

The plight of vulnerable refugees

What have we learned from the Syrian settlement scheme in the United Kingdom?

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Abstract

In 2021 the UK set up the Afghan Citizens Resettlement Scheme (ACRS). In view of experiences with the 2014 Syrian Vulnerable Persons Resettlement Scheme (VPRS), it is feared that religious minorities and the most vulnerable groups will be virtually excluded. This article examines the implementation of the VPRS for the purpose of drawing conclusions about the likely fate of religious minorities, such as the Christian community in Afghanistan, and the likely problems associated with the ACRS. Again, there is reason to expect a wilful blindness to the fate of the most vulnerable people including Christian communities.

Keywords Afghan refugees, Syrian refugees, religious minorities.

1. Introduction

The 2011 Syrian civil war had a profound impact on Western societies. Many governments established specific measures for the reception of refugees. In 2014, the government of the United Kingdom established the Syrian Vulnerable Persons Resettlement Scheme (VPRS), according to which 20,000 Syrian refugees selected by the UN High Commissioner for Refugees (UNHCR) would be resettled in the United Kingdom by 2020. Only one percent of those accepted have come from religious minorities, including Christians. In 2020, a claim for judicial review was made, on the basis that the VPRS's operation discriminated against religious minorities. The court held that the statistical evidence was inconclusive on the question.

The fall of the Afghan government in 2021 led to the Taliban's seizure of Afghanistan, and in response, the UK set up the Afghan Citizens Resettlement Scheme (ACRS), which is premised on the VPRS and thus is likely to have the same shortcomings, resulting in the virtual exclusion of religious minorities and of the most vulnerable.

This article examines the implementation of the VPRS for the purpose of drawing conclusions about the likely fate of religious minorities, such as the Christian community in Afghanistan, and the likely problems associated with the ACRS. The paper

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contains four parts: an overview of the Syrian war; a comprehensive overview of the VPRS; a discussion of *R (HNA) v Secretary of State for the Home Department*, because of this case's significance for future cases involving refugees; and some observations as to the likely implications for the Afghan settlement programme.

2. The Syrian civil war: an overview

The Syrian civil war commenced in or about mid-March 2011 with major disturbances and demonstrations in Damascus, Hama and Aleppo. These uprisings were part of the multinational Arab Spring movement² and were initially peaceful. However, they were violently suppressed by the government under President Bashar al-Assad.

The Syrian civil war was a multi-sided armed conflict involving various Kurdish, secular and Islamist groups. The government has restored order over much of the country, but the Kurds (in the northeast), the area along the border with Turkey and some armed groups in Idlib province continue to resist.

The 2019 Report of the US Commission on International Religious Freedom³ estimates the Christian population as 10%, Jews and Yazidis at less than 1%, the Alawites at 12%, the Druze at 3% and the Ismaili at 2%. The other 72% are predominantly Sunni Muslims. The exact definition of the Muslim community is problematic as many Islamic groups do not see other expressions of Islam as orthodox but as heretical.

President al-Assad's government is dominated by the Alawite sect of Islam, which sought to limit Sunni Muslim social hegemony through a degree of religious pluralism. The collapse of government control led to the seizure of territory by multiple Islamist forces. At one point, the Islamic State in Iraq and Syria (ISIS, also known as Daesh) was estimated to have control over 34,000 square miles of territory as it sought to re-establish a caliphate.

ISIS was just one of many Islamist factions involved in the war.⁴ These Islamist factions unleashed horrific savagery against religious minorities; slaughter of men, women and children, parents forced to eat children and one case of 250 children killed in a dough kneader have been reported.⁵ ISIS gave Christians and other re-

² The Arab Spring was a series of protests and uprisings protesting against authoritarian governments and socio-economic conditions that took place across the Middle East and North African commencing in 2010–2011. The Governments in Tunisia and Egypt were overthrown (Britannica 2011, 2012).

³ The last official census identifying religious affiliation in Syria was in 1960. Syria's pre-war population is estimated to have been 10% Christian. (USCIRF 2019:104–109).

⁴ One of these groups is the al-Qaeda affiliate Jabhat al Nusra Front, which has also specifically targeted Christians. It existed in Syria from early 2012, prior to ISIS.

⁵ See the debate of 20 April 2016 in the House of Commons on genocide of religious minorities. The House resolved that "Christians, Yazidis and other ethnic and religious minorities in Iraq and Syria are suffering genocide."

ligious minorities under their control three choices: dhimmitude (a permission to live), conversion to Islam or execution (MEMRI 2015).

During 2014, the media reported on the genocidal attacks taking place, particularly on the Yazidi and Christian communities throughout Syria and Iraq. In Iraq, scenes of Yazidi families clinging to the sides of mountains were broadcast by some media outlets. This reporting demanded a humanitarian response from the UK government, leading to the belief that the persecuted religious minorities would figure predominantly in any relief measures.

