UNHCR ELIGIBILITY GUIDELINES FOR ASSESSING THE INTERNATIONAL PROTECTION NEEDS OF ASYLUM-SEEKERS FROM AFGHANISTAN

United Nations High Commissioner for Refugees (UNHCR)
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NOTE

UNHCR *Eligibility Guidelines* are issued by the Office to assist decision-makers, including UNHCR staff, Governments and private practitioners, in assessing the international protection needs of asylum-seekers. They are legal interpretations of the refugee criteria in respect of specific profiles on the basis of social, economic, security, human rights and humanitarian conditions in the country/territory of origin concerned. The pertinent international protection needs are analysed in detail, and recommendations made as to how the applications in question relate to the relevant principles and criteria of international refugee law as per, notably, the UNHCR Statute, the 1951 Refugee Convention and its 1967 Protocol, and relevant regional instruments such as the 1969 OAU Convention, the Cartagena Declaration and the EU Qualification Directive. The recommendations may also touch upon, as relevant, complementary or subsidiary protection regimes.

UNHCR issues *Eligibility Guidelines* to promote the accurate interpretation and application of the above-mentioned refugee criteria in line with its supervisory responsibility as contained in paragraph 8 of its Statute in conjunction with Article 35 of the 1951 Convention and Article II of its 1967 Protocol and based on the expertise it has developed over the years in matters related to eligibility and refugee status determination. It is hoped that the guidance and information contained in the *Guidelines* will be considered carefully by the authorities and the judiciary in reaching decisions on asylum applications. The *Guidelines* are based on in-depth research, information provided by UNHCR’s global network of field offices and material from independent country specialists, researchers and other sources, rigorously reviewed for reliability. The *Guidelines* are posted on UNHCR’s Refworld website at [http://www.refworld.org](http://www.refworld.org).
# Table of Contents

I. EXECUTIVE SUMMARY .......................................................... 4
   - Refugee Status under the 1951 Convention ........................................... 4
   - Broader UNHCR Mandate Criteria, Regional Instruments and Complementary Forms of Protection .......................................................... 5
   - Internal Flight or Relocation Alternative .................................................. 8
   - Exclusion Considerations ......................................................................... 9

II. OVERVIEW OF THE SITUATION IN AFGHANISTAN ................................. 10
   A. MAIN DEVELOPMENTS IN AFGHANISTAN ........................................... 10
   B. THE SECURITY SITUATION IN AFGHANISTAN: IMPACT OF THE CONFLICT ON CIVILIANS .................................................. 14
      1. Civilian Casualties............................................................................. 16
      2. Security Incidents ............................................................................. 18
   C. HUMAN RIGHTS SITUATION .................................................................. 18
      1. Human Rights Abuses ....................................................................... 18
         a) Human Rights Violations by State Actors ....................................... 19
         b) Human Rights Abuses by Pro-Government Armed Groups ............. 21
         c) Human Rights Abuses by Anti-Government Elements ................... 22
      2. The Ability of the State to Protect Civilians from Human Rights Abuses .... 24
   D. HUMANITARIAN SITUATION .............................................................. 26
   E. CONFLICT-INDUCED DISPLACEMENT .............................................. 28
   F. REFUGEES AND RETURNEES ............................................................. 31

III. ELIGIBILITY FOR INTERNATIONAL PROTECTION .................................. 32
   A. POTENTIAL RISK PROFILES ............................................................... 34
      1. Individuals Associated with, or Perceived as Supportive of, the Government and the International Community, Including the International Military Forces ................. 34
         a) Government Officials and Civil Servants ....................................... 35
         b) Members of the ANP and ALP ....................................................... 36
         c) Civilians Associated with or Perceived as Supportive of the ANSF / pro-government forces ........................................................ 37
         d) Civilians Associated with or Perceived as Supportive of the International Military Forces ....................................................... 37
         e) Humanitarian Workers and Development Workers ....................... 38
         f) Human Rights Activists ................................................................. 38
         g) Other Civilians Perceived as Supporting the Government or the International Community ............................................................. 38
         h) Tribal Elders and Religious Leaders ............................................... 39
         i) Women in the Public Sphere ......................................................... 40
         j) Individuals perceived as “Westernized” .......................................... 41
         k) Family Members of Individuals Associated with, or Perceived as Supportive of, the Government and the International Community ................................................. 41
         l) Summary .................................................................................... 41
      2. Journalists and Other Media Professionals ......................................... 42
      3. Men of Fighting Age, and Children in the Context of Underage and Forced Recruitment .............................................................. 44
         a) Forced Recruitment by AGEs ......................................................... 45
         b) Forced and Underage Recruitment by Pro-Government Forces ........ 46
         c) Summary .................................................................................... 46
      5. Members of Minority Religious Groups, and Persons Perceived as Contravening Sharia Law .......................................................... 49
         a) Minority Religious Groups ............................................................ 50
         b) Conversion from Islam .................................................................. 53
         c) Other Acts Contravening Sharia Law ............................................. 54
         d) Summary .................................................................................... 54
6. Individuals Perceived as Contravening AGEs’ Interpretation of Islamic Principles, Norms and Values ................................................................................................................................. 55
7. Women with Certain Profiles or in Specific Circumstances ................................................................. 56
   a) Sexual and Gender-Based Violence ........................................................................................................ 59
   b) Harmful Traditional Practices ................................................................................................................. 60
   c) Systematic Denial of Access to Education ................................................................................................. 62
8. Women and Men Who Are Perceived as Contravening Social Mores ..................................................... 62
9. Individuals with Disabilities, Including in Particular Mental Disabilities, and Individuals Suffering from Mental Illnesses ................................................................. 65
10. Children with Certain Profiles or in Specific Circumstances .............................................................. 65
    a) Bonded or Hazardous Child Labour ....................................................................................................... 66
    b) Violence against Children, including Sexual and Gender-Based Violence ............................................ 66
    c) Systematic Denial of Access to Education ............................................................................................... 68
    d) Abductions, Punishments and Reprisals by the ANSF and AGEs ......................................................... 69
    e) Summary ................................................................................................................................................... 70
11. Survivors of Trafficking or Bonded Labour and Persons at Risk of Being Trafficked or of Bonded Labour .............................................................................................................. 70
12. Individuals of Diverse Sexual Orientations and/or Gender Identities .................................................. 72
13. Members of (Minority) Ethnic Groups ................................................................................................. 73
    a) Kuchis ....................................................................................................................................................... 75
    b) Hazaras .................................................................................................................................................... 76
    c) Members of the Jat ethnic group, including the Jogi, Chori Frosh, Gorbat and Mosuli communities .... 76
    d) Land Disputes with an Ethnic or Tribal Dimension .................................................................................. 77
    e) Summary ................................................................................................................................................... 78
14. Individuals Involved in Blood Feuds ........................................................................................................ 78
15. (Family Members of) Business People and Other People of Means ......................................................... 79

B. INTERNAL FLIGHT OR RELOCATION ALTERNATIVE FOR INDIVIDUALS AT RISK OF PERSECUTION ..... 81
1. Relevance Analysis ..................................................................................................................................... 82
2. Reasonableness Analysis .......................................................................................................................... 83

C. REFUGEE STATUS UNDER UNHCR’S BROADER MANDATE CRITERIA OR REGIONAL INSTRUMENTS, OR ELIGIBILITY FOR COMPLEMENTARY FORMS OF PROTECTION ................................................. 86
1. Refugee Status under UNHCR’s Broader Mandate Criteria and Regional Instruments ................................. 87
   a) Refugee Status under UNHCR’s Broader Mandate Criteria ....................................................................... 87
   b) Refugee Status under Article 1(2) of the 1969 OAU Convention ................................................................ 88
   c) Refugee Status under the Cartagena Declaration ....................................................................................... 89
2. Internal Flight or Relocation Alternative under UNHCR’s Broader Mandate Criteria and Regional Instruments ........................................................................................................................................... 89
3. Eligibility for Subsidiary Protection under the EU Qualification Directive ............................................... 90
4. Internal Protection Considerations for Individuals at Risk of Serious Harm under the EU Qualification Directive ............................................................................................................................................. 91

