aims to shape a global response based on solidarity and shared responsibilities, implement the Joint Way Forward, and support the dignified return and sustainable reintegration of Afghan refugees from neighbouring countries.

-
35. <https://afghanistan.iom.int/press-releases/iom-european-commission-support-returnee-reintegration-afghanistan>
 36. http://www.migri.fi/our_services/customer_bulletins/bulletins_asylum/1/0/the_agreement_with_afghanistan_only_applies_to_those_who_have_received_a_negative_decision_70331
 37. <http://www.migrationsinfo.se/wp-content/uploads/2016/10/A%CC%8Atersa%CC%88ndandeavtal-Sv-Afg-signed-16-10-05.pdf>
 38. <http://sverigesradio.se/sida/artikel.aspx?programid=2054&artikel=6576737>
 39. <https://www.afghanistan-analysts.org/afghan-exodus-afghan-asylum-seekers-in-europe-3-case-study-germany/>
 40. https://eeas.europa.eu/delegations/afghanistan/10740/eu-afghanistan-relations-factsheet_en
 41. https://eeas.europa.eu/headquarters/headquarters-homepage_en/23544/EU-Afghanistan%20Joint%20Working%20Group%20on%20migration
 42. <https://www.asktheeu.org/en/request/3564/response/11916/attach/html/2/Gestdem2016%206476.pdf.html>
 43. https://eeas.europa.eu/headquarters/headquarters-homepage/20838/european-union-and-afghanistan-sign-cooperation-agreement-partnership-and-development_en
 44. https://eeas.europa.eu/headquarters/headquarters-homepage/30014/eu-welcomes-ratification-capd-afghanistans-parliament_en
 45. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017JC0023>
 46. https://eeas.europa.eu/headquarters/headquarters-homepage/28512/european-union-strengthens-engagement-afghanistan-through-appointment-special-envoy_en
 47. <http://www.consilium.europa.eu/en/press/press-releases/2017/10/16/eu-strategy-afghanistan/>

Conclusion

The EU and its Member States have had wide and varied relations with Afghanistan for many years. They have supported Afghanistan, its institutions and people as a strong partner since 2001, including as one of its main donors in spheres such as education, health and the rule of law, tackling the root causes of displacement and migration in Afghanistan and neighbouring countries. Recently, the Joint Way Forward signed by the EU and Afghanistan in 2016 includes focus on returns. There are concerns about the agreement including that it bypassed parliamentary scrutiny, unlike more formal readmission agreements, and that at least some parts of the Afghan government have had concerns about its provisions. The EU is attempting a difficult balance as Afghanistan battles for security and to support hundreds of thousands of returnees from neighbouring countries and internally displaced people across Afghanistan. Although the Joint Way Forward supports the government and communities in the reintegration of returnees, the EU risks focusing on its own “crisis”, concentrating disproportionate efforts on removing the relatively small numbers of Afghans who have made it to Europe to seek protection. There may also be increasing damage to the effectiveness of the EU and Member States’ diplomacy and dialogues on issues such as human rights with Afghanistan and regionally.

2. Afghans in Europe

The majority of Afghan nationals seeking international protection are still predominantly in neighbouring countries Pakistan and Iran. However, Afghan nationals submitted the second highest number of applications for international protection in Europe in both 2015 and 2016 and have been in the top five nationalities for the past five years.⁴⁸ This trend continued into 2017, although the number of applications for international protection from Afghan nationals has dropped considerably.⁴⁹ Germany was the main country by far for applications for asylum from Afghan nationals in 2016 followed by Austria, Hungary, Bulgaria and France. In 2016 there was a marked decrease in the number of applications for protection in northern Europe by Afghan nationals, particularly in Sweden. Sweden had received the second highest number of Afghans applying for asylum in the EU in 2015 (41,445 applications) but dropped to 9th place in 2016 (2,950) for a number of reasons including the closure of the Balkan route, reinstated border controls by Sweden, and the more restrictive asylum policies brought in there. As of August 2017, Germany, Italy and France had the highest absolute numbers of applications for international protection from Afghan citizens. In the first eight months of 2017, Afghanistan was the top nationality in Hungary, Bulgaria, Slovenia, the second nationality in Austria and Belgium and the third nationality in Germany, Sweden, Switzerland and Greece. There are also reports of increasing numbers of Afghans who are arriving in France after their asylum application has been rejected in Germany.⁵⁰

As for the profile of those leaving, a March 2016 UNHCR profiling of Afghans arriving in Europe showed a high number of families leaving Afghanistan. Ethnic Hazaras and Tajiks were the largest groups. 14% of those interviewed had never lived in Afghanistan.⁵¹ Other research confirms three notable groups among more diverse flows from Afghanistan: Hazara male unaccompanied minors or young adults, many but not all arriving from Iran; young men from the southern and eastern countryside, who are caught between the government and the insurgency; urban families who feel threatened after the scaling down of the foreign military and humanitarian presence in Afghanistan.⁵² Afghans also made up the highest number of unaccompanied children in Europe in 2015 and 2016⁵³ with the highest number of those seeking protection in Sweden in 2015 and Germany in 2016.

48. EASO Annual Report on the Situation of Asylum in the European Union 2016. Page 13.

49. For example, according to Eurostat 5,020 Afghan citizens applied for asylum in Europe in March 2017 compared to 14,035 in March 2016. <http://ec.europa.eu/eurostat>

50. See for example: <http://www.la-croix.com/Monde/A-Paris-migrants-afghans-arrivent-Allemagne-2017-05-12-1300846560>

51. <https://data2.unhcr.org/en/documents/download/47675>

52. GLOBAL MIGRATION RESEARCH PAPER N°17 | 2016, Afghans on the Move: Seeking Protection and Refuge in Europe, Antonio Donini, Alessandro Monsutti, Giulia Scalettaris: Page 13

53. <http://ec.europa.eu/eurostat/documents/2995521/8016696/3-11052017-AP-EN.pdf/30ca2206-0db9-4076-a681-e069a4bc5290>

2.1. Afghan refugees at the back of the queue?

Although this report looks primarily at returns to Afghanistan, a short discussion of the treatment of Afghan refugees and asylum seekers, and their applications in key countries in Europe is needed⁵⁴ as this directly influences returns. There are different routes to access Europe but many Afghans travel across land from Pakistan or Iran through Turkey to Greece. When refugee flows were high in February 2016, Afghan nationals were singled out by the heads of police services from Austria, Slovenia, Croatia, Serbia and the Former Yugoslav Republic of Macedonia to reduce the migration flow across the Greek-Macedonian international border. In their joint statement⁵⁵ the police said that those “who have a longer residence in a safe third country such as an Afghan national who has resided for a longer time in Turkey or Iran” could not be considered as having a valid reason for applying for international protection, meaning they would not be allowed to cross the border, in violation of their right to apply for international protection and have an individual assessment of their claim. Many Afghans became stranded in Serbia⁵⁶ and on the borders of Greece⁵⁷ after border changes or consequent increases in the cost of moving on that they had not planned for. Some of those stranded are now returning to Greece after not being able to find any durable solution in Serbia.⁵⁸

After the closure of the Balkan route, came the EU-Turkey Statement.⁵⁹ The Statement aimed to restrict the number of migrants and asylum seekers traveling across from Turkey to the Greek islands, a route used by many nationalities with a genuine need to seek asylum in Europe including Syrians and Afghans. Afghan refugees were not entitled to the resettlement component of the Statement from Turkey to the EU. The agreement allowed Greece to return to Turkey “all new irregular migrants” arriving after 20 March 2016, including asylum seekers for whom they assumed Turkey would be a safe third country, although several human rights organisations have shown that the situation for Afghans and others in Turkey raises serious concerns and that they have problems accessing protection and their basic rights.⁶⁰ At the time of the agreement UNHCR estimated that some 50,000 people remained in Greece,⁶¹ including thousands of Afghans, who, for example, had made up about 25% of arrivals between January and May 2016.⁶² Hotspots were set up on Greek islands to deal with the arrivals, process applications for asylum and implement returns as quickly as possible.⁶³ In the first months following the EU-Turkey Statement, asylum procedures exclusively prioritised Syrians, followed by the registration of asylum seekers from countries with generally low recognition rates. Other nationalities were put on hold despite having stated their intention to seek asylum and despite 75% of Afghans arriving in Greece in March 2016 having come to Europe because of conflict.⁶⁴ Afghan and Iraqi applications were not processed from hotspots until the end of 2016— a situation that led to ‘frustration and unrest in the overcrowded hotspots’ and hindered family reunification options.⁶⁵ Refugees including families were staying in inhumane conditions, with many living in flimsy tents in the winter with restricted access to basic needs and facilities.⁶⁶ Some on the islands even died due to the cold.⁶⁷ Only the most vulnerable were transferred to the Greek mainland. In answer to the humanitarian crisis on the Greek islands, the EU and Greece tried to speed up the processing of asylum applications and returns from the islands to reduce the backlog. A Joint Action Plan from December 2016 between the EU and Greece combined support for asylum systems with re-enforcing the geographical restriction imposed on people present on the islands, and support from the European Border and Coast Guard.

54. See for example Buzz Feed News from July 2016 on why Afghan refugees find Europe so unwelcoming: https://www.buzzfeed.com/jinamoore/this-is-how-europes-rules-discriminate-against-afghan-refugee?utm_term=.ydb0YQ145#.me4DMjg7R

55. https://www.mup.hr/UserDocsImages/topvijesti/2016/veljaca/migranti_sastanak/joint_statement.pdf

56. <https://www.theguardian.com/world/2017/aug/08/eu-refugees-serbia-afghanistan-taliban>

57. <http://www.bbc.co.uk/news/world-europe-36358891>

58. Information from Generation Outside Afghanistan, interview 25 September 2017. The organization is aware of approximately fifty families who have recently returned to Greece from Serbia.

59. <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>

60. For example: <https://www.amnesty.org/en/latest/news/2016/03/turkey-safe-country-sham-revealed-dozens-of-afghans-returned/> , <https://www.rescue-uk.org/sites/default/files/document/1040/15-06-16europeanrefugeecrisis-afghanistanbriefingfinal.pdf>

61. Page 2 <https://data2.unhcr.org/en/documents/download/58264>

62. <https://data2.unhcr.org/en/documents/download/47786>

63. See the ECRE/ DCR report <https://www.ecre.org/wp-content/uploads/2016/12/HOTSPOTS-Report-5.12.2016..pdf>

64. <https://data2.unhcr.org/en/documents/download/47675>

65. Point 10, page 3: <http://www.statewatch.org/news/2016/oct/eu-council-migration-implimentation-12730-16.pdf>. See also AIDA Country Report Greece 2016 update: <http://www.asylumineurope.org/reports/country/greece>

66. <https://www.amnesty.org/en/latest/news/2017/03/the-eu-turkey-deal-europes-year-of-shame/>

67. See this report on the conditions in the camps and the bad weather leading to deaths and suicides in January 2017. <http://infomobile.w2eu.net/2017/01/29/death-in-greek-camps/>

The plan also targeted increasing returns through tightening up on security and registration; scaling up the Assisted Voluntary Return and Reintegration Programmes; issuing return decisions earlier in the procedure after the first rejection even though they are not enforceable; intensifying cooperation on return; and increasing reception and detention capacity on the islands.

For those on the mainland there were delays in applying for asylum. Despite reinforcements for the Greek Asylum Office, asylum seekers can still wait weeks to book an appointment. At the moment those speaking Arabic, Farsi/Dari, English and several other languages can only make the application for a registration date by skype and only at certain times, making it difficult to apply and leading to people worrying about their legal status. There have been complaints both on the islands⁶⁸ and on the mainland in Greece about differentiated standards in camps with the better facilities going to Syrians and those with more hope of leaving Greece for other EU countries. The same goes for access to services provided by the government and by NGOs.⁶⁹

Relocation is the main solidarity sharing mechanism for Member States to help ease the burden on Greece and Italy as countries of first arrival in Europe.⁷⁰ For the past two years it has also been the only legal way, apart from family reunification, for asylum seekers to leave Greece and Italy to move onwards to other EU Member States. Unfortunately, Afghans have not been eligible for relocation from Greece, as to access this scheme, refugees need to come from a country with an average 75% acceptance rate across Europe. Family reunification through the Dublin procedure takes time and agreed restrictions on the number of family reunification cases between Germany and Greece delayed this further⁷¹ although these have been challenged recently when the German Administrative Court of Wiesbaden ruled that the Federal Office for Migration and Refugees (BAMF) must comply with the timeframes for carrying out a Dublin transfer as set out in the Dublin III Regulation.⁷² Thus, many asylum seekers from Afghanistan have ended up trapped in Greece, often in difficult even inhumane conditions, with long delays to apply for asylum, unable to move on.⁷³ As more cases are being examined, the recognition rate for Afghan refugees in Greece seems relatively high.⁷⁴ This will mean of course, that return rates from Greece are not as high as expected for those who have managed to hold out.