The Christians and Yazidis suffered the worst sectarian violence as these communities lacked a regional or international protector and, due to their geographical dispersion throughout Syria and Iraq, the capacity to form a militia. The Shiite Muslims had regional protectors (Iran and certain Gulf States) whilst the Alawites, Kurds and Druze had militias or control of the State apparatus.⁶ The Islamists were rumoured to be funded by Turkey, Saudi Arabia and others.

In Syria, the Christians both supported and were protected by the Assad government, as Assad had granted minorities a degree of protection. In Iraq, Christians and the Yazidis as minorities received limited but necessary protection from the state prior to the rise of ISIS. The emergence of ISIS in 2014 resulted in everyone other than Sunni Muslims (including Shi'a Muslims) being badly treated in the territory that they controlled.

Thus, the Christian community continued to experience targeted violence from both the Islamists and the general population in both Syria and Iraq (Savage, 2014). Women were singled out for sexual and gender-based violence (Nicolas 2016:10); Christians faced expulsion unless they converted to Islam or paid the *jizya* tax (ACNUK 2017a and 2017b; Nicolas 2016; Katulis et al. 2015; Hanish 2014). Other forms of persecution included attacks on churches and religious property, erasing of identity (Puttick and Verbakel, 2016), larceny, the illegal seizure of property (Kraft and Manar 2016; El Ashmawy et al. 2015), exclusion from educational programs (ACNUK 2017a and 2017b) and the targeting of religious leaders.⁷

In the post-war reconstruction in Syria and Iraq, the specific needs and injustices of the Christian community do not appear to be a priority. There have been some attempts to return properties to Christians (Agenzia Fides 2022), but not in any systematic way. Christians are reluctant to return to Syria after their experience of war and abandonment by their neighbours.

⁶ There are small exceptions, such as the Syriac Military Council (Assyrian) which is allied with the Kurds. The organization was established on 8 January 2013 to protect Assyrians.

⁷ In 2015 two Orthodox Bishops were abducted and almost certainly murdered. (Agenzia Fides 2020). In Khabour valley, 200 Christian were kidnapped by ISIS. (Hinnant 2016) 80,000 Yazidi have fled the Raqqa/Sinjar region (Cetorelli and Saretta, 2019).

3. The Syrian Vulnerable Person Resettlement Scheme

3.1 Background

The scale of the violence in Syria during the Arab Spring movement shocked the international community. The UK and US were deeply concerned by the humanitarian crisis and introduced a scheme to resettle some of the most vulnerable victims of this conflict. The US offered to settle 40,000 Syrian refugees and the UK 20,000 over five years. The US and UK, in that order, were the leading bilateral donors to the Syrian relief effort.⁸ In 2016, the UK Department for International Development (DfID) estimated that 13.5 million Syrians needed humanitarian assistance; of whom some 4.9 million Syrian were refugees outside their country of nationality.⁹

The establishment of the VPRS was formally announced by Theresa May, then British Home Secretary, on 29 January 2014; on 7 September 2015, the UK voluntarily agreed to accept 20,000 refugees of Syrian nationality by 2020, and in July 2017, people of all other nationalities who had fled from Syria as refugees were included.¹⁰ Initially, this extension of the scheme appeared to be for political reasons so that Palestinian refugees would not be denied access to the VPRS, but shortly thereafter the government determined that since an entire UN agency was dedicated to the Palestinians' welfare, they did not need access to the VPRS as well.¹¹

The UNHCR identifies refugees from Syria deemed vulnerable according to criteria set by the UK government. The Home Office decides on whether entry clearance will be given to any individual selected by the UNHCR and screens for security purposes. After selection for settlement, the Home Office places the individuals and families with local authorities; provision of housing and monies under a policy of integration is structured for the new arrivals, with the Home Office paying the cost for up to five years.¹²

The VPRS is a domestic policy programme established by the UK government. In case of any concern with the operation of the VPRS, such as an unexplained dearth of religious minorities being accepted, the scheme could have been simply amended by administrative action.

⁸ The United Kingdom has committed £2.3 billion. However, some estimates place the German contribution at equivalent to £2.4 billion. See "Donors pledge \$2.4 million to Syria at UN donor conference." Available at: <https://bit.ly/3CL8Onb>.

⁹ UN Office for the Coordination of Humanitarian Affairs, December 2016.

¹⁰ Only those of Syrian nationality could be considered under the Scheme between 2014-17. But after the amendment of the Scheme, for example, an Iraqi who had fled to Syria to avoid the violence in Iraq and who fled again to either Jordan, Lebanon or Turkey could be considered under the Scheme if they had passed through Syria.

¹¹ The exclusion of the Palestinians was challenged in the domestic courts, but the Governments decision was upheld by the Court of Appeal (Court of Appeal 2021).

¹² This tapers down from £8,500 in the first year of resettlement to £1,000 in the fifth year of resettlement. (UK Government 2018:19).

The scheme used the UNHCR as its partner in identifying suitable persons for resettlement in the UK. Individual applications could not be considered, and those selected for inclusion on the VPRS came solely via the UNHCR. The UNHCR has more than 16,800 personnel and works in 134 countries, with a budget of US \$6.54 billion in 2016.