D. EXCLUSION FROM INTERNATIONAL REFUGEE PROTECTION .................................................................... 91
1. The Communist Regimes: Former Members of the Armed Forces and the Intelligence/Security Apparatus, Including KhAD/WAD Agents, as well as Former Officials ....... 95
2. Former Members of Armed Groups and Militia Forces During and After the Communist Regimes ................................................................................................................................. 96
3. Members of AGEs ....................................................................................................................................... 96
4. Members of the Afghan Security Forces, including the NDS, the ANP and the ALP ................................. 97
5. Members of Pro-Government Paramilitary Groups and Militias ............................................................. 97
### List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AAN</td>
<td>Afghanistan Analysts Network</td>
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<td>ABP</td>
<td>Afghan Border Police</td>
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<td>AGEs</td>
<td>Anti-Government Elements</td>
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<td>AIHRC</td>
<td>Afghanistan Independent Human Rights Commission</td>
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<td>ALP</td>
<td>Afghan Local Police</td>
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<td>ANA</td>
<td>Afghan National Army</td>
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<td>ANCOP</td>
<td>Afghan National Civil Order Police</td>
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<tr>
<td>ANP</td>
<td>Afghan National Police</td>
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<tr>
<td>ANSF</td>
<td>Afghan National Security Forces</td>
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<td>AREU</td>
<td>Afghanistan Research and Evaluation Unit</td>
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<td>ERW</td>
<td>Explosive Remnants of War</td>
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<td>EVAW Law</td>
<td>Law on Elimination of Violence against Women</td>
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<td>HPC</td>
<td>High Peace Council</td>
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<td>IDP</td>
<td>Internally Displaced Person</td>
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<td>IED</td>
<td>Improvised Explosive Device</td>
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<td>IHL</td>
<td>International Humanitarian Law</td>
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<td>ISAF</td>
<td>International Security Assistance Force</td>
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<td>ISIS</td>
<td>Islamic State in Iraq and Syria</td>
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<td>KIS</td>
<td>Kabul Informal Settlements</td>
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<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
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<td>NDS</td>
<td>National Directorate of Security</td>
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<td>NGO</td>
<td>Non-Governmental Organization</td>
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<tr>
<td>NUG</td>
<td>National Unity Government</td>
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<td>OAU</td>
<td>Organization of African Unity (succeeded by the AU)</td>
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<tr>
<td>OCHA</td>
<td>United Nations Office for the Coordination of Humanitarian Affairs</td>
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<td>OHCHR</td>
<td>Office of the United Nations High Commissioner for Human Rights</td>
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<td>RSM</td>
<td>Resolute Support Mission</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNAMA</td>
<td>United Nations Assistance Mission in Afghanistan</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<td>UNICEF</td>
<td>United Nations Children's Fund</td>
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I. Executive Summary

These Guidelines supersede the August 2013 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan. They are issued against a background of continuing concerns about the security situation in parts of Afghanistan and about widespread human rights abuses. They contain information on particular profiles of persons for whom international protection needs may arise in the current context in Afghanistan.

UNHCR has included in these Guidelines the most up-to-date information available at the time of writing, from a wide variety of sources. The analysis contained in these Guidelines is informed by publicly available information as well as by information collected and obtained by UNHCR in the course of its operations in Afghanistan and elsewhere, as well as by other UN agencies and partner organizations.

All claims lodged by asylum-seekers need to be considered on their own merits according to fair and efficient status determination procedures and up-to-date and relevant country of origin information. This applies whether the claims are analysed on the basis of the refugee criteria contained in the 1951 Convention Relating to the Status of Refugees (“1951 Convention”) and its 1967 Protocol, UNHCR’s mandate, regional refugee instruments, or on the basis of broader international protection criteria, including complementary forms of protection.

Refugee Status under the 1951 Convention

People fleeing Afghanistan may be at risk of persecution for reasons that are related to the ongoing armed conflict in Afghanistan, or on the basis of serious human rights violations that are not directly related to the conflict, or a combination of the two. UNHCR considers that in relation to individuals with the following profiles a particularly careful examination of possible risks is required:

1. Individuals associated with, or perceived as supportive of, the Government and the international community, including the international military forces;
2. Journalists and other media professionals;
3. Men of fighting age, and children in the context of underage and forced recruitment;
4. Civilians suspected of supporting anti-government elements (AGEs);
5. Members of minority religious groups, and persons perceived as contravening Sharia law;
6. Individuals perceived as contravening AGEs’ interpretation of Islamic principles, norms and values;
7. Women with certain profiles or in specific circumstances;
8. Women and men who are perceived as contravening social mores;
9. Individuals with disabilities, including in particular mental disabilities, and persons suffering from mental illnesses;
10. Children with certain profiles or in specific circumstances;
11. Survivors of trafficking or bonded labour and persons at risk of being trafficked or of bonded labour;
12. Individuals of diverse sexual orientations and/or gender identities;
13. Members of (minority) ethnic groups;
14. Individuals involved in blood feuds;
15. (Family members of) business people and other people of means.

This list is not necessarily exhaustive and is based on information available to UNHCR at the time of writing. Hence, a claim should not automatically be considered as without merit simply because it does not fall within any of the profiles identified here. Depending on the specific circumstances of the

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2 These Guidelines are based on information available to UNHCR as of 1 March 2016, unless otherwise stated.
case, family members or other members of the households of individuals with these profiles may also be in need of international protection on the basis of their association with individuals at risk.

Afghanistan continues to be affected by a non-international armed conflict. Individuals fleeing harm or the threat of harm in the context of this conflict may meet the criteria for refugee status as contained in Article 1(A)(2) of the 1951 Convention. For this to be the case, there must be a reasonable possibility that the individual would experience serious harm amounting to persecution for reasons related to the grounds set out in Article 1(A)(2) as a result of the conflict.

Human rights violations and other consequences of exposure to conflict-related violence may amount to persecution within Article 1(A)(2) of the 1951 Convention, either independently or cumulatively. In the context of the conflict in Afghanistan, relevant factors in assessing the human rights violations or other serious harm that would be reasonably possible for an individual fleeing the conflict include: (i) the control over civilian populations by anti-government elements (AGEs), including through the imposition of parallel justice structures and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, restrictions on freedom of movement, and the use of extortion and illegal taxation; (ii) forced recruitment; (iii) the impact of violence and insecurity on the humanitarain situation as manifested by food insecurity, poverty and the destruction of livelihoods; (iv) high levels of organized crime and the ability of local strongmen, warlords and corrupt government officials to operate with impunity; (v) systematic constraints on access to education and basic health care as a result of insecurity; and (vi) systematic constraints on participation in public life, including in particular for women.

For an individual who flees harm or the threat of harm in the context of the armed conflict in Afghanistan to meet the criteria for refugee status as contained in Article 1(A)(2) of the 1951 Convention, the persecution flowing from the violence must also be for reason of a 1951 Convention ground. In the context of Afghanistan, examples of circumstances where civilians are subjected to violence for a 1951 Convention ground include situations where violence is targeted at areas where civilians of specific ethnic, political or religious profiles predominantly reside, or at locations where civilians of such profiles predominantly gather (including markets, mosques, schools, or large social gatherings such as weddings). To qualify for refugee status there is no requirement that an individual be known personally to the agent(s) of persecution or be sought out personally by those agents. Similarly, entire communities may have a well-founded fear of persecution for one or more of the 1951 Convention grounds; there is no requirement that an individual suffer a form or degree of harm that differs from that suffered by other individuals with the same profile.

**Broader UNHCR Mandate Criteria, Regional Instruments and Complementary Forms of Protection**

The 1951 Convention forms the cornerstone of the international refugee protection regime. The criteria for refugee status in the 1951 Convention should be interpreted in such a manner that individuals or groups of persons who meet these criteria are duly recognized and protected under that instrument. Only when an asylum-seeker is found not to meet the refugee criteria in the 1951 Convention would broader international protection criteria as contained in UNHCR’s mandate and regional instruments be examined, including subsidiary protection.