For those Afghans seeking international protection who made it to other countries before the closure of the Balkan Route, the majority aimed for Germany or Sweden. Both Pro Asyl and AAN Afghanistan⁷⁵ report on differences in treatment between different groups of asylum seekers in Germany. Unlike Syrian refugees, who are allowed to participate in the Federal Office for Migration and Refugee (BAMF) integration courses while their asylum applications are ongoing, Afghans are only allowed onto such courses once their applications have been approved. The reason given by the German Ministry for the Interior is the insufficiently high number of successful asylum applications. In addition, due to the high number of arrivals children have often not had access to education for months. Unaccompanied minors in particular from Afghanistan have had to endure long waiting times.⁷⁶ In Belgium nationalities with recognition rates above 90% (Syrians / Libyans / Burundians) are given access to decentralized accommodation under a Local Reception Initiative (LRI) after four months in collective reception, but this does not apply to Afghans.⁷⁷ At the height of the influx in the autumn of 2015, Iraqis and, to a lesser extent, Afghans in Belgium were deterred from applying for asylum in personalised written communications from the State Secretary, only registered with delays of up to more than two weeks and were thus not able to secure an accommodation place quickly. This has led to at least one judgment of the Labour

68. <https://www.theguardian.com/world/2015/nov/21/chaos-greek-islands-three-tier-refugee-registration-system-syria-lesbos>

69. Afghan community network "Generation Outside Afghanistan" confirmed that services such as shelter are provided more quickly to some groups of asylum seekers than others. Usually it is quicker for Syrian refugees to gain access to shelter than other groups for example, as they are part of the relocation programme. Interview 25th September 2017. See also: <https://www.irinnews.org/feature/2017/06/02/afghan-refugees-greek-camp-%E2%80%9Cif-you-kept-animals-situation-they-would-die%E2%80%9D>

70. <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015D1523&from=EN>

71. See parliamentary questions and answer from the Commission: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2017-003570+0+DOC+XML+V0//EN&language=en>

72. The judgment is here in German: http://www.asylumineurope.org/sites/default/files/vg_wiesbaden_family_greece.pdf?utm_source=ECRE+Newsletters&utm_campaign=912ff67cc3-EMAIL_CAMPAIGN_2017_09_22&utm_medium=email&utm_term=0_3ec9497afd-912ff67cc3-420540397

73. For instance see this blog by Mehdi Shams, from Moria camp on Lesbos Greece: <https://refugeesworldblog.wordpress.com/2017/08/07/condition-of-afghanistan/>

74. <https://twitter.com/ecre/status/908364524629131265>

75. <https://www.afghanistan-analysts.org/afghan-exodus-afghan-asylum-seekers-in-europe-3-case-study-germany/>

76. Pro Asyl, Afghanistan: No Safe Country for Refugees, page 12.

77. See AIDA Country Report Belgium, 2016 Update, Page 69. <http://www.asylumineurope.org/reports/country/belgium>

Court condemning Fedasil to provide for accommodation for an Afghan asylum seeker.⁷⁸

By the end of 2016 Afghans were the largest group awaiting decisions on their applications.⁷⁹ Cases can take longer to process for several reasons, including their complexity, the need for more individual scrutiny but also because claims from particular countries are prioritized by Member States. The number of pending cases for nationals from Afghanistan had risen by 49 % from the end of 2015 to the end of 2016. 54 % of all cases of Afghan applicants awaiting a final decision were registered in Germany, 14 % in Sweden and 13 % in Austria. In Germany 210,467 applications from Syrian nationals were processed in 2016 but only 25,036 Afghan applications.⁸⁰ Afghan applications in Germany took significantly longer than Syrian and Iraqi applications to process, although less time than Iranian, Pakistani and Russian applications.⁸¹ Afghan applications were processed more quickly than others in Switzerland, for example,⁸² but as of the end of July 2017 Afghan applications still constituted the largest backlog of all the countries of origin with more than 93,000 asylum applications from Afghan nationals pending at first instance.⁸³ From a legal perspective asylum procedures should neither be too long nor too short and it can be in the interests of applicants that states take longer to consider their application. However, it has created tensions in countries such as Greece and Germany where some Afghan nationals have felt that their applications were not being given the same prioritization as others.

2.2. Asylum lottery for Afghan nationals in Europe

Since 2015 most of the Member States with high numbers of applications for international protection from Afghan nationals have tightened up on their approach to this group. Guidelines have been changed for decision-makers in Sweden,⁸⁴ Germany, Norway and Finland,⁸⁵ increasing the likelihood of an application being rejected. For example, a re-assessment by Finland of the security situation in Afghanistan, led officials to believe that it has gradually improved, although it may have got worse at times for certain specific areas locally. Due to the improved security situation, it will be more difficult for applicants to be granted a residence permit on the basis of subsidiary protection.⁸⁶ In Norway, the Directorate for Immigration (UDI) changed its assessment of the situation in Afghanistan and raised the threshold for protection in February 2016. From 2016, none of the provinces in Afghanistan were considered unsafe to provide protection. The change meant that stricter requirements were imposed on asylum seekers' individual submissions and that asylum seekers had to show that they were particularly exposed compared with others from the same area. As a result, far more applications than before were rejected. This spring, Norwegian Immigration Authorities have concluded that only two provinces in Afghanistan are unsafe: Helmand and Nangahar. The Norwegian Directorate of Immigration (UDI) confirmed this evaluation in a Norwegian newspaper in April 2017⁸⁷, although there is no official statement.

Although not specifically aimed at Afghans, changes in legislation in Sweden are affecting vulnerable groups and unaccompanied children, many of whom are from Afghanistan. In Sweden the temporary law valid for three years adopted in July 2016 limits asylum seekers' possibilities of being granted residence permits and the possibility for the applicant's family to come to Sweden. For those who do not qualify for refugee or subsidiary protection status, a third/humanitarian type of protection status according to the Aliens Act, a "person otherwise in need of protection", has been restricted to children and families with children who applied for

78. See AIDA Country Report Belgium, 2016 Update, Page 85. <http://www.asylumineurope.org/reports/country/belgium>

79. EASO annual report 2016, Page 17.

80. AIDA Country Report Germany March 2017, Page 8: <http://www.asylumineurope.org/reports/country/germany>

81. AIDA Country Report Germany March 2017, Page 19: <http://www.asylumineurope.org/reports/country/germany>

82. ADIA The Length of Asylum Procedures in Europe, October 2016 on <https://www.ecre.org/wp-content/uploads/2016/10/AIDA-Brief-DurationProcedures.pdf>

83. <https://www.easo.europa.eu/news-events/press-release-afghanistan-focus>

84. <http://farr.se/en/lag-a-praxis/aktuellt/1389-nya-riktlinjer-foer-afghanistan>

85. http://www.migri.fi/for_the_media/bulletins/press_releases/press_releases/1/0/humanitarian_protection_no_longer_granted_new_guidelines_issued_for_afghanistan_iraq_and_somalia_67594

86. http://www.migri.fi/for_the_media/bulletins/press_releases/press_releases/1/0/humanitarian_protection_no_longer_granted_new_guidelines_issued_for_afghanistan_iraq_and_somalia_67594

87. <http://www.vg.no/nyheter/innenriks/afghanistan/udi-bare-to-av-afghanistans-34-provinser-er-utrygge/a/23963813/>

asylum on or before 24 November 2015, provided that the child in question is still under 18 years old when the decision is made.⁸⁸ In addition residence permits will be very difficult to obtain for reasons other than protection. Regulations about exceptionally or particularly distressing circumstances have now been removed. The only time when a residence permit can be granted for reasons other than protection is when it would be contrary to a Swedish undertaking under an international convention to refuse a permit.⁸⁹ Human Right Watch has expressed concerns that this could affect children who have sought asylum in Sweden as many had previously benefited from this provision.⁹⁰

2.3. The Internal protection alternative

For applications for protection from Afghan nationals the question of an internal protection alternative being available inside Afghanistan is often examined. This means that if a person is thought to be at risk of persecution, there is another area or place within their country of origin they could have fled to without the need to seek international protection, and they can therefore go back there instead. There are wide disparities in the application of this concept by Member States and ECRE is opposed to the application of the concept, as it adds an additional criterion to eligibility for refugee status beyond the criteria foreseen in Article 1A of the Refugee Convention.⁹¹

UNHCR recommends that there should always be an assessment of both the relevance and the reasonableness of any proposed site of internal protection. For Afghan applicants decision makers should look at whether the proposed area is durably safe, and also that it is practically, safely and legally accessible to the individual. UNHCR considers that there is no internal protection alternative in areas under the effective control of anti-government elements in Afghanistan or those affected by active conflict. An internal protection or relocation area would only be available if an applicant were able to live there in safety and security, free from danger and risk of injury. They also argue against the relevance of an internal protection alternative for individuals who fear harm as a result of traditional practices and religious norms of a persecutory nature, such as women and children and people of diverse sexual orientations or gender identities. They stress the importance of traditional support mechanisms such as members of the family or members of their ethnic group, access to shelter, infrastructure, livelihood opportunities and the scale of internal displacement. Reports of discrimination against returnees should be taken into account. The best interests of the child should always determine any decision on their future. Women who are single heads of households will not be able to live life without undue hardship if there is no male protection, including in urban areas.⁹²

In Germany, according to Pro Asyl's research the Federal Office for Migration and Refugees (BAMF) seems to be of the opinion that Kabul, but also Herat and Mazar-i-Sharif, are safe – especially for young men.⁹³ Pro Asyl have argued that given the numbers of internally displaced people and the scarcity of resources, survival there is extremely difficult, even for young people, especially when family ties or other functioning social networks (no longer) exist in Afghanistan.

German courts have ruled on the internal protection alternative recently in terms of high risk profiles. In May 2017 the Bavarian Administrative Court ruled that there is no internal protection against persecution by the Taliban in the case of persons with a clearly elevated risk profile as the court could not be sufficiently certain that there is a part of Afghanistan that can be safely reached and provides a safe place to stay.⁹⁴ In another case from 3 July 2017, the German Administrative Court of Magdeburg ruled there was no internal protection alter-

88. AIDA Country Report Sweden, 2016 update, page 24 <http://www.asylumineurope.org/reports/country/sweden>

89. <https://www.migrationsverket.se/English/About-the-Migration-Agency/News-archive/News-archive-2016/2016-08-16-The-new-temporary-law-has-entered-into-force.html>

90. <https://www.hrw.org/news/2016/06/20/sweden-restrictive-asylum-bill>

91. ECRE Comments on the Commission Proposal for a Qualification Regulation COM(2016), Page 8. <http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/ECRE%20Comments%20QR.pdf>

92. UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 19 April 2016, pages 81-90.

93. Pro Asyl, Afghanistan: No Safe Country for Refugees, May 2017. Page 11 https://www.proasyl.de/wp-content/uploads/2017/05/PRO_ASYL_Afghanistan_Broschuere_englisch_web_Mai17.pdf

94. http://www.asyl.net/index.php?id=114&tx_ttnews%5Btt_news%5D=58665&cHash=366bc7b0a4ddb67675c998511f788bc

native for an Afghan national who had worked as a long-time transport commissioner for UNHCR.⁹⁵ The Court concluded that the applicant was likely to be subjected to persecution by anti-governmental groups (namely, Taliban and Hezbi Islami) upon return. The Court dismissed any possible internal flight alternative based on Taliban's extensive network information, its increased interest in the applicant (as shown by the threatening letters) and the recent increase in Taliban attacks against persons who have cooperated with international organisations.⁹⁶

In **Norway** previously, refusal of asylum and return to an internal protection alternative would be justified if the Norwegian immigration authorities found the area to be both "safe" and "reasonable" in line with recommendations from UNHCR. In October 2016, due to the government's tightening in the asylum field, the reasonability requirement was removed from the Norwegian immigration laws. In other words, provided the return area is safe, refugee status need not be recognized. This makes Norway one of the lowest-threshold countries in Europe to return asylum seekers based on the existence of an internal protection alternative.⁹⁷ The government recently voted to stop the forced return of some children who have been granted temporary residence permits after they were referred to seek internal flight in their home country. The children and youth will have their cases reassessed according to new criteria. ECRE Member NOAS has said that it is positive that the parliament has acknowledged that Norway has become too restrictive in the treatment of unaccompanied minors, and that steps are taken to treat particularly vulnerable children in a more decent manner. However, they believe asylum cases need to be reassessed and that the reasonableness criteria must be reinstated in cases involving the internal protection alternative.⁹⁸

In **Denmark** practice on the internal protection alternative is not as clear. It is not considered in all cases. 'Other places in Afghanistan' or Kabul are generally considered safe. Mazar-e-Sharif was considered in one case. If there is conflict with the Taliban decision makers often consider whether the asylum seeker is 'profiled' and the likelihood that Taliban would seek them out. Age, health and education are also factors. The internal protection alternative is not used in cases where there is an inability to work and a lack of family networks.⁹⁹

According to the **Swiss** Federal Administrative Court, a return to the cities of Kabul, Herat and Mazar-i-Sharif can be considered as reasonable under certain circumstances (social/family network etc.). A return to the rest of the provinces is considered generally unreasonable. So this means that if a person does not have a network or ties to one of these cities, the chances are high that he/she will receive a temporary admission.¹⁰⁰ The Court has also stated that families with minor children are considered especially vulnerable, so that their return to Afghanistan is usually considered unreasonable (including the three cities above).¹⁰¹ Negative decisions confirmed by the court are, therefore, mostly given to young single men, who in the view of the Swiss authorities have a social net, secured existence, a place to live, good health. There have been a few exceptional cases of unaccompanied minors who had mentioned they have relatives in Kabul for instance, and who received a negative decision based on this but this is more of an exception. This means that the internal flight alternative is only applied if the person has a social net and support, secured existence, a place to live in one of the 3 cities and good health. There are a lot of Afghans who grew up in Iran. In these cases it is possible for the Swiss authorities to consider the return to Afghanistan as reasonable when the above mentioned conditions are fulfilled, especially because these people had no legal status in Iran.

