

The Home Office is deporting Afghans one day before a legal ruling could save them

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Next Wednesday, a legal ruling could spell the end of Britain's Afghan deportation programme. Legal firm Duncan Lewis will argue that their 19 clients are being returned to a country where violence has become so severe it cannot be considered safe. A ruling in their favour would trigger the start of a legal process which could halt the deportation of all Afghans from the UK.

So it's curious that on Tuesday, a day before the judicial review, the Home Office has tabled a charter flight from the UK to Kabul. A plane-load of mostly refugees will be returned just hours before a legal ruling might save them.

The Duncan Lewis argument is not based on apocalyptic warnings. It is a reflection of the security reality in Afghanistan, as expressed by the Afghan and British governments, the UN and journalists on the ground. Since British and American troops left, the country has fallen into chaos.

In late February, the country's [own minister for refugees and repatriation](#), Hossein Alami Balkhi, said European countries could not safely return people to his country. You can see why. Last Thursday, ten people died when Taliban insurgents wearing military uniforms mounted a six-hour assault with guns and grenades against a court complex in northern Afghanistan. The usually tranquil city of Mazar-i-Sharif was merely the first to see the outbreak of the traditional spring offensive, as Afghanistan entered the first fighting season without full Nato support.

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An Afghan military offensive to take back control of the north has faltered. Nearly 250 Taliban and other fighters attacked government positions in Badakhshan on Friday, in a string of coordinated attacks. Over 30 Afghan soldiers were killed, wounded or went missing according to official sources. Eyewitnesses told journalists the real numbers were much higher. Many police outposts are still encircled, cut off from reinforcements.

A couple of days ago, acting defence minister Sher Mohammed Karimi said he would try to retake control of the northern initiative. Few expect him to be successful. The Taliban are everywhere, galvanised by the departure of US troops. And now warlords warn of the rise of Islamic State, which had previously struggled to get a foothold.

The latest figures from the [United Nations Assistance Mission in Afghanistan](#) (UNAMA) show high civilian casualties, mostly caused by deaths and injuries from ground engagements. Year-on-year civilian casualties are up eight per cent, with 512 people being killed or injured in the first three months of 2015. There was a big spike of 43% in civilian deaths and injuries caused by mortars or rockets.

Conflict-related violence killed 55 women and injured 117 in the first three months of the year. There have also been 430 child civilian casualties. Anti-government forces are responsible for 73% of civilian casualties, pro-government forces for 14% and seven per cent were attributed to both parties. Six per cent could not be attributed to anyone, mostly because they were a result of explosive "remnants of war" – unexploded devices and IEDs.

Georgette Gagnon, director of human rights for UNAMA, said:

"With all signs pointing to increased ground conflict in the coming months, with devastating consequences for civilians, parties must act urgently on the commitments they've made to prevent harm to civilians, especially women and children."

As Balkhi desperately tried to explain, his government cannot keep the women and children deported from the UK safe. He says 80% of the country is considered insecure. He is asking western leaders to stop all deportations until the memorandum of understanding between deporting countries and Afghanistan can be revised. Until then, he is preventing anyone getting off the deportation flight at Kabul if they are an unaccompanied woman or child, if they have mental health problems or are physically disabled, or if they come from a dangerous province.

Downing Street knows all this. It knows the memorandum of understanding – signed in 2002 – is hopelessly out of date. Sources tell me there was a meeting between David Cameron and the Afghan president in which the latter accepted the continuation of the deportations but expressed a wish to renegotiate the memorandum of understanding after the UK election. A new one would take into account the disintegration of the country since the exit of British and (most) American forces.

But for the time being, the flights continue. Duncan Lewis swung into action to get people off a deportation flight on March 10th. It managed to save 19 of them. The flight eventually departed the UK with 26 aboard. That's far less than anticipated, but the legal firm can't find out what happened to the others. As usual, there has been no disclosure from the Home Office - only secrecy.

The firm will argue that the claims of the 19 Afghan can be considered 'fresh' because the situation on the ground has changed so rapidly. They cannot leave Kabul, because it is not safe. They cannot stay in Kabul, because one of the country's own ministers has admitted it does not have the infrastructure to keep them secure. There is no such thing as a safe return to Afghanistan.

A successful ruling would not be the end of the matter. But it would trigger a legal process which would give the 19 back their right of appeal and could lead to new 'country guidance' about Afghanistan. If that guidance is in line with the eyewitness, UN and Afghan government reports, it would almost certainly bring an end to deportations to Afghanistan.

As Duncan Lewis puts it:

"We consider it unusual and concerning that the secretary of state continues to enforce removals to Afghanistan. We continue to seek generic relief suspending removals to Afghanistan in the light of the significant deterioration of the country situation. We consider that this is especially relevant given the pertinent hearing scheduled for the day after this charter flight."

It is very rare that the Home Office U-turns on deportation. They will keep sending people back until they are forced to stop. But they should be under no illusions about what they are doing. There is no such thing as a safe return to Afghanistan.

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