Individuals who flee situations of violence where there is no nexus with a 1951 Convention ground would not ordinarily come within the scope of the 1951 Convention. Such individuals may

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6 UNHCR, *Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence; Roundtable 13 and 14 September 2012, Cape Town, South Africa*, 20 December 2012, http://www.refworld.org/docid/50d32e5e2.html, paras. 10-12. See also Section II.B of these Guidelines.


nevertheless come within the terms of UNHCR’s broader mandate criteria, or the criteria set out in regional instruments.

UNHCR’s mandate encompasses individuals who meet the refugee criteria under the 1951 Convention and its 1967 Protocol, but has been broadened through successive UN General Assembly and ECOSOC resolutions to a variety of other situations of forced displacement resulting from indiscriminate violence or public disorder. In light of this evolution, UNHCR’s competence to provide international protection to refugees extends to individuals who are outside their country of origin or habitual residence and who are unable or unwilling to return there owing to serious threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.

In the context of Afghanistan, indicators to assess the threat to life, physical integrity or freedom resulting from generalized violence include: (i) the number of civilian casualties as a result of indiscriminate acts of violence, including bombings, air strikes, suicide attacks, the use of improvised explosive devices (IEDs) and landmines (see Section II.B.1); (ii) the number of conflict-related security incidents (see Section II.B.2); and (iii) the number of people who have been forcibly displaced due to conflict (see Section II.E). Such considerations are not, however, limited to the direct impact of the violence. They also encompass the longer-term, more indirect consequences of conflict-related violence that, either alone or on a cumulative basis, give rise to threats to life, physical integrity or freedom.

In the exceptional circumstances of Afghanistan, relevant considerations to assess the threat to life, physical integrity or freedom resulting from events seriously disturbing public order include the fact that in certain parts of the country the Government has lost effective control to AGEs and is unable to provide protection to civilians. Available information indicates that the exercise of control over key aspects of people’s lives in these areas is repressive, coercive and undermines an ordre public based on respect for the rule of law and human dignity. Such situations are characterized by the systematic use of intimidation and violence directed against the civilian population, in a climate of widespread human rights abuses.

Against this background, UNHCR considers that individuals who originate from areas affected by active conflict between pro-government forces and AGEs, or between different AGEs, or from areas under the effective control of AGEs as characterized above, may, depending on the individual circumstances of the case, be in need of international protection. Those who are found not to meet the refugee criteria of the 1951 Convention may be eligible for international protection under UNHCR’s broader mandate on the grounds of serious threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.

Afghans and others originating from Afghanistan who seek international protection in countries that are States Parties to the Convention Governing the Specific Aspects of Refugee Problems in Africa (“1969 OAU Convention”)11, and who have been found not to meet the criteria of the 1951 Refugee Convention, may qualify for refugee status under Article I(2) of the 1969 OAU Convention. In particular, UNHCR considers that individuals originating from areas of Afghanistan that are affected by active conflict as part of the ongoing struggle for control between pro-government forces and AGEs, or between different AGEs, as well as areas of Afghanistan that are under the effective control of AGEs, may be in need of international protection under the terms of Article I(2) of the 1969 OAU

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Convention on the grounds that they were compelled to leave their place of habitual residence owing to threats to their lives, freedom or security as a result of events seriously disturbing public order. 12

Afghan asylum-seekers who seek international protection in any of the countries that have incorporated the Cartagena Declaration on Refugees (“Cartagena Declaration”) 13 into their national legislation may qualify for refugee status under the terms of the Cartagena Declaration. In particular, UNHCR considers that individuals originating from areas in Afghanistan affected by active conflict between pro-government forces and AGEs, or between different AGEs, or from areas under the effective control of AGEs, and who have been found not to meet the criteria of the 1951 Refugee Convention, may be in need of international protection under the terms of the Cartagena Declaration on the grounds that their lives, safety or freedom were threatened by circumstances that have seriously disturbed public order.

Afghans who seek international protection in Member States of the European Union (EU) and who are found not to be refugees under the 1951 Convention may qualify for subsidiary protection under Article 15 of EU Directive 2011/95/EU (Qualification Directive), if there are substantial grounds for believing that they would face a real risk of serious harm in Afghanistan. 14 In light of the information presented in Section ILC of these Guidelines, applicants may, depending on the individual circumstances of the case, be in need of subsidiary protection under Article 15(a) or Article 15(b) on the grounds that they would face a real risk of the relevant forms of serious harm (death penalty 15 or execution; or torture or inhuman or degrading treatment or punishment), either at the hands of the State or its agents, or at the hands of AGEs. 16 Equally, in light of the fact that Afghanistan continues to be affected by a non-international armed conflict and in light of the information presented in Sections II.B, II.C, II.D and II.E of these Guidelines, applicants originating from or previously residing in conflict-affected areas may, depending on the individual circumstances of the case, be in need of subsidiary protection under Article 15(c) on the grounds that they would face a serious and individual threat to their life or person by reason of indiscriminate violence.

Given the fluid nature of the conflict in Afghanistan, applications by Afghans for international protection under UNHCR’s mandate or under the definitions contained in regional instruments should each be assessed carefully in light of the evidence presented by the applicant and other current and

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13 Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, http://www.refworld.org/docid/3ae6b36ec.html. Although the Cartagena Declaration is included in a non-binding regional instrument, the Cartagena refugee definition has attained a particular standing in the region, not least through its incorporation into 14 national laws and State practice. For guidance on the interpretation of the refugee definition in the Cartagena Declaration, see: UNHCR, Summary Conclusions on the Interpretation of the Extended Refugee Definition in the 1984 Cartagena Declaration: Roundtable 15 and 16 October 2013, Montevideo, Uruguay, 7 July 2014, http://www.refworld.org/docid/53c525274.html.

14 On the meaning of the term “serious harm” for the purposes of the Qualification Directive is defined as (a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict. European Union, Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 13 December 2011, http://www.refworld.org/docid/4f06fa5e2.html, arts 2(f), 15.


16 It should be noted that where applicants face a real risk of such treatment for reason of a 1951 Convention ground, they should be accorded refugee status under the Convention (unless they are to be excluded from the benefit of protection under the Refugee Convention under Article 1F); only where there is no nexus between the risk of serious harm and one of the Convention grounds should the applicant be accorded subsidiary protection.
reliable information about the situation in Afghanistan, giving due weight to the future-oriented nature of assessments of protection needs.

**Internal Flight or Relocation Alternative**

An assessment of the availability of an internal flight or relocation alternative (IFA/IRA) requires an assessment of the relevance as well as the reasonableness of the proposed IFA/IRA. An IFA/IRA is relevant only if the proposed area of relocation is practically, safely and legally accessible, and if the individual concerned would not be exposed to a further risk of persecution or serious harm in the area of relocation. In assessing the relevance of an IFA/IRA for Afghan applicants, the following considerations must be taken into account:

(i) The volatility and fluidity of the armed conflict in Afghanistan in terms of the difficulty of identifying potential areas of relocation that are durably safe; and

(ii) The concrete prospects of safely accessing the proposed area of relocation, taking into account the risks associated with the widespread use of IEDs and landmines throughout the country, attacks and fighting taking place on roads, and restrictions on civilians’ freedom of movement imposed by AGEs.

Where the applicant has a well-founded fear of persecution at the hands of the State or its agents, there is a presumption that consideration of an IFA/IRA is not relevant for areas under the control of the State. In light of the available information about serious and widespread human rights abuses by AGEs in areas under their effective control, as well as the inability of the State to provide protection against such abuses in these areas, UNHCR considers that an IFA/IRA is not available in areas of the country that are under the effective control of AGEs, with the possible exception of applicants with previously-established links with the AGE leadership in the proposed area of relocation.