95. http://www.asyl.net/fileadmin/user_upload/dokumente/25212.pdf?utm_source=ECRE+Newsletters&utm_campaign=0332f79a80-EMAIL_CAMPAIGN_2017_08_04&utm_medium=email&utm_term=0_3ec9497afd-0332f79a80-420540397

96. http://www.asyl.net/fileadmin/user_upload/dokumente/25212.pdf?utm_source=ECRE+Newsletters&utm_campaign=0332f79a80-EMAIL_CAMPAIGN_2017_08_04&utm_medium=email&utm_term=0_3ec9497afd-0332f79a80-420540397

97. Information provided by NOAS, June 2017.

98. <http://www.noas.no/en/the-parliaments-vote-on-unaccompanied-minors-does-not-bring-norwegian-practice-in-line-with-the-refugee-convention/>

99. Information provided by Danish Refugee Council, 8th June 2017.

100. Information provided by the Elena network. Relevant judgments (in German, summary at the beginning in German, French and Italian):

- Federal Administrative Court, leading case judgment BVGE 2011/7, E-7625/2008, 16 June 2011: general situation in Afghanistan, Kabul

- Federal Administrative Court, leading case judgment BVGE 2011/38, D-2312/2009, 28 October 2011: city of Herat

- Federal Administrative Court, leading case judgment BVGE 2011/49, D-7950/2009, 30 December 2011 : city of Mazar-e-Sharif

101. See Federal Administrative Court, judgment D-666/2013 of 7.5.2013.

2.4. Recognition rates

Recognition rates for Afghanistan: 2015-Q32017			
Country	Recognition rate 2015	Recognition rate 2016	Recognition rate as of Q3 2017
Switzerland	92.1%	89.4%	91.4%
Germany	72.2%	55.8%	47.3%
Austria	78.4%	56%	70.7%
Belgium	77.3%	59%	59.7%
Greece	60.5%	48.8%	65.9%
Sweden	54.5%	45%	44%
Finland	71.6%	42.4%	45%
Norway	82.2%	30%	34.7%
Hungary		6.1%	23%
Bulgaria		2.5%	1.2%

Source¹⁰²

Recognition rates for Afghan refugees varied widely in 2016.¹⁰³ Despite continued efforts towards convergence, the treatment of Afghan asylum seekers in Europe is highly dependent upon the country of destination, as recognition rates vary from 2.5% to 97% across Europe. Protection for Afghan nationals in absolute terms dropped to worryingly low levels in Hungary (6.1%) and Bulgaria (2.5%). The latter treated Afghans as a manifestly unfounded nationality in 2016, though their claims were still processed in a regular procedure,¹⁰⁴ whilst in the Netherlands there is a special policy for so called risk or vulnerable groups which require a lower burden of proof, including LGBT applicants, ethnic or religious minorities in their 'living area', women working in public areas, people working in human rights, the judiciary, journalism etc. There is also group protection for single Afghan women.¹⁰⁵ There are not only differences in recognition rates between countries but also within countries. A report has shown that for Afghan refugees the recognition rate in Germany can vary significantly depending on the Laender where an applicant is allocated to stay. Individuals do not have free choice.¹⁰⁶

Recognition rates also dropped considerably in 2016 despite the worsening security situation in Afghanistan. If we look at the statistics for 2015 and 2016 above, protection rates for Afghan asylum seekers fell by around 16% in Germany, over 50% in Norway, nearly 30% in Finland and by 9% in Sweden in 2016.

As of September 2017 recognition rates for Afghan nationals have continued to drop in Germany (47.3%) but increased significantly in Austria (70.7%) and Greece (65.9%).

One major impact of this wide divergence in recognition rates has been that Afghans arriving in Greece or Italy have had no access to relocation to another EU country, despite high recognition rates in Italy in particular. The lower numbers of people granted protection also means that there will be higher numbers of individuals who have no legal right to stay in Europe and will have to be returned to Afghanistan.

For subsidiary protection under the EU Qualification Directive UNHCR has argued that there is individuals from

102. Figures from 2015 and 2016 from ECRE's AIDA database, see a summary of 2016 recognition rates here: <http://www.asylumineurope.org/news/23-05-2017/asylum-statistics-2016-sharper-inequalities-and-persisting-asylum-lottery> . For 2017 figures compiled by ECRE from the relevant national authorities with the exception of BG where Eurostat figures are used. See the statistical overview for each country in the AIDA database for access to country statistics, e.g. Sweden: <http://www.asylumineurope.org/reports/country/sweden/statistics>

103. http://www.asylumineurope.org/sites/default/files/shadow-reports/aida_refugee_rights_subsiding.pdf Page 11.

104. AIDA, Country Report Bulgaria, 2016 Update, February 2017, available at: <http://bit.ly/2lw71fy>, Page 42.

105. Information provided by the Dutch Council on Refugees.

106. http://www.dw.com/en/study-asylum-seekers-chances-of-staying-in-germany-vary-dramatically-by-state/a-38149653?utm_source=ECRE+Press+Review&utm_campaign=737a4a6bac-EMAIL_CAMPAIGN_2017_03_28&utm_medium=email&utm_term=0_1a5cfac4e4-737a4a6bac-422294521

Afghanistan can qualify for subsidiary protection where there would be a real risk of serious harm in Afghanistan under articles 15 (a) (the death penalty or execution), (b) (torture or inhuman or degrading treatment) and (c) (serious and individual threat by reason of indiscriminate violence in situations of armed conflict) of the EU Qualification Directive.¹⁰⁷ In a specially commissioned report in German¹⁰⁸ UNHCR has also stated that “with reference to the interpretation of the term ‘internal armed conflict’ by the European Court of Justice in the case *Diakité* [...] the entire state territory of Afghanistan is affected by an internal armed conflict as per Article 15(c) of the EU Qualification Directive.”

The type of protection awarded is different in different countries. In 2016 refugee status was awarded to between 0.5% of Afghan applicants (Bulgaria) and 53.1% of Afghan applicants (Croatia).¹⁰⁹ Rates for subsidiary protection for Afghan applicants in 2016 varied from 0.4% in the UK to 86.8% in Italy. In the Netherlands there is not considered to be any ‘15(c)’ situation or areas considered generally unsafe.

In a recent case¹¹⁰ in Sweden the court awarded subsidiary protection to a 17 year old boy, a Hazara Afghan citizen who had lived in Iran since he was a small child, with reference to the facts that he lacked a network in Afghanistan and that Afghan children are vulnerable to sexual abuse, forced marriage and forced recruitment.

A high number of Afghan nationals are granted humanitarian status such as those in Germany who are granted tolerated stay status/*Abschiebeverbot*, a non-EU harmonised type of protection, which grants only a limited set of rights.¹¹¹

There are specific issues for unaccompanied children who seek asylum in Europe. In the UK there were reports that over two thousand minors had been returned to Afghanistan after settling and studying, upon turning eighteen after being granted temporary status until they became adults.¹¹² In Sweden a new stricter temporary asylum law has restricted the type of status that can be awarded, the allocation of residence permits, and family reunification rights. The number of unaccompanied minors seeking asylum has plummeted from around 34,000 in 2015 to 2,199 in 2016, with the majority of minors coming from Afghanistan.¹¹³ Norway too is actively adopting a policy of return at eighteen.

2.5. Differential treatment and ‘mutual trust’

The differential treatment of asylum claims in Europe for Afghan nationals has been recognised to some extent in case-law. For example in April 2017 the Administrative Court of Lyon ruled against a Dublin transfer of an Afghan national to Norway, where his asylum application had previously been rejected. The higher appeal Administrative Court of Lyon found that the transfer to Norway would constitute a violation of Article 3 ECHR because the applicant was from Nangahar province, where according to EASO reports, the insecurity level is one of the most severe in the country and where Afghans who are returned are exposed to serious, direct and individual threats, as a consequence of the armed conflict, without being able to get protection. According to the Court, it was sufficient that the applicant shows that he is from the region of Nangarhar, which the applicant has proved. The Court rejected the Dublin transfer of the applicant to Norway, and obliged the prefect of Rhône to register the asylum application of the applicant in France.¹¹⁴ In April 2017 the Belgian Council on Alien Law Litigation (CALL) suspended the Dublin transfer of an Afghan national to Bulgaria on the grounds that there

107. UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, April 2016. Pages 90-91. <http://www.refworld.org/docid/570f96564.html>

108. <https://www.proasyl.de/wp-content/uploads/2015/12/2017-Bericht-UNHCR-Afghanistan.pdf>

109. It was also awarded to 100% of Afghans in Malta but as that was only one application we have not used this as an example. http://www.asylumineurope.org/sites/default/files/shadow-reports/aida_refugee_rights_subsiding.pdf Page 33

110. Sweden, case reference UM 911-16.

111. For information on humanitarian status for Afghans in Europe see EASO Annual Report on the Situation of Asylum in the European Union 2016, page 24. For the kinds of rights awarded for each status in Germany see BAMF information here: http://www.bamf.de/SharedDocs/Anlagen/EN/Downloads/Infothek/Asyl/schema-ablauf-asylverfahren.pdf?__blob=publicationFile

112. <https://www.thebureauinvestigates.com/stories/2016-02-09/revealed-the-thousands-of-former-child-refugees-deported-to-afghanistan-and-iraq>

113. AIDA Country Report Sweden 2016, Page 17.

114. <http://www.asylumlawdatabase.eu/fr/content/france-administrative-court-lyon-no-1702564-3-april-2017>

was a risk of a breach of Article 3 ECHR and Article 4 of the EU Charter of Fundamental Rights (CFR).¹¹⁵ CALL ruled that the national authorities had failed to address the indication that Bulgaria treats asylum claims from Afghan nationals as “manifestly unfounded”. CALL also considered that a risk of a breach of Article 3 ECHR and Article 4 of the EU CFR could potentially lead to damage that would be hard to repair and so suspended the transfer.

EASO is undertaking an in-depth analysis on Afghanistan in the framework of a pilot Country Guidance exercise, which aims to reach a higher level of convergence of national decision practices by developing Country Guidance Notes on Afghanistan.¹¹⁶ The Joint EEAS, EC non-paper on Afghanistan highlighted a need for a common definition of safe areas in Afghanistan.¹¹⁷ EASO has since published a country of origin report on the security situation as well as on key socio-economic indicators, state protection and mobility in Kabul city, Mazar-e Sharif and Herat, as these are cities that several Member States consider as safe, to aid decision-makers to come to a common view on specific factors that may impact on returns and further harmonize recognition rates.¹¹⁸

Conclusions

It is ECRE’s longstanding position that it is legitimate for states to return people whose applications for international protection have been rejected. The prerequisite is that fair and consistent asylum systems are in place that properly examine whether a person will face a well-founded fear of persecution or serious harm if returned, that return procedures respect fundamental rights and are seen as fair by individuals and third countries, and that partnerships with third countries are open to scrutiny and based on a shared observance of fundamental rights. At the moment in the case of Afghanistan, recognition rates and types of protection diverge to such an extent across Europe that the fairness and quality of asylum procedures that are being conducted must be questioned in several European countries. In addition, some Member States have altered their policy guidelines since 2015 on how to deal with applications from Afghan nationals, including on which areas are safe for an internal protection alternative with it now being more difficult for protection to be granted. At a time when security in Afghanistan is worsening, policy changes seems to be more of a reaction to the migration situation in Member States, than the security situation in Afghanistan. There is recognition of divergent practice in Europe and EASO is undertaking a pilot Country Guidance exercise to assist Member States in harmonising decision-making on Afghanistan. As of November 2017 decisions still diverge widely. In addition, harmonised decision-making does not always mean quality decision-making and care should be taken that decisions are in-line with international refugee law standards.