As of 2022, the UNHCR supports some 5.6 million Syrian refugees outside the country,¹³ working with host governments and resettlement nations to secure asylum for as many Syrian refugees as possible.

The ability to resettle refugees overseas is problematic due to the advent of anti-migration sentiment in Europe; the 20,000 individuals to be accepted under the VPRS are thus close to insignificant considering the total number of Syrian refugees, but that is all the more reason why the scheme should operate fairly.

A similar story of anti-immigration sentiment is reflected in the United States in relation to their resettlement programmes. President Trump severely restricted resettlement access to the United States. President Biden has increased the number of refugees to be resettled as a whole, but such numbers are very small compared to the need.

3.2 The exclusion of any consideration of religion in the VPRS

A deliberate and specific decision was made, in the formulation of the VPRS, to exclude any consideration of religion as a distinct ground of vulnerability for granting access to the scheme. On 17 November 2015, Home Office Minister James Brokenshire stated to the House of Commons that the listed grounds for consideration for resettlement included, *inter alia*, sexual orientation and gender identity, but not religious affiliation.

This position was repeated to the House of Lords. On 3 August 2016, Baroness Williams of Trafford (Minister of State at the Home Office and Minister of Equalities) underscored the exclusion of religious minorities, stating, “It is important that we base our selection criteria on those most in need, rather than on the basis of membership of a particular religious group.”¹⁴

This exclusion of a religious criterion in a region of the world where religious identity is central, and where extreme acts of violence are premised on a group’s religious affiliation, unambiguously highlights the secularization that has taken place in Western society, as well as exposing the prevalent religious illiteracy towards those regions of the world where religion remains a predominant force.

The need to address this religious illiteracy has been advocated, but it is surmised that Western nations do not want to be seen in any way as favouring Christian

¹³ See UNHCR Data Portal. Available at: <https://data.unhcr.org/en/situations/syria>.

¹⁴ Written Question HL1383.

minorities (who are becoming the most persecuted faith group in the world) (BBC 2019; Open Doors n.d.).

3.3 Religious minorities and the VPRS

From 2016, there was increasing concern that the number of religious minorities selected under the VPRS had been disproportionately low. These concerns were expressed both in Parliamentary and in media comments.

Rumours began circulating that the Home Office appeared to be discriminating against religious minorities under the mantra of “need not creed,” and the Home Office appeared impervious to appeals to address this issue (Ahmad 2015). The former Archbishop of Canterbury, Lord Carey, raised the issue in Parliament and wrote widely in the national press on this subject, (Carey 2017; 2021) in relation to both Syria and Afghanistan.

Requests were made for the religious affiliations of those admitted under the VPRS. The Home Office delayed responding, and a Freedom of Information Request was made. On 19 September 2017, the Information Commissioner issued a formal notice for the Home Office to release the requested information by 23 October. The Home Office released the information on the next day, and it has continued to subsequently release the statistics (Barnabas Fund 2017).

The resistance of the Home Office to disclose the statistics until October 2017 may suggest that they were aware of this discrepancy and did not want the wider public to know. However, the Home Office said the delay was due to difficulties in collating the data.

The significance of these released statistics is not simply that Christians, Shi'a and Yazidis are vastly under-represented. Rather, where a group is specifically targeted as the religious minorities in Syria have been, one would expect them to be disproportionately *over-represented* in the refugee statistics. The statistics revealed these shocking patterns:

- In 2015, of 2,637 individuals recommended to the UK by the UNHCR for resettlement only 43 were Christians, 13 were Yazidis and there was a single Shi'a Muslim.
- In 2016, of 7,499 individuals recommended for resettlement, only 27 were Christians, along with 13 Shi'a Muslims and 5 Yazidis.
- In 2017, of 4,850 accepted for settlement by the UK, 11 identified as Christian and 5 as Yazidi.
- In the first quarter of 2018, of the 1,112 accepted for settlement in the UK, there were no Christians.

Some 99% of those accepted on to the VPRS were Sunni Muslim. As noted, they do represent some 72% of the Syrian population, so you would expect them to be a

high percentage. But 99%? In contrast, all religious minorities only accounted for 1% of those selected for the relocation scheme.

Figures in the US scheme appear similar. By the end of the fiscal year that closed on 30 September 2016, of 12,587 individuals admitted to the United States, only 68 were Christian and 24 members of the Yazidi sect (Shea 2016).

In a case seeking the release of the names of certain terrorist organisations, the judge summed up the disparity of the situation:

I write separately for a second critical reason, which is my concern about the apparent lack of Syrian Christians. . . . And yet, of the nearly 11,000 refugees admitted by mid-September [2016], only 56 are Christian. To date, there has not been a good explanation for this perplexing discrepancy. (US Court of Appeals 2016)

One significant factor may be the reluctance among religious minorities to enter UN Refugee Camps due to strict Islamist control of the camps. Refugee camps have been the recipients of considerable aid in the form of accommodation, food and educational provision. The Islamist control of the camps is well known (though formally denied); but simple measures such as the creation of camps specifically designated for individuals from religious minorities have been consistently resisted by the UNHCR.

