

REFUGEE COUNCIL OF AUSTRALIA

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RCOA POSITION ON THE RETURN OF AFGHANS

The Council acknowledges that there have been significant changes in Afghanistan since September 2001 and that under the new regime there is the prospect of winding back some of the worst excesses of the Taliban. This being said, the Council is deeply concerned by statements from various political leaders that Afghanistan is “safe” now that the Taliban have been routed.

It is the Council’s considered opinion that such remarks are grossly under-estimating the complexity of the situation. Further, they fail to recognise that for the last 20 years Afghanistan has been embroiled in a succession of bitter struggles between the various ethnic and religious groups within the country. What we are seeing is just the next chapter, not the end game.

With over two decades of experience dealing with conflict situations around the world, the Council has learnt that when there has been an upheaval of the scale we have seen in Afghanistan, a significant number of people will be in need of ongoing protection. This was the case in Indochina where resettlement programs went on for almost 20 years after the war ended. Six years after the signing of the Dayton Peace Accord, the largest single group Australia is accepting for resettlement come from Bosnia. To expect that the situation with respect to Afghanistan will be any different is both simplistic and dangerous.

It is true that the Refugee Convention includes a so-called ‘cessation clause’ which recognises that where circumstances in a country change, people from that country might no longer need protection. But the Convention is clear that such changes must be of a substantial and durable nature.

Professor James Hathaway, author of the definitive text on refugee law, sets out the following as guidelines on indicators of “substantial change”:

- the change must be of substantial political influence in that the power structure under which the persecution took place no longer exists;
- there must be reason to believe that the substantial political change is truly effective, in other words, there has to be a fundamental change in the nature of the government (not just a change in government) and the new government must have put in place effective mechanisms to protect human rights;
- the change of circumstances must be shown to be durable. Cessation is not a decision to be taken lightly on the basis of transitory shifts in the political landscape but must be reserved for situations where there is reason to believe that the positive conversion of the power structure is likely to last.

It is far too soon to make a blanket assessment about Afghanistan. Although the initial reports have tended to be positive, ethnic divisions within Afghanistan's tribal culture are still deep, and freedom of expression and belief is not widely respected. The reinstitutionalisation of politics in a country that has suffered as much as Afghanistan is a process which will take years, not weeks or months.

It is acknowledged that there are some Afghans who are very keen to return to their homeland. In large part, these are people who have links to the incoming regime who are keen to establish a place for themselves in the new order. Their return should be facilitated.

Such people are, however, a minority of the Afghans in Australia. The majority of the Afghan asylum claimants have been from the ethnic and religious minority group, the Hazaras. Without doubt the Hazaras suffered terribly under the Taliban. It must not be forgotten, however, that their persecution began long before the reign of the Taliban and there are as yet no guarantees that it will end with their demise.

The issue of return to Afghanistan has to be seen in the context of three distinct groups of Afghans:

- those who have yet to have their claims considered: their claims will be assessed according to the changed conditions in Afghanistan and it is vital that such consideration take into account the complexity of the situation;
- those who have been determined not to be refugees: the fact that a person has been found not to be a refugee does not mean that he or she does not have reason to fear returning to their country of origin. Nor does it mean that return can be arranged. The general security and economic situation of Afghanistan must be considered;
- those on temporary protection visas who are about to have their claims reassessed: DIMIA is about to start reprocessing Afghans granted refugee status on the basis of their fear of the Taliban. Their circumstances might have changed but their fear of returning might still be legitimate.

RCOA notes that in recent weeks DIMIA has been granting refugee status to Afghan asylum seekers. This is a positive development and one that indicates that decision makers concur with RCOA's views that for some groups, Afghanistan is still not safe.

The Refugee Council calls on the Australian Government to;

- continue processing refugee status claims lodged by Afghans;
- grant protection to those whose protection can not be guaranteed if returned;
- recognise the importance of increasing the size of the resettlement program from the region in order to combat people smuggling.