3. Returns to Afghanistan

With high numbers of Afghan asylum seekers, lower rates of protection and fears in the media and among local populations on migration and security, several Member States have increased their efforts to deport more Afghan nationals whose applications for asylum have been rejected. Flights have been leaving for Kabul regularly since December 2016.¹¹⁹ Denmark, Norway, Sweden, Finland, Germany, Austria, the Netherlands, Belgium, Bulgaria, France and the Slovak Republic are currently returning people to Afghanistan or considering doing so.

There is a relatively high margin of discretion left to Member States in the way that they implement the Return

115. http://www.rvv-cce.be/sites/default/files/arr/A185279.AN.pdf?utm_source=ECRE+Newsletters&utm_campaign=281e3b31e2-EMAIL_CAMPAIGN_2017_06_09&utm_medium=email&utm_term=0_3ec9497afd-281e3b31e2-420540397

116. EASO Annual Report on the Situation of Asylum in the European Union 2016, page 26.

117. Joint Commission-EEAS non-paper on enhancing cooperation on migration, mobility and readmission with Afghanistan, Page 3: <http://statewatch.org/news/2016/mar/eu-council-afghanistan-6738-16.pdf>

118. EASO Country of Origin Information Report, Afghanistan Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City. https://www.easo.europa.eu/sites/default/files/publications/EASO-COI-Afghanistan-IPA-August-2017_0.pdf

119. <http://www.reuters.com/article/us-afghanistan-migrants-return/afghan-asylum-seekers-sent-home-fear-deportations-will-add-to-chaos-idUSKBN14512Q>

Directive –one of the reasons that the European Commission issued recommendations in March 2017 aiming to harmonise the approach and coordination to make returns more effective.¹²⁰ This is reflected in the current push for returns to Afghanistan. Countries deport either under a bilateral agreement or the Joint Way Forward. Criteria and exceptions for deportations differ (vulnerable groups might be excluded in some countries and not others). Some countries use chartered flights and some use joint flights with Frontex. Finland has made it known that it is keen to cooperate regionally and with Frontex on joint returns.¹²¹ The UK (not subject to the Returns Directive) only uses chartered flights. Denmark uses chartered and ordinary flights.

3.1. Numbers of returns

The Commission recommendation to make returns more effective from March 2017 encourages Member States to take the necessary measures to ensure swift return procedures, increase cooperation and the rate of return. Whilst many of the recommendations were still in development last year, Member States and other European countries have entered into their spirit in implementing returns to Afghanistan. European states, including Germany, Finland, Norway and Sweden, have openly promoted increasing returns to Afghanistan.

Deportations started in December 2016 with Member States using joint, chartered and ordinary flights. Ongoing security issues, however, have meant delays and suspensions. For example, the 50 seats allocated for non-voluntary returns on each flight for the first six months of the Joint Way Forward was not filled on flights for which information is in the public domain. Two cases, one from Finland and one from the UK, have highlighted problems of implementing swift returns to countries in conflict such as Afghanistan as in both cases people returned to Afghanistan had to be brought back due to a residence permit to work being awarded in one case and an ongoing asylum appeal in the other. This could have had extremely serious consequences for the individuals concerned. Amnesty International has detailed serious cases including of a man who was killed upon return.¹²²

Overall, statistics on return at EU level are patchy. The following tables give information on Afghan citizens ordered to leave the EU and those who have left over the past three years.

Afghan citizens ordered to leave the EU	Afghan citizens returned/who left Member States after receiving return order
2014: 23,445	2014: 3,360
2015: 38,890	2015: 3,290
2016: 30,325	2016: 9,460

Source: Eurostat

These figures include 77 Afghans who were returned from Greece to Turkey between April 2016 and June 2017 under the EU-Turkey Statement.¹²³ The rate of return (numbers of who left compared to return decisions issued) rose considerably in 2016. Since December 2016 returns from Europe have been in the hundreds with Germany, Denmark, the UK, Sweden and Finland sending most people back.¹²⁴

Several European countries have openly pushed to increase returns to Afghanistan. In May 2016 the Secretary of State for Migration and Asylum in Belgium launched a return campaign specifically for Afghanistan, sending letters to individual asylum seekers, explaining delays and conditions when applying for asylum in Belgium and encouraging them to return. Those who took advantage of his offer before 1 June 2016 and left

120. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_commission_recommendation_on_making_returns_more_effective_en

121. See government action plan on asylum policy, 8 December 2015 here: http://valtioneuvosto.fi/sv/artikeln/-/asset_publisher/hallituksen-tiedotustilaisuus-turvapaikkapoliittisesta-toimenpideohjelmasta?_101_INSTANCE_LZ3RQQ4vWXR_languageld=en_US

122. See section on post return monitoring for more information and Amnesty International, Forced Back to Danger, Asylum Seekers Returned from Europe to Afghanistan, October 2017. <https://www.amnesty.org/en/documents/asa11/6866/2017/en/>.

123. <https://data2.unhcr.org/en/documents/download/58003>

124. See AAN's information on flights for the first half of the year and main countries of return <https://www.afghanistan-analysts.org/voluntary-and-forced-returns-to-afghanistan-in-201617-trends-statistics-and-experiences/>

between 1 June and 15 July 2016 were entitled to a free flight and assistance including 500 Euros.¹²⁵

Afghanistan was specified by Finland as a target country to increase returns from December 2015.¹²⁶ As of 4 July 2017 according to the police 61 people had been returned to Afghanistan from Finland this year.¹²⁷

France, with a traditionally low number of returns to Afghanistan, decided to re-start deportations in 2017.¹²⁸ A deportation was reportedly stopped from France in June as passengers on a plane remained standing.¹²⁹

In Norway the authorities seem proud to have become one of the 'strictest' countries in Europe towards applicants from Afghanistan.¹³⁰ In 2016, 381 afghan asylum seekers were deported from Norway to Afghanistan.¹³¹ From January to April 2017, 102 afghan asylum seekers were deported to Afghanistan.¹³²

Denmark has a tripartite agreement with Afghanistan from 2004. There are some challenges regarding single women/other vulnerable groups but other than that no significant obstacles to return to Afghanistan the government sees no major obstacles to return. Between January and April 2017 there were 187 returns all together. Fourteen of these were forced deportations of rejected asylum seekers to Afghanistan. Many are detained shortly after their final rejection. There have been some problematic and publicly discussed deportations including a flight where there was violence from the Afghan authorities towards those being deported.¹³³ There have also been some cases rejected by the national authorities due to non-Afghan nationality.¹³⁴

Before the recent renewed interest in returning to Afghanistan there had been almost no returns from **Germany** to Afghanistan since 2005. In December 2016 the German government started to single out Afghans as a group who could be deported.¹³⁵ 106 persons were deported from December 2016 to beginning of June. The ongoing violence and attacks in Kabul have led to more debate and flights were suspended in June 2017 with the exception of criminal offenders and people who did not present correct information about their identity when they applied for asylum. The unclear definition of what constitutes an offender or information about identity has been of concern for advocates.¹³⁶ Recent reports in the press indicated that a reassessment of internal policy would mean less returns would take place and only in exceptional circumstances.¹³⁷ However, flights resumed in August, perhaps due to the upcoming elections, with a reported 10,000 Afghans now eligible to be returned from Germany.¹³⁸

There were 20 forced returns to Afghanistan from the **Netherlands** in 2015, 40 in 2016 and 20 for the first quarter of 2017.¹³⁹ There have been several concerning cases of deportations including vulnerable groups and a couple who had lived for over 15 years in the Netherlands who were excluded from refugee status through the application of Article 1F of the Geneva Convention Relating to Refugees.

There have been at least two cases when Member States have deported people before they have exhausted

125. <http://ptb.be/articles/francken-etend-sa-campagne-de-dissuasion-aux-refugies-afghans>

126. See government action plan on asylum policy, 8 December 2015 here: http://valtioneuvosto.fi/sv/artikeln/-/asset_publisher/hallituk-sen-tiedotustilaisuus-turvapaikkapoliittisesta-toimenpideohjelmasta?_101_INSTANCE_LZ3RQQ4vWXR_languageId=en_US

127. Information from the Finnish Refugee Advice Centre.

128. <http://www.lacimade.org/presse/la-france-expulse-vers-lafghanistan-malgre-une-situation-explosive/>

129. <http://le-blog-sam-la-touch.over-blog.com/2017/06/expulsion-des-passagers-restant-debout-l-avion-revient-l-expulse-est-debarque-mediapart.html>

130. <http://norwaytoday.info/news/norway-strictest-class-afghan-asylum-seekers/>

131. https://www.politi.no/vedlegg/lokale_vedlegg/politiets_utlendingssenhet/Vedlegg_4430.pdf

132. https://www.politi.no/vedlegg/lokale_vedlegg/politiets_utlendingssenhet/Vedlegg_4525.pdf

133. <http://www.independent.co.uk/news/world/europe/afghanistan-police-beat-asylum-seekers-danish-officers-deportation-flight-kabul-refugee-returns-safe-a7739176.html>

134. Information provided by the Danish Refugee Council, 8 June 2017.

135. See AAN Case Study on Germany: <https://www.afghanistan-analysts.org/afghan-exodus-afghan-asylum-seekers-in-europe-3-case-study-germany/>

136. For example see information on those on the second flight to Afghanistan provided by Karl Kopp from Pro Asyl in an Op-ed in the ECRE weekly from 27 January 2017 <https://www.ecre.org/summary-deportations-of-afghans-in-germany-continue-a-question-of-life-and-death/>.

137. <https://www.welt.de/politik/deutschland/article167509591/Deutschland-will-nur-noch-Straftaeter-nach-Afghanistan-abschieben.html>

138. <http://www.dw.com/en/what-is-the-status-of-german-deportations-to-afghanistan/a-40451011>

139. Information provided by the Dutch Council for Refugees. Rounded up to the nearest five.

all legal avenues to stay in the Member State. This is in line with the direction indicated in the Commission recommendation on making returns more effective that encourages Member States to ensure that the automatic suspensive effect of appeals against return decisions is granted only when it is necessary to comply with the obligations of non-refoulement and the right to legal remedy.¹⁴⁰

In the case of a young man, Zaki Hussaini, it led to him being deported from Finland to Afghanistan in July 2017, and having to be returned back to Finland in August after his permit to work was approved shortly after he had been deported.¹⁴¹ The young man faced difficulties organising his return to Finland, despite the fact it had been approved by the court, particularly in receiving his permit. The Finnish Embassy in Kabul does not usually handle immigration matters as it is considered too dangerous to provide residency permits there as they are so valuable. In this 'exceptional' case, his documents were sent to Kabul, otherwise Mr Hussaini believed he would have needed a visa and over a thousand dollars to travel to New Delhi. This shows that there are hurdles for people to return to Europe when errors happen, even when a return has only just taken place and the authorities are aware of the person's location.

Another case from the UK saw Samim Bigzad deported to Afghanistan in September 2017 despite the fact that a High Court judge ruled that the deportation should not take place whilst an appeal had not been decided. The UK authorities seemingly ignored then tried to dispute orders to return him to the UK. Home Secretary Amber Rudd may now be judged to be in contempt of court.¹⁴²

3.2. Voluntary vs forced returns

Voluntary returns or repatriation can only be truly voluntary where a person has a genuine choice of whether or not to return, decides to go back in full possession of the facts on the situation they are returning to, without any pressures, and are able to return in safety and dignity. The voluntary returns as per the Return Directive registered on Eurostat are voluntary compliance with a return order, rather than returns that are truly voluntary, and few countries provide a breakdown of statistics between forced return and voluntary compliance. In the past ECRE has called these returns 'mandatory'. Although 'voluntary' return is preferred over forced return¹⁴³ current thinking in the Commission recommendation on making returns more effective sees voluntary departure only offered if the individual themselves requests it and the shortest possible time period to be allowed to organise and proceed with the return. This could be as little as seven days.¹⁴⁴

In 2016 there were 9,460 total returns to Afghanistan. 1,925 were classed as "voluntary returns" or compliance with return orders and 1,175 were classed as enforced returns. For the majority - 6,360 returns, it is unknown if they were voluntary compliance or enforced.