UNHCR considers that no IFA/IRA is available in areas affected by active conflict, regardless of the actor of persecution.

Where the applicant has a well-founded fear of persecution at the hands of a non-State agent, the ability of the agent to pursue the applicant to the area of proposed relocation needs to be assessed, as well as the ability of the State to provide protection in that area. Where the agent of persecution is an AGE, evidence about AGEs’ capacity to carry out attacks outside the areas under their effective control needs to be taken into account.

For individuals who fear harm as a result of harmful traditional practices and religious norms of a persecutory nature, such as women and children in certain circumstances and persons of diverse sexual orientations and/or gender identities, the endorsement of such norms and practices by large segments of society and powerful conservative elements at all levels of government needs to be taken into account as a factor that weighs against the relevance of an IFA/IRA.

Whether an IFA/IRA is reasonable must be determined on a case-by-case basis, taking fully into account the security, human rights and humanitarian environment in the prospective area of relocation at the time of the decision. In particular, the poor living conditions and precarious human rights situation of Afghans who are currently internally displaced in Afghanistan are relevant considerations that need to be taken into account in assessing the reasonableness of a proposed internal flight or relocation alternative. UNHCR considers that a proposed IFA/IRA is reasonable only where the individual has access to (i) shelter, (ii) essential services such as sanitation, health care and education; and (iii) livelihood opportunities. Moreover, UNHCR considers an IFA/IRA as reasonable only where the individual has access to a traditional support network of members of his or her (extended) family or members of his or her larger ethnic community in the area of prospective relocation, who have been assessed to be willing and able to provide genuine support to the applicant in practice.

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UNHCR considers that the only exception to the requirement of external support are single able-bodied men and married couples of working age without identified specific vulnerabilities. Such person may in certain circumstances be able to subsist without family and community support in urban and semi-urban areas that have the necessary infrastructure and livelihood opportunities to meet the basic necessities of life and that are under effective Government control. Given the breakdown in the traditional social fabric of society caused by decades of war, mass refugee flows and internal displacement, a case-by-case analysis will, nevertheless, be necessary.

In the case of unaccompanied and separated children from Afghanistan, UNHCR considers that in addition to the requirement of meaningful support of the child’s own (extended) family or larger ethnic community in the area of prospective relocation, it must be established that relocation is in the best interest of the child. The return of unaccompanied and separated children to Afghanistan is furthermore subject to the minimum safeguards identified in the 2010 Aide-mémoire: Special Measures Applying to the Return of Unaccompanied and Separated Children to Afghanistan. The consideration of possible internal relocation is not generally relevant to the determination of refugee status under Article I(2) of the OAU Convention.

Exclusion Considerations

In light of the serious human rights abuses and violations of international humanitarian law during Afghanistan’s long history of armed conflicts, exclusion considerations under Article 1F of the 1951 Convention may arise in individual claims by Afghan asylum-seekers. Careful consideration needs to be given in particular to the following profiles:

(i) Former members of the armed forces and the intelligence/security apparatus, including KhAD/WAD agents, as well as former officials of the Communist regimes;
(ii) Former members of armed groups and militia forces during and after the Communist regimes;
(iii) (Former) members and commanders of AGEs;
(iv) (Former) members of the Afghan National Security Forces (ANSF), including the National Directorate of Security (NDS), the Afghan National Police (ANP) and the Afghan Local Police (ALP);
(v) (Former) members of paramilitary groups and militias; and
(vi) (Former) members of groups and networks engaged in organized crime.

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II. Overview of the Situation in Afghanistan

A. Main Developments in Afghanistan

A non-international armed conflict continues to affect Afghanistan, posing the Afghan National Security Forces (ANSF) supported by the international military forces against a number of anti-government elements (AGEs).19

According to the UN Secretary-General, Afghanistan continues to face formidable security, political and economic challenges.20 The security situation deteriorated markedly in 2015 as the Taliban and other AGEs conducted aggressive campaigns and increasingly advanced towards major population centres.21 At the end of 2015 the Taliban reportedly held more territory than in any year since 2001, with estimates of the number of districts controlled or contested by the Taliban ranging between 25 and 30 per cent.22 A proliferation of AGEs with various goals and agendas, including notably the emerging threat from ISIS-affiliated groups,23 combined with intra-insurgent violence has further complicated the security situation.24 Pro-government armed groups25 are also reported to undermine


21 The Taliban reportedly captured 24 district centres in the north, west and south of the country in 2015. While most were quickly retaken by pro-government forces, several centres reportedly remained under Taliban control for weeks. This presented a significant increase compared with 2014, when the Taliban captured only three district centres. UN Secretary-General, The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General, 7 March 2016, A/70/775–S/2016/218, http://www.refworld.org/docid/56f2667d4.html, para. 14. See also UNAMA, Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict, February 2016, http://www.refworld.org/docid/56c17b714.html, pp. 6-7.


23 The militant group is variously referred to as ISIS (Islamic State in Iraq and Syria), or ISIL (Islamic State in Iraq and the Levant), or IS (Islamic State), or Daesh (a loose acronym of al-Dawla al-Islamiya al-Iraq al-Sham, the Arabic for Islamic State in Iraq and the Levant). UNAMA notes that groups that claim affiliation with ISIS are referred to by the Arabic acronym Daesh in Afghanistan. However, UNAMA add that in some parts of the country the term Daesh is used to refer to any foreign fighter, regardless of their allegiance. UNAMA, Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict, February 2016, http://www.refworld.org/docid/56c17b714.html, p. 56 (footnote 152).


25 UNAMA defines pro-government armed groups as “an organized armed non-State actor engaged in conflict and distinct from Government Forces, rebels and criminal groups. Pro-Government Armed Groups do not include Afghan Local Police which fall under the command and control of the Ministry of Interior. These armed groups have no legal basis under the laws of Afghanistan. Armed groups have the capacity to employ arms in the use of force to achieve political, ideological or economic objectives; are not within the formal military structures of States, State-alliances or intergovernmental organizations; and are not under the control of the State(s) in which they operate.” UNAMA, Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict, February 2016, http://www.refworld.org/docid/56c17b714.html, p. 81.
the government’s authority in their areas of influence and are increasingly associated with human rights violations. ²⁶

The deterioration of the security situation in 2015 followed a period of cautious optimism in 2013 and 2014 as successful elections and transition of power as well the promise of a new governing coalition saw a majority of Afghans reporting that the country was moving in the right direction. ²⁷ The security transition from the NATO-led International Security Assistance Force (ISAF) to the leadership of the ANSF had started and was reported to be progressing as planned. ²⁸

On 1 January 2015, ISAF ended its combat mission and ANSF assumed full responsibility for the security situation in the country. ²⁹ A significantly reduced international military presence remained under the NATO Resolute Support Mission (RSM), with a focus on training, advising and assisting the ANSF; in December 2015, it was agreed to sustain the RSM presence during 2016. ³⁰ In addition, the United States maintained a separate and complementary counterterrorism mission in the country. ³¹ According to analysts, the ANSF have proved generally adept in defending provincial capitals and major urban centres, with the chief exception of the brief capture by the Taliban of Kunduz in September 2015. However, the ANSF suffered a substantial increase in casualties in 2015 and have typically been forced into reactive positions as a resurgent Taliban launched multi-pronged offensives and strengthened their control in rural areas across the country during the 2015 fighting season. ³²

The UN Secretary-General reported in March 2016 that the peace process had gained regional momentum through the Quadrilateral Coordination Group (QCG), but that the Taliban’s commitment to the process remained uncertain. ³³ Moreover, different factions within the Taliban reportedly had

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²⁸ According to a briefing to the UN Security Council by the Secretary-General’s Special Representative for Afghanistan in December 2013, the security transition was “proceeding as planned, with the Afghan army and police stepping up to the challenge.” UN Security Council, Despite Temporary Setbacks, Afghanistan’s Political, Security Transition on Track, Special Representative Tells Security Council, 17 December 2013, http://www.un.org/press/en/2013/sc11218.doc.htm.