It is suspected that the UNHCR overtly selected refugees for the VPRS from the camps for administrative convenience, resulting in the lack of religious minorities. Only 5% of all refugees are actually in the refugee camps, and it is harder to reach those refugees outside the camps with such aid. Therefore, aid from the UK and elsewhere is failing to reach vulnerable religious minority communities.

This dearth of religious minorities in the UK and US resettlement schemes has been questioned by both British Parliamentarians and US Congressmen, but to no avail. In fact, all the political pressure is on securing rights of the Muslim majority. The UK has even taken active measures to return orphaned children whose parents fought for ISIS. (UK Parliament 2019)

The UNHCR appears unable to discharge its functions impartially; the numbers speak for themselves. There is considerable anecdotal evidence regarding this discrimination from charities in the region, but they do not wish to endanger their presence in the country where they are seeking to give aid by voicing their concerns.

Before a subcommittee of the US House Foreign Affairs Committee in December 2015, the following evidence was given (Anderson 2015):

- Religious minorities are fearful of entering the UN refugee camps due to religiously motivated violence.
- Separate camps for religious minorities need to be created.

- Safe routes for the consideration for resettlement of religious minorities should be created.
- The UNHCR is “functionally discriminatory” and other partner agencies should be used.

Evidence from a visit by Lord David Alton and MP Fiona Bruce to Syrian refugee camps, states the following (Alton and Bruce 2015):

- Christians do not enter the UNHCR Refugee Camps due to religious hostility.
- Christian refugees receive less aid than Muslim refugees.
- Christians do not receive full consideration for the VPRS.
- The UNHCR focuses its efforts within the refugee camps.

3.4 Bishop Truro’s Independent Review and UNHCR failings

In 2018, Jeremy Hunt, then Secretary of State for Foreign and Commonwealth Affairs, under the auspices of the Bishop of Truro, commissioned an independent review on worldwide Christian persecution.

The Bishop reported on 8 July 2019 (Mounstephen 2019), and on 19 July, Foreign Office Minister Alan Duncan accepted every recommendation in full. Further, he stated:

Christians suffer more persecution than any other religious group in the world, yet we hear far less about this than one would expect . . . this is not just a Foreign Office thing. Indeed, it is not just an envoy thing; it is an everything thing, which means that all Departments, all the Government, and all Government policies must bear this in mind. (Duncan 2019)

This statement appears powerful; and not only does it specifically identify Christian persecution, but it undertakes to extend this awareness to all governmental Departments. At the time of this report, about 5,000 places remained to be allocated under the VPRS, which could have been redirected towards religious minorities.

The Bishop of Truro’s independent review recognized the failings of the UNHCR and directly addressed them. It is difficult to understand why the UK government has again entrusted selection for the ACRS to the UNHCR, since the Bishop’s report noted the discriminatory effect of the UNHCR process and added, “Other countries, including Australia and Belgium, have managed to achieve higher percentages of Christian refugees by not solely relying on UNHCR recommendations. Instead, they rely on local charitable institutions and churches.” (Mounstephen 2019:6)

The accepted recommendations include the following (summarized briefly) (Mounstephen 2019):

- Recommendation 3: Name the phenomenon of Christian persecution.

- Recommendation 4: Encourage the development of appropriate mechanisms, with international partners, using external sources.
- Recommendation 21: Policies should be consistent across all government departments. Specifically, when UK actions are delegated to international institutions or agencies (such as the UNHCR), minority visibility amongst beneficiaries should be a priority. Humanitarian law mandating no “adverse distinction” must not be used as a cover for making no distinction at all and letting the majority community benefit disproportionately. The Foreign and Commonwealth Office, in its international engagement, must resist any temptation to outsource its obligation in this regard.

4. R (HNA) v Secretary of State for the Home Department

4.1 The facts, issues and decision

On 17 March 2020, a claim for judicial review was made on behalf of HNA (the name is a pseudonym as the person is an apostate from Islam and lives in fear of reprisal), challenging the Syrian VRPS on the grounds that its operation discriminated against religious minorities. The claim argued that many non-Muslim refugees were fearful about the UNHCR because it was staffed by local Muslims who allegedly manifested similar societal animus to religious minorities as did the general population.

The statistics published on those granted entry into the United Kingdom and United States under the resettlement schemes showed that approximately 99% and 99.7%, respectively, were Sunni Muslims, who were the religious group least at risk of attack on grounds of religion, and most able to reintegrate into an Arab Muslim society on their own.

At the time, HNA was a 31-year-old Syrian national and a refugee in Jordan, together with his wife and three children. HNA sought, by challenging the VRPS, to ensure that Christians and other religious minorities (those most at risk) were at least considered for the scheme and proportionally represented amongst those accepted for settlement. HNA had converted to Christianity and had been barred by UNHCR officials from registering for the VRPS.