In a recent ad hoc query for the European Migration Network, nine Member States said that they were forcibly returning people to Afghanistan: Austria, Belgium, Hungary, Lithuania, the Netherlands, the Slovak Republic, Sweden, the UK and Norway.¹⁴⁵ The following table reproduced from the European Migration Network (EMN) ad hoc query shows the number of forced returns to date in 2017:¹⁴⁶

140. Commission Recommendation of 7.3.2017 of 7.3.2017 on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council. Article (12) page 8.

141. <http://www.hs.fi/kotimaa/art-2000005336473.html>

142. See Colin Yeo blog on this case here: <https://www.freemovement.org.uk/explainer-can-home-secretary-really-guilty-contempt-court-breach-court-order/>

143. Return Directive L 348/98, paragraph (8) preamble.

144. Commission Recommendation of 7.3.2017 in making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and Council.

145. EMN Ad-Hoc Query on Forced returns to Afghanistan (requested by Sweden) Summary of answers as of 8 November 2017: http://www.emnsweden.se/download/18.5bc6881815e14db67502576/1510911095580/SE-EMN_AHQ_Forced-returns-to-Afghanistan_SUMMARY_2017-11-08.pdf.

146. EMN Ad-Hoc Query on Forced returns to Afghanistan (requested by Sweden) Summary of answers as of 8 November 2017, page 2: http://www.emnsweden.se/download/18.5bc6881815e14db67502576/1510911095580/SE-EMN_AHQ_Forced-returns-to-Afghanistan_SUMMARY_2017-11-08.pdf

Number of forced returns to Afghanistan

Country	Number of forced returns in 2017	Reference period in 2017
Austria	No information available about number of forced returns. In total 493 persons returned to Afghanistan.	1 January – 1 August
United Kingdom	No data available for 2017	-
Belgium	24	January – August
Hungary	2	So far in 2017
Netherlands	35	January to June
Sweden	34	January to June
Norway	142	January to June
Croatia, Cyprus, Czech Republic, Estonia, Latvia, Lithuania, Luxembourg, Malta, Portugal, Slovak Republic	0	So far in 2017

Several countries reported restrictions on those who could be forcibly returned mainly unaccompanied minors (Belgium, the Slovak Republic, Cyprus, the UK and Norway); single females without a network (the UK and Norway); families with children (Cyprus). For Belgium there was more groundwork needed for returns of women or families and so in practice only young males were really returned. Sweden and Hungary returned unaccompanied children only where they were returned to family, a guardian or 'adequate reception services'. The standards of reception services and post-return care for children, including those who are unaccompanied, and what 'adequate' may mean, have not been defined by the Commission or Member States in the recent push on returns to Afghanistan, although there are some minimum guidelines from UNHCR, for example in the tripartite agreement on returns between Norway and Afghanistan.¹⁴⁷

Most countries run AVRR programmes, either themselves or through IOM. In 2016, a total of 7,102 Afghans returned to their country through the IOM AVRR programme, more than any of the previous five years.¹⁴⁸ The substantial majority of voluntary returns to Afghanistan with IOM in 2016 were from Germany (3,319 individuals), followed by Greece (1,257 individuals), Turkey (799 individuals), Austria (593 individuals) and Bulgaria (276 individuals). Several countries run tailored AVRR programmes for Afghan nationals, including Belgium.¹⁴⁹

In Germany Ministers have reportedly said that increasing deportations would increase 'voluntary' returns.¹⁵⁰ There has also been an incentive programme "Starthilfe Plus" providing financial payments of 1,200 Euros to people who return before the decision on their asylum application has been made, or 800 Euros for people who do not appeal a negative decision and return before the final deadline.¹⁵¹ The waiting time for asylum applications from Afghan nationals to be processed in Germany may also be a factor. France is reportedly increasing the financial reintegration package for Afghans to encourage more returns to Afghanistan after concerns that many are arriving in France after receiving a refusal for their application for asylum in Germany.¹⁵² In an interview recorded for ECRE's round table on returns to Afghanistan from June 2017, Abdul Ghafoor who monitors the situation for returnees and supports them in Kabul has questioned the difference between recent voluntary and enforced returns from Europe. In his experience most people who are voluntary returnees have already received a rejection for their application for asylum, have faced psychological pressure from Member States to return as well as cuts to support in some cases. They have no more wish to be in Afghanistan than those who

147. See <https://www.udiregelverk.no/en/documents/international-conventions-and-agreements/2011-09-18e/>

148. Assisted Voluntary Return and Reintegration 2016 Key Highlights, IOM. Page 65.

149. <http://belgium.iom.int/country-specific-approach-afghanistan>

150. <https://www.afghanistan-analysts.org/afghan-exodus-afghan-asylum-seekers-in-europe-3-case-study-germany/>

151. See IOM Germany (in German) <http://germany.iom.int/de/starthilfeplus>

152. <http://www.la-croix.com/Monde/A-Paris-migrants-afghans-arrivent-Allemagne-2017-05-12-1300846560>

have been forced to return and cannot see much chance of survival for themselves or their families.¹⁵³

In conclusion, it seems that voluntary return is not being prioritised. The ever-shrinking space for individuals to really look at their options for return, the threat of deportation, inhumane conditions for refugees in some countries in Europe, for example in Greece, and worsening security and attacks in Afghanistan put a question mark about whether any truly voluntary return to Afghanistan is taking place at the moment. There is essentially a sliding scale of forced returns.

3.3. Who is being returned?

As with other factors there seem to be a lot of variables in terms of who Member States consider can be returned to Afghanistan. Anecdotal accounts have suggested that many of those returned from **Germany** have lived in Germany for many years, speak German and have been working or studying and are fairly integrated,¹⁵⁴ whereas those returned from Norway, have spent less time there.¹⁵⁵ Despite the Joint Way Forward promising to take vulnerabilities into account, individuals and families including vulnerable groups have been returned to Afghanistan, including where they are well-integrated into European society.

There have been several deportations of concern to NGOs in the Netherlands concerning vulnerable groups. The Dutch Council for Refugees protested the deportation of an Afghan family with young children.¹⁵⁶ There was also a case of two young brothers who used to live in Iran who had no parents. The 18 year old boy was deported with his 17 year old brother as the 17 year old's legal guardian. A homosexual man has also been deported after his asylum claim based on his sexual orientation was judged not to be credible and an Afghan boy who arrived in the Netherlands at the age of 15 and was deported as soon as he turned 18.¹⁵⁷

The **Netherlands and Norway** reportedly returned the most children in 2016.¹⁵⁸ A young boy who had lived four and a half of his seven years in Norway was recently deported with his family to Afghanistan, even though the Norwegian government had originally flown the family to Norway under family reunification to be with his elder sister. She was allowed to stay in Norway on humanitarian grounds as she had forged a strong connection with the country through her schooling.¹⁵⁹ **Norway** has also started to offer both unaccompanied children in Norway and their caregivers in Afghanistan reintegration funds so that the children return to Afghanistan.¹⁶⁰

Removing the reasonability criteria for the internal protection alternative has affected the most vulnerable asylum seekers in **Norway** and has had dramatic consequences including for unaccompanied asylum seeking children. It was previously considered unreasonable to refer unaccompanied asylum seeking children to an area where they do not have caregivers. Those who could not return to their home place because they risked persecution there were thus protected. Now it is no longer necessary to make an assessment of whether it is reasonable to refer young people to a place where they do not have caregivers. This means they are considered not to have protection needs, and it is possible to give them a temporary permit which means that they must leave Norway when they reach 18. By 2016 there had been a sharp increase in the number of temporary permits for unaccompanied asylum seeking children. Most of these decisions were made following the entry into force of the new rules in October 2016. Also, families with children, single women, and people with serious illnesses or disabilities are among those affected by the tightening of the regulations. Earlier, such conditions could mean that it was not considered reasonable to refer the persons to an unknown part of the country where they often lack family and/or network. Today, such arguments are no longer relevant for protection. The remov-

153. Interview with Abdul Ghafoor, AMASO, Kabul. June 2017. https://www.youtube.com/watch?v=Vk9SZzdl_84&feature=youtu.be

154. <https://www.theguardian.com/global-development/2016/dec/15/first-wave-afghans-expelled-eu-states-contentious-migration-deal-germany-sweden-norway>

155. Interview with Abdul Ghafoor from AMASO, Kabul, June 2017: https://www.youtube.com/watch?v=Vk9SZzdl_84&feature=youtu.be

156. <https://www.vluchtelingenwerk.nl/actueel/persbericht/afghaans-gezin-levensgevaar-vluchtelingenwerk-eist-uitstel-uitzetting-jong-gezin>

157. These two cases are included in the Amnesty report 'Forced back to danger' [https://www.amnesty.org/en/documents/asa11/6866/2017/en/October 2017](https://www.amnesty.org/en/documents/asa11/6866/2017/en/October%202017), <https://www.amnesty.org/en/documents/asa11/6866/2017/en/>

158. <http://norwaytoday.info/news/norway-returns-children-afghanistan/>

159. https://www.nytimes.com/2016/11/13/world/asia/a-deported-afghan-boy-returns-to-a-land-nothing-like-home.html?_r=0

160. <http://norwaytoday.info/news/udi-offers-minors-money-afghanistan/>

al of this criteria has resulted in more families and single women from Afghanistan being denied protection.¹⁶¹

There have been reports of governments trying to return the very elderly, including an elderly Afghan woman with dementia from her family in **Denmark**¹⁶² and an elderly Afghan woman of over 106 from **Sweden**, although she was given a temporary permit to stay upon appeal.¹⁶³ In Sweden the proposed deportation is likely to be linked to changes to asylum legislation detailed above that limits access to status and residence permits.

Despite LGBTI asylum seekers from Afghanistan being amongst the most vulnerable,¹⁶⁴ the **UK** has published controversial guidelines on the treatment of sexual orientation and gender identity in claims from Afghanistan saying that gay men should be able to conceal their homosexuality to avoid persecution¹⁶⁵, this is contrary a ruling of the Court of Justice of the European Union that applicants for asylum cannot be reasonably expected to 'conceal their homosexuality in their country of origin', or 'to exercise reserve in the expression of their sexual orientation'.¹⁶⁶

The return of ethnic minorities has raised concerns including an Afghan Hindu from **Germany**¹⁶⁷ and a Sikh family from **the Netherlands**.¹⁶⁸

There are reports of people being returned who have not been to Afghanistan or who have spent most of their lives in another country, such as Iran before making the journey to Europe.

Interestingly Afghan media reported on who is not returning with information that over 200 diplomats having refused to go back to Afghanistan after their tour of duty. Although the Foreign Ministry reportedly has said this does not mean all of them have claimed asylum, tellingly they are seeking to introduce measures to withhold salaries to ensure that people go back.¹⁶⁹

Overall, despite the provision in the Joint Way Forward to take vulnerabilities into account and regardless of ongoing security concerns in Afghanistan, there are multiple reports of children and families, the elderly and other vulnerable groups being returned to Afghanistan.

3.4. Effect on asylum seekers in the EU

The seemingly relentless focus on returns and differential treatment of Afghan asylum seekers in the press and in policies, has had an effect on Afghan asylum seekers in the EU. Afghan members of the Refugee Ideas and Solutions for Europe (RISE) network interviewed asylum seekers and refugees in Germany and Sweden in March 2017 and met with members of the European Parliament to discuss the EU-Turkey Statement and its effects,¹⁷⁰ increasing physical and mental health problems among asylum seekers and particular problems for women and children.¹⁷¹ Studies have shown the psychological effects of post-migration difficulties including among Afghans in Turkey¹⁷², on the islands in Greece,¹⁷³ even among children.¹⁷⁴ Three young men from

161. Information provided by NOAS, June 2017.

162. <https://www.nytimes.com/2017/04/22/world/europe/old-ill-and-ordered-deported-from-denmark-to-afghanistan.html?mcubz=1>

163. See: <http://www.aljazeera.com/video/news/2017/09/sweden-106-year-old-afghan-woman-appeals-deportation-170901152623862.html> and <https://www.thelocal.se/20171004/sweden-grants-106-year-old-afghan-woman-asylum>.

