

**UNHCR**United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiésUNHCR Regional Representation for Austria, Belgium, France,
Germany, Ireland, Liechtenstein, Luxemburg, Monaco, the Netherlands,
Switzerland and the United KingdomRue Van Eyckstraat 11b
B - 1050 Bruxelles/BrusselTel.: 02/627.17.35
Fax: 02/627.17.30
Email: belbr@unhcr.org

9 July 2009

Re: **KhAD/WAD Afghanistan**

Dear Mr. Van der Zeeuw,

I refer to UNHCR's letter of 14 November 2007 to His Excellency the Minister of Justice, to UNHCR's Note on the Structure and Operation of the KhAD/WAD in Afghanistan 1978-1992 of May 2008, as well as to the mission of the Ministry of Foreign Affairs to Afghanistan in the autumn of 2008. Since then we have been in regular contact on the matter, and I am now in a position to formally state UNHCR's position with regard to the still outstanding issues.

During the mission of the Ministry to Afghanistan, two additional questions for UNHCR were raised. One question concerned the number of times UNHCR had, in its own refugee status determination activities in the region in recent years, applied the exclusion provisions of its Mandate in cases concerning persons who had been involved with the KhAD/WAD. The other question concerned the possibilities for UNHCR (Kabul) to obtain additional information on the structure and practices of the KhAD/WAD.

By email of 26 May 2009, UNHCR Brussels informed you that information had been found in UNHCR Headquarters to the effect that in recent years during refugee status determination activities in the region, the exclusion clauses of UNHCR's Mandate had been considered in at least nine cases involving membership in the KhAD/WAD. In five of these cases the person concerned was excluded from refugee status. It has, however, not proved possible to obtain complete statistics on the practice of various UNHCR field offices in this respect. It should further be added here that in UNHCR refugee status determination practice - contrary to the current Dutch practice - an inclusion assessment is carried out before an exclusion assessment is carried out, if any. It is therefore very well possible that cases where exclusion issues might have arisen, were rejected for non-fulfilment of the inclusion requirements of the refugee definition in UNHCR's mandate. Exclusion issues were in such cases never subject of consideration.

Mr. Jaap van der Zeeuw
Head, Asylum and Migration Affairs Division
Ministry of Foreign Affairs
P.O. Box 20061
2500 EB 's-Gravenhage
Netherlands

/.

As concerns the other question, both UNHCR Brussels and UNHCR Kabul have tried to identify and approach additional sources. The results of UNHCR Brussels' efforts, i.e. the names of four Russian experts on Afghanistan and the KhAD/WAD, were communicated to the Ministry in an email of 11 November 2008. Following consultations with UNHCR Kabul and Headquarters, I regret to inform you that despite UNHCR Kabul having approached additional sources who would in principle be in a position to comment on the structure and functioning of the KhAD/WAD, no further information adding to our existing knowledge was secured.

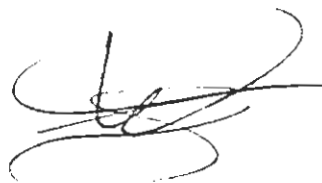
The May 2008 Note will hence remain UNHCR's position on the structure and functioning of the KhAD/WAD, including on the issue of rotation. We would like to stress that this note is based on in-house expertise built up over the many years of UNHCR presence in Afghanistan, as well as on interviews with persons directly involved with the KhAD/WAD and with knowledgeable academics. In the research leading to the publication of the Note, no positions supporting the Ministry's view on rotation within the KhAD/WAD as reflected in its 2000 report had been found.

To summarize, UNHCR's position on the application of the exclusion clauses vis-à-vis former members of the KhAD/WAD in Dutch asylum practice continues to be as follows:

- a) The conclusion contained in the Ministry's 2000 report, that all officers and non-commissioned officers of the KhAD/WAD have been guilty of human rights violations because they have as a matter of policy rotated through a variety of positions within the KhAD/WAD, is unwarranted, since unconfirmed by any public source or by confidential sources consulted by UNHCR;
- b) Hence the reversal of the burden of proof in Dutch exclusion practice for all former KhAD/WAD officers and non-commissioned officers instead of for senior members in leading positions only, is unjustified and too far-reaching a measure, and ought to be abolished;
- c) The finding that there are serious reasons for considering that an asylum seeker has been guilty of any of the crimes enumerated in Art. 1F of the 1951 Refugee Convention ought normally to be based on individual assessments of responsibility as per the UNHCR Guidelines on Exclusion¹; and
- d) The burden of proof with regard to exclusion rests with the State.

I would like to express my appreciation for the cooperation we have received from the Ministry and you personally in this matter so far, and remain,

Yours sincerely,



Gert Westerveen
Deputy Regional Representative

¹ *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Art. 1F of the 1951 Convention relating to the Status of Refugees, 4 September 2003.*