As a young man living in Syria, HNA stated, he had seen a vision of Jesus telling him to go to church, but he was uncertain what this meant as Islam was his faith. Local Christians were too fearful to explain the Christian faith to a Muslim. HNA was a general labourer who married and began a family. When the civil war broke out, he was horrified at the violence being committed in the name of Islam, its sectarian nature of the violence, and the sexual abuse of women (including an assault against his wife, whom he was able to protect). Two of his brothers went missing.

In 2014, on crossing the Jordanian border from Syria, HNA's family registered as refugees with the UNHCR. The husband and wife both came from orthodox Muslim

families in Syria. Initially, they were placed in the UN's Zaatari refugee camp; near Mafraq (north of Amman). Although a UN camp provides food, shelter, education and medical care, this camp was controlled by Islamists and had considerable violence. So HNA left with his family and began to seek work unofficially in Jordan.

In 2016, HNA and his whole family converted to Christianity. HNA and his family began to watch satellite television programmes on Christianity and HNA made contact with overseas evangelists. In HNA's own words:

From 2014 in Jordan, on the Satellite Channel I commence to watch Christian television channels. Christianity taught about love; and that the only way to change people was to change their heart. The words in Jesus in Matthew 24.11 and Matthew 7:15 about false prophets particularly struck me.

As apostates from the Islamic faith, they were in considerable danger of violence or even death. They also feared that their children could be removed by family members to be raised as Muslims. In Jordan, it is a criminal offense to leave Islam and convert to another faith.¹⁵

Their life as apostates from Islam (rather than as part of an indigenous Christian minority) was very difficult; the family attended churches some distance away, to avoid any risk of identification. However, their lifestyle changed. Previously HNA's wife, as a strict Muslim, would wear a hijab and/or chador, but she began wearing her hair long and often dressed in jeans. This activity came to the attention of family members and others, and HNA knew that his family was at risk.

In October 2018, HNA contacted the UNHCR in Amman and requested an appointment. He informed them that his family had converted to Christianity and related his concern about being discovered. He went to the UNHCR office at its request, but upon his arrival, a number of UNHCR junior staff blocked the entrance in a threatening manner and publicly mocked him. One UNHCR staffer stated, "You are not going into the Office. Go to your churches, let them take care of you." Another asked, "Why are you converting? Prove to me you are a Christian."

These comments were made in public and overheard by many individuals and other refugees in the UNHCR compound. Frightened and disoriented, HNA left.

Subsequently, in January 2020, family members in both Jordan and Syria discovered that HNA and his family had converted to Christianity and attempted to kill him. HNA presumed that the UNHCR, which works closely with the Jordanian security forces, had passed information about his conversion to the authorities. Since it is unlawful to leave the religion of Islam, the Jordanian State offers no protection,¹⁶

¹⁵ The wife would probably be forced to remarry a Muslim with the children brought up as Muslims.

¹⁶ Jordanian law prohibits conversion from Islam; and individuals who do so suffer severe detriment.

which meant that as a non-citizen of Jordan, HNA feared that the Jordanians would simply transfer him to the Syrian authorities, with the likely consequence of being killed.

With the assistance of local Christians, HNA was moved to a safe house for his own protection. The local church acted at considerable risk and at its own expense to aid the family. HNA has a very perilous existence in the safe house, unable to work or go out and reluctant to send his children to school, where they could be targeted for assault or abduction if it became known that they were converts to Christianity.

The issue before the court was whether the 99% selection rate of Sunni Muslims for resettlement in the United Kingdom raised a presumption of discrimination against religious minorities. HNA relied upon the case of *DH v Czech Republic*,¹⁷ wherein it was argued that when a public body was faced with statistical evidence so extreme, it (in this case, the Home Office) had a “duty to inquire” to ascertain the reasons.¹⁸ HNA also argued that apostates from Islam formed a unique class of vulnerable individuals who needed a safe passage to access the process for consideration in the VPRS.

The Home Office argued that “religion” is one of the five “Convention reasons” (under the 1951 UN Convention on the Status of Refugees) for determining whether someone is a refugee,¹⁹ and any further specific vulnerabilities and protection needs are considered after acceptance as a refugee. Thus, previous genocidal events or evidence of widespread discrimination on grounds of religion were irrelevant. Moreover, the Home Office averred that religious minorities have stronger local support networks and greater diaspora opportunities and that they dislike the stigma of registration as a refugee. For the Home Office, Christians and other minorities were not subjects of any discrimination in Jordan. The UNHCR claimed jurisdictional immunity and chose to present no evidence, thereby avoiding review by the court.²⁰ The UNHCR could not be questioned on the dearth of religious mi-

(Australia: Refugee Review Tribunal 2009).

¹⁷ (2008) 47 EHRR 31. In paragraphs 186-188 the European Court recognises that there should be less strict evidential requirements in cases of indirect discrimination as the issue was not neutrality of the law, but how the law was applied. In *DH*, indirect discrimination was established by the use of statistical evidence. In *Orsus v Croatia Appl. No. 15766/03* [152-153] supports the use of statistical evidence to establish discrimination, but on the facts of this case, the statistical evidence was not sufficiently clear in relation to Roma children.