³⁰ NATO, A New Chapter in NATO-Afghanistan Relations, February 2016, http://www.nato.int/nato_static_f02/2014/assets/pdf/pdf_2016.01/20160202_1601-backgrounder-afghanistan-r-u.pdf. In early 2016, the U.S. military increased the deployment of troops to areas where the Afghan army is involved in heavy fighting with AGEs. While the troops are reported to continue their functions as advisors, American Special Operations forces are reported to be increasingly drawn into fighting against Taliban insurgents in Helmand province. See New York Times, U.S. To Send More Troops to Aid Afghan Forces Pressed by Taliban, 9 February 2016, http://www.nytimes.com/2016/02/10/world/asia/us-troops-helmand-province-afghanistan.html; Reuters, U.S. Troop Reinforcements Head for Embattled Southern Afghan Province, 9 February 2016, http://www.reuters.com/article/us-afghanistan-military-


differing interests in reaching a political settlement.\(^{34}\) The effectiveness of the High Peace Council (HPC) in its reconciliation efforts with the Taliban has reportedly been limited, amidst a leadership vacuum and sustained security threats against its members.\(^{35}\) While a number of women are members of the HPC, women remain excluded from the peace talks, despite repeated calls for participation from women’s rights activists.\(^{36}\)

The National Unity Government (NUG) remains a fragile governing coalition hampered by ethnic divisions, tensions related to political patronage and internal disagreements over key strategic issues.\(^{37}\) Concerns over the deteriorating security situation have reportedly reduced popular support and belief in the Government’s ability to provide security for the population, while political opponents have also increasingly voiced their disapproval with the Government’s inability to implement promised reforms.\(^{38}\) Following the postponement of parliamentary elections that were due to be held in April 2015, some progress was made in efforts to reform the electoral process through the establishment of a Special Electoral Reform Commission in July 2015.\(^{39}\) However, while the Commission issued its final recommendations in December 2015, implementation of the reforms reportedly stalled.\(^{40}\) Parliamentary and District Council elections are scheduled to be held in the second half of 2016.\(^{41}\)

The economic situation has deteriorated as economic growth slowed considerably in 2014 and 2015, reportedly as a result of increased violence and increased uncertainty about the future.\(^{42}\) The economy is reportedly largely comprised of informal and illicit activity, including the opium trade, which in


turn is reported to generate further instability.43 The withdrawal of the majority of international forces has reportedly had a harmful effect on the economic situation of many Afghans due to the sheer number of people who benefited economically from their presence.44 Unemployment in the formal sector is reported to be at 40 per cent (up from 9.3 per cent in 2011-12).45 According to a nation-wide survey conducted in June 2015, 55.4 per cent of respondents reported that their employment opportunities had worsened in the last year, while only 5.6 per cent of respondents reported an improvement. Similarly, 29.7 per cent of respondents reported that their household financial situation had worsened, while 21.0 per cent of respondents reported an improvement.46

These developments must be considered against a reported background of endemic corruption, difficulties in establishing and maintaining governmental authority, continuing concerns about weaknesses in the rule of law and an endemic judicial system, high crime levels,47 widespread human rights violations, and a general climate of impunity.48 There are also concerns that the ongoing violence and deteriorating economic situation are fuelling increases in mental health problems and drug use.49

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47 See Section II.C.

B. The Security Situation in Afghanistan: Impact of the Conflict on Civilians

The security situation in Afghanistan remains unpredictable, with civilians continuing to bear the brunt of the conflict.50 Following the completion of the withdrawal of the international military forces in 2014, 2015 saw an intensification of the conflict, particularly in the second half of the year, together with a marked deterioration of the security situation across the country compared to 2014.51 The Taliban was reported to exercise control in an increasing number of districts, and managed for the first time since 2001 to take temporary control over a provincial capital, the city of Kunduz, in September 2015.52 An increase in the number of armed actors, including as the result of the emergence of new groups affiliated to ISIS53 and the re-emergence of Al Qaeda,54 has further destabilized the security situation.55 Following the announcement of the death of the Taliban leader Mullah Omar in July 2015, opponents to the new leader Mullah Akhtar Mansur reportedly broke away into splinter groups, further increasing the number of armed actors engaged in the conflict.56 The conflict is increasingly affecting all parts of the country.57 Moreover, the nature of the conflict has reportedly continued to change.58 Since the completion of the withdrawal of international combat forces in 2014, the security situation in Afghanistan has significantly deteriorated.59


troops at the end of 2014, AGEs are reported to have engaged in an increasing number of attacks, including complex and suicide attacks as well as targeted and deliberate killings, and directly attacking ANSF checkpoints and smaller garrisons. There has been a significant increase in targeted killings and abductions of local civilian leaders by AGEs, as well as a general campaign of intimidation aimed at controlling communities in rural areas. AGES continue to carry out high-profile attacks in Kabul and other cities, and to expand their reach in rural or less populated areas.

Concerns have been expressed about the ANSF’s capability and effectiveness in ensuring security and stability across Afghanistan.


Mark Bowden, the UN Deputy Special Representative of the Secretary-General for Afghanistan, was quoted saying: “The conflict is changing in nature, in the way it is being fought and the impact is primarily on civilian population […] also, there has been a change in control of areas”. See UN News Service, Afghanistan: Despite Intensification of Violence, UN Official Reports Progress in Overall Relief Assistance, 15 December 2015, http://www.refworld.org/docid/56720f0417.html.


The United Nations Assistance Mission in Afghanistan (UNAMA) has expressed concerns about the continuing human rights abuses carried out by pro-government armed group and the extent to which such groups are able to act with impunity. Civilian casualties by pro-government armed groups reportedly increased by 42 per cent compared to 2014.66 Civilians were also reported to be increasingly caught in the line of fire between pro-government armed groups and AGEs.67

The next two subsections provide detailed information about the number of civilian casualties and the number of security incidents in Afghanistan. It should however be noted that while the total number of civilian casualties and the number of security incidents are important indicators of the intensity of the ongoing conflict in Afghanistan, they represent only one aspect of the direct impact of conflict-related violence on civilians. For an accurate understanding of the full impact of the conflict on the civilian population, consequences of violence that are more long-term and indirect must also be taken into account, including the impact of the conflict on the human rights situation and the extent to which the conflict impedes the ability of the State to protect human rights (see Section II.C). In the context of the conflict in Afghanistan, relevant factors in this respect are:

(i) The control over civilian populations by AGEs, including through the imposition of parallel justice structures and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, restrictions on freedom of movement, and the use of extortion and illegal taxation (see Section II.C);
(ii) Forced recruitment (see Section III.A.3);
(iii) The impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty and the destruction of livelihoods (see Section II.D);
(iv) High levels of organized crime and the ability of local strongmen, warlords and corrupt government officials to operate with impunity (see Section II.C);
(v) Systematic constraints on access to education and basic health care as a result of insecurity (see Section II.C); and
(vi) Systematic constraints on participation in public life, including in particular for women (see Sections III.A.1.i and III.A.7).

1. Civilian Casualties

UNAMA started tracking civilian casualties (comprising civilians who are either killed or injured as a result of conflict and other forms of violence) in 2009. The number of civilian casualties increased every year between 2009 and 2015, apart from a four per cent decrease in 2012 compared to 2011. The year 2015 saw the highest number of civilian casualties compared to previous years, with 11,002 civilian casualties (3,545 civilian deaths and 7,457 injured).68 Between 1 January 2009 and 31 December 2015, UNAMA recorded a total of 58,736 civilian casualties (21,323 deaths and 37,413 injured).69 The trend of rising numbers of civilian casualties continued in the first quarter of 2016.70

UNAMA observed that the rise in civilian casualties was due to an increase in ground engagements, targeted killings and complex and suicide attacks.71 While in the first half of 2015 casualties from...
ground engagements decreased by 19 per cent, increased ground fighting across Afghanistan caused a 60 per cent increase in civilian casualties from ground engagements in the second half of 2015. Pro-government forces were responsible for 30 per cent of civilian casualties caused by ground engagements, while AGEs caused 25 per cent of the civilian casualties from ground engagements (UNAMA could not determine the perpetrator for 44 per cent of the casualties from ground engagements). According to UNAMA, the significant increase in 2015 in civilian casualties from ground engagements by pro-government forces was due in large part to the completion of the security transition at the end of 2014, with the ANSF taking full responsibility in 2015 for counter-insurgency operations.