164. See Human Rights Watch <https://www.hrw.org/news/2017/02/26/afghan-lgbt-asylum-seekers-uk-among-most-vulnerable> and Radio Free Europe <https://www.rferl.org/a/afghanistan-being-gay-fake-life/28731934.html>

165. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/584025/Afghanistan_-_SOGI_-_CPIN_-_January_2017_.pdf

166. C-199/12, C-200/12 and C-201/12 X, Y and Z v Minister voor Immigratie en Asiel. <http://curia.europa.eu/juris/liste.jsf?num=C-199/12>

167. <https://www.pajhwok.com/en/2016/12/16/germany-condemned-deporting-afghan-hindu>

168. <https://amasosite.wordpress.com/2017/10/16/sikh-family-returned-to-shrinking-frightened-community/>

169. <http://www.1tvnews.af/en/news/afghanistan/31684-over-200-afghan-diplomats-fail-to-return-home-after-end-of-duty-tour>

170. <http://refugees.gr/joint-action-day-brussels-20th-march-2017/>

171. <http://refugees.gr/rise/>

172. <https://www.hindawi.com/journals/ijpr/2016/7690697/>

173. http://www.msf.org/sites/msf.org/files/one_year_on_from_the_eu-turkey_deal.pdf

174. <https://www.savethechildren.net/article/self-harm-and-depression-rise-among-child-refugees-one-year-eu-turkey-deal>

Afghanistan committed suicide in Sweden after worries and delays in their asylum applications.¹⁷⁵ Afghan refugees have become increasingly vocal in their advocacy on the issues facing them and others in Europe. Just over the summer of 2017 there have been protests by Afghan groups in Finland, Sweden,¹⁷⁶ Austria and Greece¹⁷⁷ about the conditions for Afghan refugees, deportations, the Joint Way Forward Agreement and the EU-Turkey deal. In a recent open letter to the EU, Afghan refugees including those living in camps across Greece demanded an end to deportations, family reunification with family members in other EU countries, and increased recognition as refugees and people fleeing violence and conflict, particularly for Afghan women who face daily gender-based violence and oppression.¹⁷⁸ Afghan refugees from the Vienna Refugee Protest Camp have demanded that Austria, UNHCR and the EU recognise that Afghanistan is not safe, end decision making on the basis of single country of origin reports, provide better interpretation and access to education for those seeking asylum in Europe.¹⁷⁹ Hundreds of young Afghans held sit-downs strikes in Sweden for several weeks over the summer because of fears they would be deported after guidelines on Afghanistan changed.¹⁸⁰

Afghan diaspora groups in Europe have played an important role helping newcomers to understand the situation they find themselves in. Advocates and groups have also helped the authorities particularly during the times of high numbers of arrivals, to manage the situation and understand the problems people are facing. With often several languages and experience on the ground in Europe, Afghanistan and/or countries such as Iran and Turkey, they have been providing expertise on the situation experienced by Afghans forcibly displaced.

European policies on returns and towards Afghanistan have had a profound effect on Afghans in Europe, both for new arrivals and those who have settled here and become citizens. The Afghan diaspora has played a crucial role in supporting new arrivals to Europe and their host countries, particularly during the recent period of higher arrivals. With experience in Europe and a deep knowledge of Afghanistan or transit countries, they have the skills and insights to act as a bridge between newcomers and hosts in Europe, as well as providing input into policy developments.

4. Post-return

4.1. The situation in Afghanistan

Just as Member States have attempted to increase returns to Afghanistan, so the security situation has seriously deteriorated. Afghanistan is ranked 162 out of 163 countries in the Global Peace Index in 2017.¹⁸¹ It came 111th out of 113 countries in the World Justice Project's 2016 Rule of Law Index.¹⁸² According to the US Special Inspector General for Afghanistan Reconstruction around 60 percent of Afghanistan is under government control.¹⁸³ This represents an almost 15 percent decline since 2015. With 3,498 civilians killed and 7,920 wounded, 2016 was the deadliest year for civilian casualties on record according to the UN. The number of civilians killed and injured in Afghanistan during the first six months of 2017 persisted at the same record high levels as the year before. According to a mid-year report from the United Nations extreme harm to civilians continued amid a worsening toll from suicide attacks, and a greater impact on women and children.¹⁸⁴ Nineteen per cent of the casualties occurred in the capital, Kabul, as a result of suicide and complex attacks – the city where many Member States believe returnees can settle. Civilian casualties increased in 15 of Afghanistan's 34 provinces, mainly due to increased attacks by anti-government forces. The highest numbers of casualties occurred in Kabul, Helmand, Kandahar, Nangarhar, Uruzgan, Faryab, Herat, Laghman, Kunduz and

175. <http://1tvnews.af/en/news/afghanistan/27732-three-afghan-asylum-seekers-commit-suicide-in-sweden>

176. <https://www.thelocal.se/20170807/refugee-children-protest-swedish-deportations-to-afghanistan>

177. <https://www.youtube.com/watch?v=05tSvRDk0D4>

178. <https://ricochet.media/en/1930/afghan-refugees-in-greece-demand-their-rights>

179. <https://www.facebook.com/RefugeeCampVienna/>

180. http://kbr.id/berita/08-2017/young_afghan_refugees_stage_two_week_long_strike_in_stockholm/92010.html

181. <http://visionofhumanity.org/indexes/global-peace-index/>

182. <http://data.worldjusticeproject.org/>

183. Special Inspector General for Afghanistan Reconstruction (SIGAR), Quarterly Report to the United States Congress, 31 July 2017, Page 4 : <https://www.sigar.mil/pdf/quarterlyreports/2017-07-30qr.pdf>

184. <https://unama.unmissions.org/extreme-harm-afghan-civilians-continues-suicide-attacks-worsen-latest-un-report-shows>

Farah provinces. According to a recent EASO report 69 per cent of the Afghan population fear for their personal safety while the number for urban residents is as high as 73.5 per cent and the number of security incidents between January and October last year reached the highest level since 2007.¹⁸⁵ Despite improvements the situation for women continues to be one of the most challenging in the world, including accessing basic rights and public spaces. Widows are particularly vulnerable as are single parents and the disabled. Children face many difficulties including potential recruitment for forced labour, forced marriage, enrolment in armed groups, deliberate attacks by anti-government forces on schools. Girls are still considerably less likely to have access to education than boys.

Amnesty International has detailed specific cases of persecution towards people who had sought international protection in Europe and been returned to Afghanistan, including the death of Hadi, returned to Afghanistan from Norway, who disappeared and then died a few months after their return in 2016. His family believe was killed by the people they had fled from in 2015.¹⁸⁶

High levels of insecurity and natural disasters have led to increases in internal displacement in Afghanistan after decades of conflict.¹⁸⁷ At the end of 2016, UNOCHA reported that levels of internal displacement reached a record high in November of that year, at half a million, with 56% of those being children.¹⁸⁸ Another 67,850 were displaced in the first quarter of 2017.¹⁸⁹ Many of these people live in hard to reach areas and the government is struggling to support them. Research showed that those living in prolonged internal displacement have not managed to build stable and secure lives in their new environment, struggle to access basic rights, suffer from food insecurity, health problems, psychological trauma particularly among young people, and can need humanitarian assistance to reach the minimum lifestyle standards of host communities.¹⁹⁰

Pakistan has hosted over one million Afghan refugees for decades making it one of the longest protracted refugee situation today. However, over the past two years the Pakistani authorities have pushed for Afghans to return back to Afghanistan. 370,000 refugees returned from Pakistan to Afghanistan in 2016 and 248,000 undocumented returnees. Key factors cited for return included unstable legal status, intimidation and threats of deportation. Human Rights Watch has called the returns from Pakistan the world's largest unlawful mass forced return of refugees in recent times.¹⁹¹ In addition approximately 444,000 undocumented Afghans returned from Iran in 2016.¹⁹² Afghans in Iran have often had no access to protection. With no documentation they have had to live illegally with limited rights for years.¹⁹³ Their numbers are growing in 2017 with over 8,000 returning from Iran in one week in August.¹⁹⁴ IOM is scaling up its support to returnees in coordination with the Government of Afghanistan and other partners as there could be another surge at any time.¹⁹⁵ UNOCHA estimates that between 864,000 and 1.5 million Afghans could return to Afghanistan from neighbouring countries this year.¹⁹⁶

The numbers of Afghans resettled from Pakistan and Iran to other countries are currently low¹⁹⁷ compared to the number in need of resettlement. There is currently no targeted EU programme for

185. https://coi.easo.europa.eu/administration/easo/PLib/EASO_COI_Afghanistan_IPA_August2017.pdf

186. See report, Amnesty International, *Forced Back to Danger, Asylum Seekers Returned from Europe to Afghanistan*, October 2017. <https://www.amnesty.org/en/documents/asa11/6866/2017/en/>, also <https://www.amnesty.org/en/latest/news/2017/06/they-fled-afghanistan-fearing-for-their-lives-but-europe-forced-them-back/>

187. UNOCHA provides topline data on both here: <https://data.humdata.org/organization/ocha-afghanistan>

188. https://unama.unmissions.org/sites/default/files/un_afghanistan_-_population_movement_bulletin_-_issue_7_-_nov_2016_0.pdf

189. Afghanistan – Complex Emergency Factsheet, USAID, https://www.usaid.gov/sites/default/files/documents/1866/afghanistan_ce_fs03_07-19-2017.pdf,

190. <http://www.reach-initiative.org/afghanistan-revealing-the-hidden-vulnerabilities-of-prolonged-idps-living-below-the-assistance-threshold-2>

191. <https://www.hrw.org/report/2017/02/13/pakistan-coercion-un-complicity/mass-forced-return-afghan-refugees>

192. https://afghanistan.iom.int/sites/default/files/Reports/iom_return_of_undocumented_afghans_weekly_situation_report_1-7_january_2017.pdf

193. See report by Al Jazeera: <http://www.aljazeera.com/indepth/features/2016/05/afghan-refugees-leaving-iran-160511103759873.html>

194. https://afghanistan.iom.int/sites/default/files/Reports/iom_return_of_undocumented_afghans_weekly_situation_report_aug_20-26.pdf

195. https://afghanistan.iom.int/sites/default/files/Reports/iom_return_of_undocumented_afghans_weekly_situation_report_aug_20-26.pdf

196. <https://reliefweb.int/report/afghanistan/afghanistan-snapshot-population-movements-13-june-2017>

197. See article on reintegration as a solution for Afghan refugees in Iran and Pakistan in *La lettre de l'asile et de l'intégration*, Lettre de France terre d'asile, Juin 2017 N°79, *Migrants et réfugiés Afghans, La réinstallation une solution pour les réfugiés afghans d'Iran et du Pakistan ?* Page 7 (in French): http://www.france-terre-asile.org/images/stories/publications/pdf/LAI_79.pdf

resettling Afghan refugees from Pakistan to Europe, for example.¹⁹⁸

The ongoing seriousness of the security problems, high number of returnees from Pakistan and Iran alongside record high numbers of internally displaced people, are putting the government and its institutions under immense strain. The impact of returns on Afghan institutions and development is a key issue. The International Monetary Fund (IMF) has expressed concerns that the surge in returns is threatening the country's economic prospects due to continuing high unemployment and poverty (estimated at 23% and 36% respectively).¹⁹⁹ Thousands of jobs have been lost since with withdrawal of US troops at the end of 2014²⁰⁰ and insecurity is having a devastating effect on the economy and Afghan capacity to regenerate it. Next to the numbers of returnees from Pakistan and Iran, those from Europe are a drop in the ocean but still add an extra burden to an already overwhelmed state. It also means that returnees from Europe can get lost in the sheer scale of the numbers returning from neighbouring countries.²⁰¹ The government is limited in what it can do to help those returning, even with extra funding, given absorption difficulties, corruption and the ongoing struggle on so many fronts. Kabul district – a favourite for European states for return - hosts more returnees and IDPs than any other region²⁰² and has suffered from multiple attacks and bombings.

Amnesty International is calling for a moratorium on all returns to Afghanistan, until they can take place in safety and dignity, calling out the gap between the objective facts on the ground in Afghanistan, and the actions and policies of the EU and European governments towards Afghan asylum-seekers.²⁰³ Pro Asyl is demanding that the German authorities: cease deportations immediately; that Afghan refugees be granted permanent status of residence, which must include the right to family reunification; that the Federal Office for Migration and Refugees must be instructed not to instigate repeals of proceedings admitting asylum seekers and refugees or of subsidiary protection under the pretence that there exist safe regions within the country ("internal alternatives for protection") or an allegedly improved security situation; that Afghan asylum seekers must be allowed to access integration and language courses, even during ongoing asylum procedures; In the light of the deteriorating security situation in Afghanistan, the German government must ensure that asylum procedures for people such as (former) Afghan affiliates of the German military or NGOs are carried out as speedily as possible. La Cimade in France has renounced all forced returns to Afghanistan.²⁰⁴ Based on recent research from Amnesty International, a coalition of NGOs including Amnesty, Unicef Netherlands, Defence for Children and the Dutch Council for refugees is calling for a stop to the deportation for all Afghans.²⁰⁵ The Dutch Council for Refugees has stated that there is an individual risk of persecution for people fleeing Taliban controlled areas for political and religious reasons and group-based refugee status for specific vulnerable groups including ex-muslims, Christian converts and atheists, westernised woman/girls, Hazaras who need to travel through Taliban controlled areas, (former) employees of the International coalition/troops, LHBT's and single woman. If there is no individual risk of persecution, subsidiary protection is needed due to a real risk of the breach of Article 3 ECHR upon return.