¹⁸ *Secretary of State for Education v Tameside BC* [1977] AC 1014; *The Queen (on the application of Plantagenet Alliance LTD) v Secretary of State for Justice and Others* [2014] EWHC 1662.

¹⁹ ‘and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality...’ (UN General Assembly 1951: Art. 1A2).

²⁰ Article 105 United Nations Charter 1945.

norities selected for the VPRS, their selection processes or even their decision not to provide separate camp facilities for members of religious minorities.

Evidence from one charity that worked with refugees and from a Syrian Christian family who had settled in the United Kingdom was presented regarding the UNHCR's harassment of religious minorities.²¹ It was further submitted that the governments of Australia and Belgium do not use the services of the UNCHR because of multiple concerns.

On 26 July 2021, Justice Jacobs rejected the case for judicial review and an appeal was declined. Jacobs held that the statistical evidence was inconclusive on discrimination, and that further information was required as to the percentage of Christians who had sought refuge in Turkey, Lebanon, Jordan and Egypt.²² The adverse treatment of HNA at the UNHCR was likely committed by rogue officials, the decision stated, and HNA should have pursued a complaint about his treatment within the UNHCR. Not surprisingly, HNA had no faith in the availability or effectiveness of the complaint process and believed that pursuing such a complaint would bring further risk to his family.

4.2 The missing judicial notice of evidence of persecution

Justice Jacobs refused to take judicial notice of the plight of religious minorities in Islamic states, which is well known. The UNHCR should have been aware of the discrimination and addressed it. While this fact alone might not prove that the UNHCR was acting in a discriminatory manner, it should have created a presumption that needed to be rebutted by the UNHCR.

In *FG v Sweden*,²³ a case regarding an Iranian Muslim convert to Christianity, the European Court of Human Rights (ECtHR) imputed to contracting states the knowledge of discrimination against religious minorities in Muslim-majority states. Although this case involved the expulsion of an asylum seeker who elected to claim asylum on the basis of his political activity, rather than conversion to Christianity, after entry into Sweden, the ECtHR drew a distinction between general and specific risk when it interpreted the European Convention on Human Rights and Fundamental Freedoms (ECHR 1950).

²¹ The Christian family were phased to be settled in the United States, but on conversion to Christianity the UNHCR labelled them as a security risk (presumably terrorism). Because the United Kingdom Government would not disclose the reasons for their refusal for consideration on the scheme, a claim could be brought with Discovery of documentation. They were admitted to the United Kingdom without the need for a trial and Discovery.

²² Statistical evidence that cannot be obtained by a non- governmental agency; and unlikely to be obtainable at all.

²³ Appl. No. 43611/11 of 23rd March 2016: *Grand Chamber*. 41 *BHRC* 595 [2017]. See paragraphs 126-127.

The ECtHR considered the case under Article 2 (right to life) and Article 3 (risk of inhumane treatment) if FG were returned to Iran after having left Islam for Christianity. The ECtHR recognised that the claim was based on a “well-known general risk [and] when information about such a risk is freely ascertainable from a wide number of sources, the obligations . . . entail that the authorities carry out an assessment of that risk of their own motion.” The court further held that this requirement “applies in particular to situations where the national authorities have been made aware of the fact that the asylum seeker may, plausibly, be a member of a group systematically exposed to a practice of ill-treatment.”

The ECtHR has clearly established a principle that contracting states to the ECHR should be aware of the plight of apostates in Islamic states and of systemic discrimination against religious minorities. This fact is so self-evident that courts should consider this fact on *their own motion*, even if a party does not raise it.

In *AA v Switzerland* (2019), the fate of an Afghan Hazar Muslim who converted to Christianity was considered by the ECtHR, which found that a breach of the Convention would occur if the individual was returned to Afghanistan. The ECtHR noted that the death penalty for apostasy was applied in Afghanistan, and it considered the UNHCR Guidelines for Assessing International Protection in making its decision. This judgment was *prior* to the Taliban takeover of Afghanistan in 2021.

In *MAM v Switzerland* (2022), similar considerations arose in relation to a convert from Islam to Christianity who was facing removal to Pakistan. The ECtHR recognised the plight of religious minorities and particularly of converts from Islam. The ECtHR relied on the UK Home Office’s 2021 Policy on Pakistan Converts in determining that return to Pakistan would be in violation of human rights.

In *HNA*, Justice Jacobs could also have considered the many national regional resolutions declaring a genocide in Syria. These resolutions establish clear international recognition that the levels of violence against the religious minorities had risen to the level of genocide, in particular against the Christian and Yazidi communities.

Resolution 2091 (2016) of 27 January, by the Parliamentary Assembly of the Council of Europe, declared that “States should act on the presumption that Da’ish [Daesh] commits genocide and should be aware that this entails action under the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide.”