In 2014, improvised explosive devices (IEDs) were responsible for 925 civilian deaths and 2,053 injuries, marking an increase by 3 per cent compared to 2013. In 2015, for the first time since 2012, civilian deaths (713) and injuries (1,655) resulting from the use of IEDs decreased by 20 per cent compared to the previous year; however they remained the second most important cause of casualties after ground engagements, representing 21 per cent of civilian casualties.

AGEs also continued to use suicide attacks to target public places, including crowded markets, mosques, social gatherings such as weddings, gatherings of tribal elders and civilian government offices, in violation of international humanitarian law. In 2014 UNAMA documented 1,582 civilian casualties (371 killed and 1,211 injured) from suicide attacks, a 28 per cent increase from 2013; in 2015 these attacks increased by a further 16 per cent compared to 2014, causing 1,840 civilian casualties (308 deaths and 1,532 injured).

Marking a 28 per cent increase from 2014, in 2015 pro-government forces caused 1,854 civilian casualties (621 deaths and 1,233 injured), the vast part of which (68 per cent) were caused by ground engagements. UNAMA notes that it may be under-reporting the number of civilian casualties from night search operations, as a result of the limitations linked to the operating environment and limited access to information. In 2015, aerial operations by both international military forces and the Afghan Air Force caused 296 civilian casualties, an 83 per cent increase compared to 2014.

72 UNAMA defines pro-government forces as “Afghan Government National Security Forces and other forces and groups that act in military or paramilitary counter-insurgency operations and are directly or indirectly under the control of the Government of Afghanistan. These forces include, but are not limited to, the ABP, ALP, ANA, ANP, NDS and other Pro-Government local defence forces.” UNAMA, Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict, February 2016, http://www.refworld.org/docid/56c17b714.html, p. 81.
76 UNAMA observed that this reduction may be due to the increasing ability of Afghan security forces to detect and make safe IEDs rather than a reduced use of these devices by AGEs. UNAMA, Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict, February 2016, http://www.refworld.org/docid/55c1bdc4d.html, p. 35. UNAMA also observed that the decrease may be related to the fact that there were no elections, and therefore no attacks directed against election-related activities in the period under consideration. UNAMA, Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict, August 2015, http://www.refworld.org/docid/55c1bdc4d.html, p. 6.
Incidents of cross-border shelling by the Pakistani military from Pakistan into Afghanistan continue to impact areas in the eastern region of Afghanistan. In 2015, a total of 19 incidents of cross-border shelling resulted in 32 civilian casualties.\textsuperscript{81}

As of April 2014, more than 500 square kilometres of land were contaminated by landmines, affecting 1,609 communities in 253 districts.\textsuperscript{82} In mid-2015, the release of the nationwide Mine and ERW Impact Free Community Survey (MEIFCS) revealed that an additional area of about 30 square kilometres was contaminated, increasing the number of communities known to be impacted to 1,726.\textsuperscript{83}

2. Security Incidents

In 2015, 22,634 security incidents were recorded, a 3 per cent increase compared to 2014 and the second-highest number since 2001.\textsuperscript{84} A marked increase in the number of security incidents was recorded in areas in the north, such as the provinces of Sari Pul, Faryab, Jawzjan, Kunduz and Takhar.\textsuperscript{85}

C. Human Rights Situation

Despite the Afghan Government’s stated commitment to upholding its national and international human rights obligations, its record in protecting human rights continues to be inconsistent. Significant sectors of the population, including women, children, ethnic minorities, detainees, and others, reportedly continue to experience numerous human rights abuses by various actors.\textsuperscript{86}

1. Human Rights Abuses

Human rights violations against the civilian population are reported to occur in all parts of the country, regardless of who is in effective control of an area. In government-controlled areas, violations on the part of the State and its agents reportedly occur routinely.\textsuperscript{87} In areas where pro-government armed groups exercise (partial) control, such groups are reported to commit human rights violations with impunity.\textsuperscript{88} Equally, in areas controlled by AGEs there are reportedly widespread human rights violations, including through the imposition of parallel justice structures.\textsuperscript{89} Additionally, human rights violations are reportedly also committed by both State and non-State agents outside the


\textsuperscript{88} By the end of 2015, UNAMA had documented the formation of pro-Government armed groups in 23 districts of 10 provinces in areas with limited presence of Afghan security forces, as part of the Government’s “National Uprising Support Strategy.” UNAMA notes that human rights abuses by such pro-government armed groups have been consistently documented in the past, and that their creation comes with a significant risk of human rights abuses and impunity. UNAMA, Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict, February 2016, http://www.refworld.org/docid/56c17b714.html, pp. 65-66.

areas of their respective control. Severe human rights violations are reported to be particularly widespread in contested areas in which fighting is ongoing.

a) Human Rights Violations by State Actors

Various State actors and their agents have been accused of committing serious human rights violations. Members of the security forces have reportedly committed unlawful killings and sexually abused and exploited children. Government officials, security forces, detention centre authorities, and police have reportedly used torture or cruel, inhuman or degrading treatment or punishment (see below). Impunity for human rights violations committed by each of these State actors is reported to have remained widespread.

In successive reports, UNAMA has documented the widespread use of torture and ill-treatment of conflict-related detainees held by the National Directorate of Security (NDS), the Afghan National Police (ANP), the Afghan Local Police (ALP) and the Afghan National Army (ANA). Detainees reportedly lack access to remedial mechanisms and meaningful access to defence counsel. Abuse and torture of detainees were also reported to occur in unofficial detention facilities operated by security forces which are inaccessible to independent observers. Public statistics on the number of conflict-related detainees held outside the regular prison system are not available.

The prison system run by the Central Prisons Directorate reportedly suffers from severe overcrowding and poor hygienic conditions. Lengthy pre-trial detention remained a problem, despite the coming into effect of a new criminal procedure code in 2014. Law enforcement agencies reportedly use


torture in order to coerce confessions from detainees, particularly conflict-related detainees. 98 Female prisoners are reportedly subject to widespread sexual abuse and bullying. 99 While the ALP has reportedly helped to improve security in some areas where they are deployed, concerns remain about human rights violations committed by ALP members against the civilian population. 100 There are also concerns about continuing failures to ensure accountability for ALP officers for past and ongoing human rights violations, and about reports of ALP personnel being under the control of local power brokers. 101 In 2015, UNAMA documented 134 civilian casualties involving ALP officers, including 35 deaths and 99 injuries; 102 in 2014, UNAMA documented 121 civilian casualties (52 killed and 69 injured). 103 The most common violations attributed to ALP were reported to include severe beatings, property destruction, theft, threats, intimidation, and harassment. 104

UNAMA continued to document incidents involving security forces that impacted education; the majority of these were related to the occupation of schools for use as a base for combat operations, sometimes temporarily. Use of schools in this manner essentially converts schools from protected civilian buildings into legitimate military targets and has a serious impact on children’s safety, security and access to education. 105

UNAMA also noted its concern about conflict-related incidents attributed to Afghan security forces and international military forces in which hospitals, clinics, and health personnel were targeted. 106 In