4.2. (Re)integration of Returnees

Approaches to individual reintegration support are currently shaped by the debate in Europe that is more focused on European concerns and avoiding 'pull factors' to Europe. This means it has shifted away from sustainability, individuals taking the time they need to plan for return, and building up countries of origin. The lack of a more holistic approach for individuals is regrettable as when returnees arrive back in Afghanistan they face growing conflict, little or no services, often only short term assistance and destitution. Unemployment is rife. There is also no easy opportunity to appeal your return once back in Afghanistan.

198. <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2016-008105&language=EN>

199. <https://www.imf.org/en/News/Articles/2017/01/26/NA012617-Return-of-Afghan-Refugees-to-Afghanistan-Surges-Country-Copes-Rebuild>

200. <http://www.irinnews.org/analysis/2016/03/14/afghanistan%E2%80%99s-surprisingly-predictable-economic-crash>

201. See interview with Abdul Ghafoor, Afghanistan: Situation of young male 'Westernised' returnees to Kabul, Asylos, August 2017, Page 27. <https://asylos.eu/wp-content/uploads/2017/08/AFG2017-05-Afghanistan-Situation-of-young-male-Westernised-returnees-to-Kabul-1.pdf>.

202. https://reliefweb.int/sites/reliefweb.int/files/resources/Afghanistan_VulnerablePopulations_2017Aug08_HIU_U1614.pdf

203. See report, Amnesty International, Forced Back to Danger, Asylum Seekers Returned from Europe to Afghanistan, October 2017. <https://www.amnesty.org/en/documents/asa11/6866/2017/en/>, also <https://www.amnesty.org/en/latest/news/2017/06/they-fled-afghanistan-fearing-for-their-lives-but-europe-forced-them-back/>

204. <https://www.humanite.fr/la-france-expulse-vers-lafghanistan-malgre-une-situation-explosive-637137>

205. https://secure.amnesty.nl/petitie_afghanistan

Reintegration support packages for returnees differ between European Member States and between people returning from countries such as Pakistan and Iran and Europe. The government can provide limited support through help with employment, legal aid, land and housing. However, the main component, the land distribution programme that has primarily served returnees from Pakistan and Iran so far, has suffered from corruption and been seen as ineffective.²⁰⁶

UNHCR does not promote refugee returns to Afghanistan given the ongoing conflict in different parts of the country and its limited absorption capacity. However, it provides a cash grant recently increased to \$400 to support returning refugees from Pakistan with their initial reintegration needs back in Afghanistan.²⁰⁷ IOM supports undocumented returnees from Pakistan with post-arrival assistance that includes meals, accommodation, basic medical screening, Non-Food Items, onward transportation cash grants and referral services, as well as support from partners. IOM is currently providing humanitarian assistance to a small number of returnees from Iran in Herat and is looking to scale up its operations.²⁰⁸

Not all returnees from Europe are eligible for reintegration assistance in Afghanistan and not all those who are eligible claim it. Packages depend on the Member State that returns them²⁰⁹ with payments ranging from 500 Euros (Belgium) to around 3,000 Euros (e.g. Sweden).²¹⁰ Norway is one of the only countries that provides cash in-hand in-country.²¹¹ There is also a variety of in-kind support in Afghanistan previously mainly provided by IOM. Recently IRARA²¹² became the main partner of the European Reintegration Network (ERIN) project - a group of 18 Member States looking to work together to harmonise post-return assistance. IRARA works through the Aga Khan Foundation,²¹³ and the Afghan Centre for Excellence.²¹⁴ There are still differences depending on the country that is sending the individual back but assistance can include help setting up a business, education, urgent medical care or paying for accommodation. Accommodation was previously available for up to two weeks for returnees in the Jangalak reception centre²¹⁵ now the Spinzar Hotel,²¹⁶ for those with no families, although most returnees return to their families or communities. Anecdotal reports suggest accommodation is still for up to two weeks²¹⁷ although materials say temporary accommodation will be provided for a maximum of five days.²¹⁸ Differing rates and packages can make it complicated for implementing organisations to administer reintegration support and it is confusing for returnees when they do not all receive the same help. It can also be difficult to apply or less relevant, particularly for those who have never been to Afghanistan before, and do not have the networks or knowledge to set up a business upon arrival, for example. Harmonisation of support within certain parameters so that returnees know what Europe will provide upon return, so that it is easier for service providers and returnees, is now a key aim of the European Commission.

Eighteen Member States are partners in the ERIN (European Reintegration Network) Specific Action Programme aiming to implement sustainable return and reintegration of third country nationals in their country of origin, and enhance harmonization of reintegration support including in Afghanistan. The partner countries are trying to streamline support by providing a voluntary model for reintegration support that Member States can follow, so for example, forced returnees from Afghanistan could be provided with 1,000 Euros reintegration support.²¹⁹

206. <https://www.afghanistan-analysts.org/caught-up-in-regional-tensions-the-mass-return-of-afghan-refugees-from-pakistan/>

207. <http://www.unhcr.org/uk/news/briefing/2017/2/589453557/tough-choices-afghan-refugees-returning-home-years-exile.html>

208. https://afghanistan.iom.int/sites/default/files/Reports/iom_return_of_undocumented_afghans_weekly_situation_report_aug_20-26.pdf

209. Afghanistan: Situation of young male 'Westernised' returnees to Kabul, Asylos, August 2017, Page 24. <https://asylos.eu/wp-content/uploads/2017/08/AFG2017-05-Afghanistan-Situation-of-young-male-Westernised-returnees-to-Kabul-1.pdf>

210. <https://www.afghanistan-analysts.org/voluntary-and-forced-returns-to-afghanistan-in-201617-trends-statistics-and-experiences/>

211. <https://www.iom.int/countries/norway>

212. <http://www.irara.org/pdf/afghanistan.pdf>

213. <http://www.akdn.org/where-we-work/central-asia/afghanistan>

214. <http://ace.af/our-story/>

215. Afghanistan: Situation of young male 'Westernised' returnees to Kabul, Asylos, August 2017, Page 23. <https://asylos.eu/wp-content/uploads/2017/08/AFG2017-05-Afghanistan-Situation-of-young-male-Westernised-returnees-to-Kabul-1.pdf>

216. <https://www.facebook.com/Afghanistan-Migrants-Advice-Support-Org-195295217167437/>

217. <https://www.facebook.com/Afghanistan-Migrants-Advice-Support-Org-195295217167437/>

218. <http://www.irara.org/pdf/afghanistan.pdf>

219. For example, the Netherlands page is here: <https://www.infoterugkeer.nl/terugkeerprojecten/overzicht-projecten/Projectdetails/er-in-post-arrival-assistance-afghanistan.aspx>

According to experts the whole of the community approach to reintegration in the Joint Way Forward may mean that returnees could soon only be provided with a basic survival sum upon return with the rest of the support assistance being provided to the government and communities.²²⁰ IOM has recently announced a new four-year, EUR 18 million project with funding from the European Commission's Directorate-General for International Cooperation and Development (DG DEVCO) to support returnees and host communities across Afghanistan, presumably as part of the reintegration package announced in the Joint Way Forward. The project aims to foster sustainable reintegration by promoting economic development in communities of high return, building the capacity of government bodies working on migration and providing post-arrival assistance for returnees. Communities in Kabul, Herat, Nangarhar, Balkh, Kandahar, Baghlan, Uruzgan and Laghman will be targeted.²²¹

Support for communities is to be welcomed as is additional support for the government in Afghanistan in this area. However, not all communities are welcoming and whilst additional funds to support them may go towards redressing this, individuals should also be able to lead safe, dignified lives. Many returnees fall between the cracks and do not manage to receive the assistance they are eligible for already, for a wide range of reasons already, including corruption and the returnee themselves not applying or not wanting to admit to being a returnee. It is important for community and individual assistance to complement each other and support both the individual and the community and a clear monitoring framework will be needed to assess the success of any programmes.

Other programmes have targeted the Afghan diaspora for return, including temporary return, for the purpose of capacity-building, to fill skills gaps in the Afghan government and public services, invest in the private sector or assist with the post-conflict reconstruction of Afghanistan. IOM runs the Return of Qualified Afghans programme that seeks out and positions returnees in key positions in the public sector which seems to have had successful returns from Europe²²² as well as from Iran.²²³ There has also been a connecting diaspora programme between the Netherlands and Afghanistan focusing on expertise from the diaspora in health care and rural and urban development to support development in Afghanistan. This programme included training in the Netherlands for Afghan professionals and links developed between institutions in the two countries.²²⁴ The Afghan government also ran a programme called TASHWIQ (Encourage) that aimed to recruit young people from the diaspora back to Afghanistan to help rebuild the country.²²⁵ Unfortunately, it became mired in controversy after senior officials claimed that President Ghani was overruling human resources policies and was effectively recruiting by himself to key posts through the programme.²²⁶

4.3. The situation for returnees

According to the Return Directive states are bound to provide for an effective forced-return monitoring system²²⁷ but not to monitor what happens in the country of return. ECRE has previously recommended that sending states should set procedures in place to check that returnees have reached their destination safely, also to assess whether return policies are safe, effective and sustainable. Monitoring procedures should include detailed statistical information, systems for collecting country of origin information as well as clear procedures as to how the findings of monitoring will be acted upon. For those forcibly removed there should be access to NGOs, UNHCR and embassies. Whilst States should set up their own monitoring systems, it is important for NGOs and refugees to be involved in the monitoring of returns as the rights of returnees can be best protected where a number of appropriate actors are involved in monitoring. Funds need to be allocated accordingly.²²⁸

220. Afghanistan: Situation of young male 'Westernised' returnees to Kabul, Asylos, August 2017, page 24.

221. <https://afghanistan.iom.int/press-releases/iom-european-commission-support-returnee-reintegration-afghanistan>

222. See for example, IOM Afghanistan Spring Newsletter 2015, Page 4: https://www.iom.int/sites/default/files/mission_newsletter/file/IOM-Afghanistan-Newsletter-Spring2015.pdf

223. <https://afghanistan.iom.int/press-releases/qualified-afghan-returnees-recognized-kabul-event>

224. <http://www.connectingdiaspora.org/en/countries/afghanistan/>

225. See recruitment video in English: <https://www.youtube.com/watch?v=pHEgPrhGZlk>

226. See Tolo news: <http://www.tolonews.com/afghanistan/president%E2%80%99s-employment-program-criticized>

227. DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Article 8. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en:PDF>

228. The Way Forward: The return of asylum seekers whose applications have been rejected in Europe.

The situation of children should be monitored to ensure that they are safe and that the return has been in their best interests.

To date there has been little systematic monitoring of what happens to people upon return to Afghanistan and there is little data currently available. IOM monitors the situation of those who access their reintegration assistance and where the person stays in contact. It has had some examples of successful case studies.²²⁹ There are several pieces of academic research²³⁰ that have tried to monitor what happens post return. In general those interviewed have faced difficulties including insecurity, threats, lack of employment, feelings that they had disappointed their family. There seems to be a lack of belief in the Afghan government being able to provide them with an environment where they can build their future and a majority look to re-migrate. Research has shown how the shame and 'failure' of the migration journey can lead to the stigmatisation of returnees,²³¹ that returnees can be seen by the authorities or communities as a risk to security, particularly young men who cannot find work. Returnees themselves can also be a target of violence if obviously 'Westernized'.²³² Returnees from Europe have also complained of nepotism in the job market, difficulties getting jobs that fit their skills profile and being afraid of violence meaning they are too afraid to leave their homes to find work.²³³

A research project After Return monitored the situation of 25 care leavers who had been returned to Afghanistan from the UK upon reaching 18 over a period of 18 months. Without exception the young people monitored experienced a range of interconnected difficulties on return. For the majority, their networks disappeared or weakened. A fear of stigma or discrimination left many of the young people isolated. Whilst some benefited from institutional assistance particularly from IOM, the majority faced substantial barriers to accessing help and remained either without support or dependent on unsustainable and ad-hoc assistance from individuals in the UK.²³⁴ Save the Children has highlighted that many unaccompanied children who return to Afghanistan do not have any legal identity upon return which is a barrier to accessing education, health and protection mechanisms.²³⁵ Amnesty International researchers travelled to Kabul and interviewed several returnees including two men who felt at risk because of their sexuality or religion²³⁶ and as reported earlier has also detailed the case of a death of a man returned from Norway.²³⁷ Desk research and interviews with experts are included in a comprehensive report by Asylos that looks at societal attitudes towards young male 'Westernised' returnees, the consequences of a lack of support from networks, access to healthcare, housing, employment, good and basic services as well as other challenges returnees face.²³⁸

The Afghanistan Migrants Support Organisation (AMASO) run by Abdul Ghafoor in Kabul supports returnees from Europe and monitors their situation.²³⁹ Recent cases have included a family of five deported from the Netherlands with the mother facing mental health issues. A fundraising page was set up in the Netherlands to help the family find somewhere to live after their two weeks at the reception centre finished. A young man was deported from Austria and as Austria provided no financial assistance package through IOM on return, he had to be supported by AMASO. In a video interview recorded before ECRE's round table in June 2017 Abdul Ghafoor describes the main problems as a lack of security, employment and network and family. People can find it

229. https://afghanistan.iom.int/sites/default/files/Reports/iom_afghanistan_overview_of_assisted_voluntary_returns_in_2016_revised_mar_17.pdf

230. http://file.prio.no/publication_files/PRIO/Oeppen%20-%20Can%20Afghans%20Reintegrate%20after%20Assisted%20Return%20from%20Europe.%20PRIO%20Policy%20Brief%207-2015.pdf and What happens post-deportation? The experience of deported Afghans, Migration Studies, 1, Schuster, L. and Majidi, N. (2013), 221-240.