Resolution 2016/2529 of 4 February 2016 by the European Parliament stated that genocide was being committed against Christians and Yazidis.

On 17 March 2016, US Secretary of State John Kerry designated that Christians, Yazidi and members of the Shi’a faith were subject to genocide following a congressional resolution from both the Senate and the House of Representatives.²⁴

²⁴ H. Con. Res. 75 of 393-0.

On 20 April 2016, the UK House of Commons resolved that “Christians, Yazidis and other ethnic and religious minorities in Iraq and Syria are suffering genocide.”²⁵ A resolution by the House of Commons is an act without direct legal effect but remains one of importance, as the government must maintain the support of MPs. After the passing of this resolution, the government responded that the House of Commons had no capacity to determine an occurrence of genocide, since this can be done only by the United Nations.²⁶

All the above resolutions refer to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which took effect in 1951.

5. Implications for refugees from Afghanistan

5.1 Background

The fall of the government of President Khazi of Afghanistan and the return to power of the Taliban in August 2021 brought to the fore the plight of the estimated 8,000 to 14,000 Christian converts²⁷ remaining in the country.

Religious freedom was already highly restricted under the Khazi administration,²⁸ but the Taliban’s strict interpretation of Islam placed apostates in a life-or-death situation.²⁹ All four schools of Hanafi shari’a in Sunni Islam, as well as the Ja’fari (Shi’a) which predominates among the Hazara in Afghanistan, state that any sane adult male who leaves Islam should be executed. Both the Hanafi and Ja’fari schools of Islamic jurisprudence regard apostasy as a *hudud* offence, i.e. a penalty articulated in the Qur’an and the Hadiths of Muhammad, and thus as one that must be carried out strictly.

The Taliban regard the entire Christian community as apostates and there has been no recognised church in Afghanistan at any time (as there is, for example, in Pakistan). The Hindu and Sikh communities have been recognized and in 2013 they were granted a seat in the Afghan Parliament (Jirga).³⁰

²⁵ Division 244 of Ayes: 278, Noes: 0.

²⁶ This statement by the Government is legally uncertain. It has prompted a peer to submit the Genocide Determination Bill (UK Parliament 2022a) but Parliament cannot grant jurisdiction to the Courts: it is for the Courts to determine jurisdiction or deference.

²⁷ In 2001 it was estimated there were approximately 7,500 Afghan Christians in 1995 prior to the Taliban coming to power. (Barrett et al. 2001:49) In January 2022 the USCIRF estimated there to be 10-12,000 Christians in Afghanistan. (USCIRF 2022) Some Afghan house church leaders have put the figure at 20,000.

²⁸ Article 2 of the Constitution of Afghanistan 2004 provides “Followers of other faiths shall be free within the bounds of law in the exercise and performance of their religious rituals”. Article 3 provides: ‘No law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan’. The Shi’a Personal Status Law, 2009 addresses apostasy.

²⁹ There is no recognised indigenous Christian population in Afghanistan. Christians are viewed as apostates.

³⁰ Germany alone has granted asylum to some 6,631,000 individuals since 2015.

The lack of any formal recognition of the Christian community in Afghanistan has resulted in significant violations of their religious human rights even during the period of a Western-backed government. During this period, Christians collectively and individually were subject to assault by family members, the government and Islamists. Furthermore, the US government's agreement with the Taliban in February 2020 for the withdrawal of US forces sought no concessions on human and religious rights (USDOS 2020).³¹

During the period of the US-backed Afghan government, fatwas were issued against Christians (Sookhdeo 2021). In the 2004 Rahman case, the very concept of transforming Afghanistan into a pluralistic society was called into question. Abdul Rahman, a convert to Christianity, was convicted of apostasy by a shari'a court and sentenced to death, but due to media pressure he was declared insane by the Afghan authorities as a compromise and permitted to seek asylum in Italy (BBC 2006).

Currently, the Taliban are in the process of removing all non-Muslim religions from the country; the Hazara ethnic group are predominantly Shi'a and are also under strain. The main religious minorities are Shi'a Muslims,³² Ahmadi Muslims, Sikhs and Hindus. Prior to 1996, it was estimated that the Hindu and Sikh population numbered 250,000; current figures are now in the region of 300. The sole Jew remaining in Afghanistan left in 2021 (Steinbuch 2021).

Afghanistan's neighbours are also Muslim-majority states: Uzbekistan, Tajikistan, Turkmenistan, Iran and Pakistan. Thus, Afghan Christians who seek refuge in any of these states will still be regarded as apostates. Muslims seeking asylum can go to these Islamic countries whilst Christians cannot live freely there. For example, the Hazara have a regional protector in Shi'a Iran. There is a conflict between needing to leave Afghanistan and a desire to live in a Western country.

Many Christians have fled to Pakistan as the only realistic option. Whilst there is a Christian community in Pakistan, apostates remain in danger. Pakistani Christians live under extreme pressure from a number of long-standing issues, such as the country's blasphemy law, abductions, rapes, forced conversions and forced marriage of Christian girls to terrorists (ICJ 2015, Ackerman 2018, The Guardian 2013).