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105 According to UNAMA and the United Nations Children’s Fund (UNICEF), 24 schools were used for military purposes by pro-government forces in 2015. Among these, the highest numbers were documented in Kunduz province, where the military use of 15 schools affected 6,680 students (3,980 boys and 2,700 girls). The ALP were also reportedly used to school in Baglan province as a base for operations for several months in 2015, during which approximately 700 students (340 girls and 360 boys), and 20 teachers (including eight female teachers) were denied access to the school. UNAMA, Education and Healthcare At Risk: Key Trends and Incidents Affecting Children’s Access to Healthcare and Education In Afghanistan, 18 April 2016, https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf, p. 19. See also UNAMA, Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict, February 2016, http://www.refworld.org/docid/56c178714.html, p. 19; UNAMA, Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict, August 2015, http://www.refworld.org/docid/55c1b4d4d.html, p. 30; UN Secretary-General, Report of the Secretary-General on Children and Armed Conflict in Afghanistan, 15 May 2015, S/2015/5356, http://www.refworld.org/docid/5596d5254.html, paras 47-48.

particular, a United States military airstrike on a Médecins Sans Frontières (MSF) hospital in Kunduz City in October 2015 was reported to have had a devastating impact on healthcare in Kunduz province, leaving thousands without access to emergency health care. At the end of 2015 and in early 2016 there was an increase in reports of search operations in health facilities causing civilian casualties, arrests and harassment of health care staff, and damage to medical equipment, attributed to Afghan security forces acting with support of international military forces.

b) Human Rights Abuses by Pro-Government Armed Groups

Pro-government armed groups are reportedly responsible for widespread human rights violations, including deliberate killings, assaults, extortion, intimidation and property theft. In 2015, UNAMA documented 136 civilian casualties (54 deaths and 82 injured) by such groups, compared to 102 casualties (53 deaths and 49 injured) documented in 2014. Twenty-two of the deaths and 3 of the injuries in 2015 were reportedly the results of targeted killings of civilians.

Among these groups are powerful strongmen and militias who are enlisted by the Afghan security forces to fight against AGEs, yet do not fall under the command and accountability structures of the ANSF. Impunity for human rights violations committed by pro-government armed groups is reportedly widespread.

The formation of private militias reportedly increased in 2015 as Afghan security forces struggled to contain AGE offensives across the country.

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c) Human Rights Abuses by Anti-Government Elements

AGEs were reported to carry out extrajudicial executions, torture and ill-treatment; and prevent civilians from exercising their rights to free movement, freedom of expression, political participation, as well as access to education and health care and the right to an effective remedy.

AGEs are reported to take advantage of the absence of governmental justice mechanisms or services to enforcing their own parallel “judicial” structures, primarily in, but not limited to, areas under their control. UNAMA notes that these “parallel judicial structures are illegal and have no legitimacy or basis under the laws of Afghanistan. Punishments carried out by these structures amount to human rights abuses, criminal acts under the laws of Afghanistan, and in some circumstances, war crimes under international law.” In 2015, UNAMA documented 76 civilian casualties (60 deaths and 16 injured) following death sentences and lashings by AGEs. AGEs are also reportedly imposing illegal taxes in areas where they attempt to impose parallel systems of governance.

AGEs reportedly place limitations on the right to freedom of expression. Civilians who speak out against AGEs or in favour of the Government, as well as civilians who are accused by AGEs of spying for the Government, reportedly face a risk of being subjected to summary trials in parallel and illegal judicial procedures operated by AGEs; the punishment for such alleged “crimes” is usually execution (see Section III.A.1.g). The Taliban have issued multiple threats and have committed violent attacks against media companies and journalists that are perceived to report critically against them.

AGEs also reportedly place limitations on the right to political participation. During the 2014 election period, UNAMA recorded 674 casualties (173 civilian deaths and 501 injured) from attacks directly targeting the electoral process, where the vast majority resulted from ground engagements and IED attacks by AGEs targeting election convoys, polling centres or electoral candidates and their supporters.

AGEs are also reported to limit the right to freedom of movement through illegal checkpoints and the use of IEDs. While there was a reduction in civilian casualties caused by IEDs in 2015, UNAMA

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documented 1,051 civilian casualties (459 deaths and 592 injured) from the use of pressure-plate IEDs, a 35 per cent increase compared to 2014. While primarily deployed by AGEs as a defensive combat weapon against security forces, pressure plate IEDs are victim-operated and frequently impact civilians moving through public roads, footpaths, civilian agricultural areas, and other public areas frequented by civilians. UNAMA has expressed concerns about "the continued use of IEDs by Anti-Government Elements to target Afghan security forces in areas crowded with civilians, including bazaars, central areas of towns and cities, mosques and close to hospitals or schools, despite the indiscriminate and disproportionate impact upon civilians in such circumstances." IEDs planted in civilian agricultural areas, footpaths, public roads and other public areas hinder access to health care, education and livelihoods, and create an environment of fear and insecurity, with civilians living under the constant threat of death, maiming, serious injury and destruction of property.

Taliban public statements continue to emphasize their support for education and to declare that promotion of education inside the country is one of their main objectives. In some areas, the Taliban have facilitated the re-opening of schools and the resumption of education, and some moderate factions within the Taliban have reportedly expressed support for the education of girls and women. However, there have been reports of both the Taliban and ISIS-affiliated groups using schools and madrassas as places for the indoctrination and recruitment of children for use in combat and for combat support functions. The Taliban have also been reported to interfere in or attempt to control the curriculum for adherence to Taliban-approved criteria.

Incidents of conflict-related violence directly impacting access to education continue to be reported in all regions of the country. The vast majority of reported incidents were attributed to AGEs, including the Taliban, and included burning of schools, targeted killings and intimidation of teachers and staff, IEDs inside or in the vicinity of schools, rocket attacks against educational facilities, and...
 closure of schools, particularly girls’ schools. AGEs are similarly reported to restrict access to health care. In 2015, UNAMA documented 63 incidents targeting hospitals and health personnel by AGEs, a 47 per cent increase compared to 2014. Despite pledges by the Taliban to support polio vaccination campaigns, vaccination bans imposed by AGEs and attacks against polio workers continue to be reported.

The right to freedom of religion is also reported to come under attack from AGEs, including through the use of threats and attacks against individuals and communities who are perceived to contravene AGEs’ interpretation of Islamic principles, norms and values.

2. The Ability of the State to Protect Civilians from Human Rights Abuses

Even where the legal framework provides for the protection of human rights, the implementation of Afghanistan’s commitments under national and international law to promote and protect these rights in practice frequently remains a challenge. Afghan governance and the adherence to the rule of law are perceived as particularly weak, while public satisfaction with government performance and confidence in public institutions reportedly decreased sharply in 2015.

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137 The Taliban were reported to be the perpetrator in 36 of the incidents, while ISIS-affiliated fighters were the perpetrator in 12 incidents. UNAMA, Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict, February 2016, http://www.refworld.org/docid/56c17b714.html, p. 20. During 2014, at least 10 health-care personnel were reported to be killed and a further 14 abducted. 38 incidents were attributed to armed groups, including 13 to the Taliban. UN Secretary-General, Children and Armed Conflict: Report of the Secretary-General, 5 June 2015, A/69/926–S/2015/409, http://www.refworld.org/docid/557abf904.html, para. 34.


139 For further analysis of the situation of religious leaders who are at risk from AGEs, see Section III.A.1.h. For analysis of the situation of persons perceived as contravening the Taliban’s interpretation of Islamic principles, norms and values, see Section III.A.6. For analysis of the specific situation of women and men who are perceived to contravene social mores, see Section III.A.8.


The capability of the Government to protect human rights is undermined in many districts by insecurity and the high number of attacks by AGEs. Rural and unstable areas reportedly suffer from a generally weak formal justice system that is unable to effectively and reliably adjudicate civil and criminal disputes. Government-appointed judges and prosecutors are reportedly frequently unable to remain in such communities, due to insecurity.

High levels of corruption, challenges to effective governance and a climate of impunity are all reported by observers as factors that weaken the rule of law and undermine the ability of the State to provide protection from human rights violations. Accountability for human rights violations is reported to remain weak, and little or no political support has materialized for the advancement of transitional justice mechanisms. As noted above, a number of State actors tasked with protecting human rights, including the ANP and ALP, are themselves reported to commit human rights abuses with impunity in certain parts of the country.