231. See Deportation, Stigma and Remigration by Liza Schuster and Nassim Majidi, 2015 <http://www.tandfonline.com/doi/full/10.1080/1369183X.2014.957174?scroll=top&needAccess=true>

232. Afghanistan: Situation of young male 'Westernised' returnees to Kabul, Asylos, August 2017, page 18.

233. Migration Policy Practice, Vol. VI, Number 3, June–September 2016, Return and Reintegration in Afghanistan: Policy implications, Nassim Majidi and Laurence Hart, Page 37. https://reliefweb.int/sites/reliefweb.int/files/resources/migration_policy_practice_journal_27.pdf

234. Refugee Support Network, After Return: documenting the experiences of young people forcibly returned to Afghanistan. <http://www.refugeesupportnetwork.org/resources/after-return>

235. Save the Children, Afghan Children Cannot Wait, October 2016, found here: <https://campaigns.savethechildren.net/sites/campaigns.savethechildren.net/files/Brussels%20conference%20on%20Afghanistan.%20Brief.%20Oct.2016.pdf>

236. <https://www.amnesty.org/en/latest/news/2017/06/they-filed-afghanistan-fearing-for-their-lives-but-europe-forced-them-back/>

237. Amnesty International, Forced Back to Danger, Asylum Seekers Returned from Europe to Afghanistan, October 2017, page 6. <https://www.amnesty.org/en/documents/asa11/6866/2017/en/>

238. Afghanistan: Situation of young male 'Westernised' returnees to Kabul, Asylos, August 2017 <https://asylos.eu/wp-content/uploads/2017/08/AFG2017-05-Afghanistan-Situation-of-young-male-Westernised-returnees-to-Kabul-1.pdf>

239. <https://www.facebook.com/Afghanistan-Migrants-Advice-Support-Org-195295217167437/>

hard to access support programmes to set up a business, particularly those who have not been to Afghanistan before or for many years. Many returnees leave again as soon as they can.²⁴⁰

The Afghan Analysts Network has provided a series of reports on Afghan refugees and returnees including monitoring return flights.²⁴¹ The press has also provided a certain level of scrutiny and several in-depth reports on the fate of returnees.²⁴²

4.4. Post return monitoring

Whilst there have been specific research projects as detailed above and there are attempts to harmonise reintegration support, for example, through the ERIN project, there is currently no common concept, tools, structures or indicators to measure the success of return or how reintegration programmes help. In terms of a more systematic approach in Afghanistan UNHCR and Samuel Hall Consultancy are working with the Afghan government as part of the reintegration working group to set up a Multi-dimensional Integration Index to provide baseline data for the first time on the integration of displaced and returnee groups to inform and measure the impact of programming.²⁴³ IOM has also conducted comparative research on the reintegration of those who return under Assisted Voluntary Return and Reintegration packages with a return and reintegration 'index' that included studying returns to Afghanistan.²⁴⁴ The European Commission and Member States are also discussing this as part of the European Migration Network Return Expert Group.²⁴⁵

Important indicators of successful (re)integration must include whether returnees are safe, that they have the assistance they need and are willing and able to stay in their country of origin. Indicators for reintegration in research for IOM include physical, socio-economic and political/security indicators seen through the perception of returnees, the objective conditions of returnees and aggregate conditions in countries of origin.²⁴⁶ ECRE and Save the Children also studied best practice in the return of children and recommended that a check –list of reintegration indicators could include: A reintegration plan; Experienced actors provide monitoring in the country of return to ensure that what has been agreed as part of a reintegration plan is delivered; A monitoring checklist identifying appropriate indicators including indicators for registration (or civil status recognition), accommodation, education, employment, health care, reintegration into family and the community and considering whether the child is safe, and healthy; Consideration is given to the particular vulnerabilities of girls and monitoring specifically considers the situation of girls and is alert to gender specific exploitation.²⁴⁷

4.5. Remigration?

In terms of remigration from Afghanistan it should be noted that migration is seen as a coping strategy for many and has been for generations. According to the report *Afghans on the Move: Seeking Protection and Refuge in Europe*²⁴⁸ the continued conflict and displacement of Afghans over three generations, has resulted in the adoption of a variety of coping strategies, including high levels of migration combined with a dispersion of family members. In this context migration is seen as generally a good thing.²⁴⁹

240. Interview with Abdul Ghafoor, AMASO, Kabul. June 2017. https://www.youtube.com/watch?v=Vk9SZzdI_84&feature=youtu.be

241. <https://www.afghanistan-analysts.org/voluntary-and-forced-returns-to-afghanistan-in-201617-trends-statistics-and-experiences/>

242. See for example: returned from Germany, one man's story http://www.aljazeera.com/indepth/features/2017/05/rejected-germany-afghan-story-170524152713481.html?utm_source=ECRE+Press+Review&utm_campaign=7da0732eb9-EMAIL_CAMPAIGN_2017_05_30&utm_medium=email&utm_term=0_1a5cfac4e4-7da0732eb9-422294521

243. https://www.emn.sk/phocadownload/emn_conference_sustainable_returns_2016/sk_emn_conference_2016_Nassim_Majidi.pdf

244. Comparative Research on the Assisted Voluntary Return and Reintegration of Migrants, Khalid Koser and Katie Kuschminder, IOM, 2015: <https://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/AVRR-Research-final.pdf>

245. Information from a meeting with civil society and the EMN Return group in September 2017.

246. Comparative Research on the Assisted Voluntary Return and Reintegration of Migrants, Khalid Koser and Katie Kuschminder, IOM, 2015, Page 84: <https://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/AVRR-Research-final.pdf>

247. Comparative Study on Practices in the Field of Return of Minors, ECRE and Save the Children, HOME/2009/RFX/PR/1002, 2011. Page 189.

248. *Afghans on the Move: Seeking Protection and Refuge in Europe* 2016 Pages 39-40.

249. Migration Policy Practice, Vol. VI, Number 3, June–September 2016, Return and Reintegration in Afghanistan: Policy implications, Nassim Majidi and Laurence Hart, Page 36.

In addition, for people to stay there has to be something to stay for. Previously research has shown that a majority of those who are questioned post-return want to leave Afghanistan again.²⁵⁰ 63% of Afghan returnees in one study felt that assistance that they receive post return did not offer the tools they needed for permanent return and 80% were willing to re-migrate.²⁵¹ In the IOM study on reintegration indicators, although the sample of those interviewed was fairly small, 73.7% of returnees interviewed in Afghanistan were poorly reintegrated.²⁵² The majority of people in the survey had returned to Afghanistan because of conditions in the destination country.²⁵³ Security was a major factor with only 21.1% feeling safe in their communities. 42% already had definite plans to leave Afghanistan and 77% wished to leave.²⁵⁴ According to the Afghanistan Migration and Support Organisation in Kabul this trend is continuing, including for those young people returned back from Sweden and Norway since 2016. The young people live in fear in Kabul, before taking another journey back towards Europe.²⁵⁵ The Greek Forum of Refugees has also confirmed that it is still meeting Afghans in Greece who are there for the second or third time.²⁵⁶

Conclusions

Approaches to return and reintegration are being shaped by the migration debate in Europe and so focus on European concerns. There is a danger the debate will shift away from sustainability of returns for individuals, development and support with rebuilding countries of origin to a more simplistic view of numbers going back to Afghanistan. This leaves no room for discussion of what durable solutions may mean for specific individuals within the specific context of Afghanistan.

The lack of thinking on tailored approaches to individual support is regrettable and potentially unworkable as when returnees arrive back in Afghanistan apart from any individual risk they may face, they face growing conflict, little or no services, often only short term assistance and destitution. Reintegration support packages for returnees differ between European Member States and between people returning from Pakistan and Iran and Europe. Not all returnees from Europe are eligible for reintegration assistance in Afghanistan and not all those who are eligible claim it. Harmonisation of reintegration packages through the European Reintegration Network and other initiatives should make implementation easier for service providers and the system more transparent for returnees. However, the focus should be making support easier to access for individuals and returns more sustainable, rather than restricting unproved 'pull factors' to Europe. Additional support for communities and the government is welcome as part of the 'whole of the community approach' but this should complement and not replace assistance to individuals.

Programmes such as the Return of Qualified Afghans and Connecting Diaspora use approaches that could be built upon as pilot projects for more sustainable returns when it is judged safe for individuals to return, such as: (1) tailored assistance and preparation in the host country in Europe, (2) cooperation with countries of origin to identify employment needs and gaps, (3) the possibility of temporary returns to trial how sustainable return is for individuals and families, and (4) links between institutions in Afghanistan and Europe, and training for Afghan professionals in Europe.

250. http://file.prio.no/publication_files/PRIO/Oeppen%20-%20Can%20Afghans%20Reintegrate%20after%20Assisted%20Return%20from%20Europe.%20PRIO%20Policy%20Brief%207-2015.pdf and What happens post-deportation? The experience of deported Afghans, Migration Studies, 1, Schuster, L. and Majidi, N. (2013), 221-240.

251. Migration Policy Practice, Vol. VI, Number 3, June–September 2016, Return and Reintegration in Afghanistan: Policy implications, Nassim Majidi and Laurence Hart

252. 27 returnees were interviewed. See: Comparative Research on the Assisted Voluntary Return and Reintegration of Migrants, Khalid Koser and Katie Kuschminder, IOM, 2015: <https://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/AVRR-Research-final.pdf> Page 52

253. Ibid, Page 183.

254. Ibid, Page 185.

255. See blog, Is Deportation of Young Afghan Asylum Seekers a Good Idea? September 28 2017: <https://kabulblogs.wordpress.com/2017/09/28/is-deportation-of-young-afghans-a-good-idea/>

256. Information provided by email 26 September 2017.

5. Recommendations

Based on the analysis above, ECRE provides the following recommendations:

1. EASO efforts to promote convergence of recognition rates for Afghan nationals should take into account the deteriorating situation in Afghanistan and analyse practice in countries with low recognition rates, stressing the need to comply with international refugee law.
2. The internal protection alternative (IPA) should not be used in the context of Afghanistan. It adds an additional criterion to eligibility for refugee status beyond those foreseen in Article 1A of the Refugee Convention. If used, a reasonableness test should always be undertaken. It is clear that the IPA is not reasonable when UNHCR criteria are taken into account, including vulnerabilities of returnees, security, risk of injury, access to travel to safe areas, other forcibly displaced people in the area, access to shelter and reports of discrimination against returnees.
3. Monitoring programmes should be developed to assess the security of returnees, the sustainability of returns and the impact of reintegration policies. Returnees should have access to embassies, UNHCR, IOM and NGOs in Afghanistan in case of problems.
4. The impact of the Joint Way Forward should be monitored openly and transparently, including implementation by Member States, Afghanistan, communities and individuals, and its impact on fundamental rights.
5. The work of the Afghan diaspora in supporting newcomers in Europe and their knowledge of Afghanistan and/or transit countries should be better recognised by the EU and NGOs in policy making and programming. Specific funding should be provided to enable their continued input.
6. 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, unless the prerequisites for return are shown to be in place.
7. Voluntary return should only take place on the basis of full information, go-and-see visits and informed consent.
8. Vulnerable groups should not be returned to Afghanistan under any circumstances. This includes those who have not lived in Afghanistan for long periods and have no family or networks there. European countries should not be “returning” to Afghanistan people who have never been there.



ecre

European Council
on Refugees and Exiles

Rue Royale 146
Brussels 1000
Belgium
T. +32 2 234 38 00
F. +32 2 514 59 22
ecre@ecre.org
www.ecre.org