The UK's All Party Parliamentary Group on Freedom of Religion or Belief has published a report on Islamist violence against Christians between October 2001 and August 2015 in Pakistan. Terror attacks were recorded against Churches, leaders, and individuals (UK Parliament 2022b).

³¹ Although at that point in time, President Khazi was expected to remain in power post 2021.

³² Sunni and Shi'a Muslims split over the succession of Muhammed. 85% of Muslims are Sunni and the two sects have distinct theologies. There is often animosity between the sects; each regarding the other as non-Muslim.

5.2 The Afghan Citizen Resettlement Scheme

In August 2021, the British government announced the establishment of the ACRS, committing, in conjunction with the UNHCR, to the resettlement of 20,000 at risk individuals over a five-year period. The ACRS was premised on the VPRS, which had operated from 2015 to 2020. The government stated, “Priority will be given to women and girls, and religious and other minorities, who are most at risk of human rights abuses and dehumanising treatment by the Taliban.”

Whilst the ACRS pays lip service to religious minorities, there is great concern that the Christian community will be ignored as occurred in the VPRS, especially if the UNHCR is used as the partner agency.

On 6 January 2022, the ACRS came into effect with an announcement by Victoria Atkins, Minister for Afghan Resettlement. During debate on that day, the Minister informed the House of Commons that flights had been specifically arranged for LGBT individuals. She stated, “The Government are working with Stonewall, Micro Rainbow and other LGBT charities to support those cohorts and help them to set up their new lives in the UK.” The basis for the three cohorts of flights provided for the LGBT community was unclear, but it appeared likely that they constituted “leave outside the rules,” which is a discretionary prerogative power of the Crown. No religious minorities were accorded similar treatment and an MP stated during the debate that “people from religious minorities feel abandoned to persecution or worse.”

In the end, both LGBT and religious minorities have similar difficulties: both groups have a “lifestyle right” and suffer disproportionate persecution in Islamic States. Their situation is more serious than that, for example, of the plight of Afghan judges, who being Muslim are likely to be able to seek safety in surrounding Muslim states. Christians have no nearby safe haven, and the relationship of Islam to homosexuality is complex and multifaceted.³³

As the Afghan ACRS is based on the previous Syrian VPRS, from our examination of the background, operation, problems and criticisms of the VPRS, the ACRS will likely be plagued by the same difficulties.

6. Conclusion

The fact that HNA’s case had to be brought at all is quite simply a scandal. For five years after the introduction of the VPRS, figures were filtering back to the Home Office showing that 99% of those accepted were Sunni Muslims. This statistical imbalance should have been enough for the British government to express concerns to

³³ In *HJ (Iran) v Secretary of State for the Home Department* [2010] UKSC 31, the Supreme Court recognised that homosexual relationships could be conducted in Iran if done so *discreetly*.

the UNHCR and require some justification. However, not one email, call or inquiry was made by the Home Office to the UNHCR requesting an explanation.

HNA asked the court to require the Home Office to ascertain the reason for this discrepancy, but the court rejected this request on the principle that evidence on behalf of the Crown must be accepted.³⁴

What makes the inertia by the Home Office particularly egregious is that national and regional resolutions had recognized that certain religious groups had been subjected to genocide within the meaning of the Genocide Convention.

Whilst it is hoped that the UNHCR will adopt higher stands of conduct towards Christians in Afghanistan who seek assistance and consideration for resettlement under the ACRS, it is likely that this extremely vulnerable group will be abandoned. Those Afghan Judges and sporting personalities (Alarabiya News 2021) who have been accepted in Western countries would have been able to resettle safely in nearby Muslim countries.³⁵

Law and politics can be two sides of the one coin. There can be blindness to the obvious, as for example to the fate of the Jews in National Socialist Germany. Now, again, there is a wilful blindness to the fate of the Christian communities of Syria, Iraq and Afghanistan. In this situation, the phrase “never again” should be directed to all of us.

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³⁴ A rule of law in England and Wales, that the evidence of the Crown must be accepted unless it can be directly contradicted.

³⁵ *R(JZ) v Secretary of State for Foreign, Commonwealth and Development Affairs, the Secretary of State for the Home Department and the Secretary of State for Defence* (2022).

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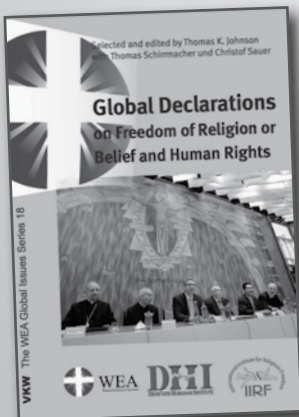
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Global Declarations on Freedom of Religion or Belief and Human Rights



by Thomas K. Johnson,
Thomas Schirmacher,
Christof Sauer (eds.)

(WEA GIS, Vol. 18) ISBN 978-3-86269-135-7
Bonn, 2017. 117 pp., €12.00 via book trade