Corruption is reported to affect many parts of the State apparatus, on the national, provincial and local levels. Up to two-thirds of Afghan citizens who are in contact with public officials at provincial and district levels reportedly have to pay bribes to access public services. Within the police, corruption is reported to be endemic, as is the abuse of power and extortion. The justice system is similarly reported to suffer from widespread corruption.

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142 According to the US Department of State, “The formal justice system was relatively strong in urban centers, where the central government was strongest, and weaker in rural areas, where approximately 76 percent of the population lived.” US Department of State, 2015 Country Reports on Human Rights Practices - Afghanistan, 13 April 2016, http://www.refworld.org/docid/5711040d4.html. Freedom House reported, “Traditional or mob justice is the main recourse for the population, especially in rural areas.” Freedom House, Freedom in the World 2015 - Afghanistan, 20 March 2015, http://www.refworld.org/docid/55116f4111.html. The United Nations Development Programme (UNDP) reports that the Government is “fighting an uphill task in seeking recognition in rural areas, mainly due to: (i) the weak capacity, decision-making power, financial, and human resources available in sub-national public institutions, reinforced by absences of government representatives from their offices when needed; (ii) the long-established roles and relatively high reputation of traditional mechanisms, in contrast with popular perceptions of [the Government] as corrupt and ineffective; and (iii) security concerns. UNDP, Management of Local Grievances and Complaints in the Afghan Public Sector: Afghanistan Sub-National Governance Study Paper No. 4, 1 January 2014, http://www.af.undp.org/content/dam/afghanistan/docs/Other/StudyPapers/UNDP-FA-24022014-Formal%20Governance%20Mechanisms.pdf, p. 31.


144 The AIHRC reported that “...the Afghan justice and judicial system is faced with many challenges to effectively address the cases of human rights violation. There are many reasons for this, out of which corruption and low level of professionalism in this system, weakness in the independence of these institutions, influence of powerful and influential people in these institutions, insecurity, existence of illegal and irresponsible armed persons and groups in different regions of the country, and lack of effective supervision over these institutions are the most important reasons.” AIHRC, The Situation of Human Rights in Afghanistan in 1393, 11 August 2015, http://www.refworld.org/docid/5694bc384.html, p. 87. See also US Department of State, 2015 Country Reports on Human Rights Practices - Afghanistan, 13 April 2016, http://www.refworld.org/docid/5711040d4.html; Freedom House, Freedom in the World 2015 - Afghanistan, 20 March 2015, http://www.refworld.org/docid/55116f4111.html.


146 According to a survey by the Asia Foundation, 61 percent of respondents had to pay a bribe some, most or all of the time when accessing public services at the provincial level, while the equivalent number at municipal level was 66 per cent. Asia Foundation, Afghanistan in 2015: A Survey of the Afghan People, November 2015, http://asiafoundation.org/resources/pdfs/Afghanistan2015.pdf, pp. 99-100. See for example SIGAR, Afghan Local Police: A Critical Rural Security Initiative Lacks Adequate Logistics Support, Oversight, and Direction, October 2015, https://www.sigar.mil/pdf/audite/SIGAR-16-3-AR.pdf.

In some areas, local communities are reported to prefer parallel judicial structures, such as courts run by the Taliban to settle civil disputes.\textsuperscript{150} Nevertheless, UNAMA notes that these structures are typically imposed on communities and that punishments such as executions and amputations meted out by these structures are criminal acts under Afghan law. Victims of the human rights abuses carried out by these parallel justice structures reportedly do not have access to government redress mechanisms. UNAMA notes that the Government’s inability to hold perpetrators of the crimes committed in the framework of parallel justice structures to account may itself amount to a violation of human rights under the principle of due diligence.\textsuperscript{151}

D. Humanitarian Situation

The ongoing conflict in Afghanistan continues to exact a heavy toll on the humanitarian situation in the country.\textsuperscript{152} As a result of the general rise in insecurity,\textsuperscript{153} including the rise in security incidents affecting humanitarian workers,\textsuperscript{154} humanitarian access to affected populations is limited.\textsuperscript{155} The limited presence of humanitarian actors in conflict-affected areas in particular inhibits access to life-saving assistance for Afghanistan’s most vulnerable people.

Decades of conflict and recurrent natural disasters have left Afghanistan’s population in a state of deep vulnerability, with many people’s coping mechanisms having been exhausted. The ongoing conflict further exacerbates these vulnerabilities through the destruction of livelihoods and the loss of livestock, growing rates of communicable diseases, increased displacement, continuous human rights abuses, and higher crime levels.\textsuperscript{156} Similarly, the protracted conflict, poor governance and weak or

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\textsuperscript{151} UNAMA observed that “...although some communities voluntarily choose the Taliban courts, a number of reports were received of Anti-Government Elements, particularly Taliban, forcing local communities to comply with their parallel judicial structures.” UNAMA, Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict, February 2015, http://www.refworld.org/docid/54e44e274.html, pp. 60-62.


\textsuperscript{156} See, for example, OCHA, Afghanistan 2016 Humanitarian Needs Overview, 31 December 2015, https://www.humanitarianresponse.info/en/system/files/documents/files/afg_2016_hno_final_20151209.pdf; UNAMA, Afghanistan: Human Rights and Protection of Civilians in Armed Conflict Special Report on Kunduz Province, December 2015, http://www.refworld.org/docid/55672df64.html, pp. 2-3; UN Office on Drugs and Crime (UNODC), Afghanistan Opium Survey 2014 - Socio-Economic Analysis, 20 April 2015, http://www.refworld.org/docid/55672df64.html, p. 36. According to the UN Secretary-General, “In 2015, the national task force on internally displaced persons, co-chaired by the Ministry of Refugees and Repatriations and the United Nations, recorded 335,000 persons displaced in Afghanistan as a result of conflict in 31 of the country’s 34 provinces. One of the highest internal displacement figures recorded since 2002, it represents a 78 per cent increase compared with 2014 and brought the estimated number of displaced persons in Afghanistan to more than 1 million.” UN Secretary-General, The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General, 7 March 2016, A/70/775-S/2016/218, http://www.refworld.org/docid/56f2667d4.html, para. 41. According to INFORM, the risk assessment tool developed by the Inter-Agency Standing Committee Task Team for Preparedness and Resilience and the European Commission, Afghanistan ranks third for the risk of humanitarian crises and disasters that could overwhelm national response capacity. See INFORM, Index for Risk Management - Results
corrupt institutions are reported to have led to a situation where disaster preparedness, risk reduction and emergency response mechanisms are weak or absent. 157 As a result, natural disasters, including floods, mudslides, earthquakes, droughts and severe winter weather, are a further cause of vulnerability for people whose levels of resilience have already been worn down. 158 Observers expect that the number of people in need of humanitarian assistance in 2016 will increase. 159

Humanitarian indicators are critically low in Afghanistan: by the end of 2015, out of a total population of approximately 27 million people, 8.1 million people were reported to be in need of humanitarian assistance. 160 Over one million children are reported to suffer from acute malnutrition, while 9.1 per cent of children died before their fifth birthday. 161 The proportion of the population who are reported to live below the national poverty line stands at 35.8 per cent, 162 while 1.7 million Afghans are severely food insecure. 163 Only 46 per cent of the population have access to potable water. 164 Afghanistan remains the poorest country in the region, ranking 171 out of 188 countries in the 2015 UN Human Development Index. 165

The ongoing conflict has particularly serious consequences for access to health care, including as a result of direct attacks on health workers and health facilities, but also because general insecurity impedes access to health care facilities, particularly in areas under the control or influence of AGES. 166 It is reported that 36 per cent of the population has no access to essential primary health care services. 167


According to OCHA, the temporary seizure of Kunduz by the Taliban in October 2015 had a significant impact on access to basic services for the civilian population who remained in the city, including as a result of the attack by US forces on the MSF hospital, which was the only medical facility of its kind in the city. UNAMA, Afghanistan: Human Rights and Protection of Civilians in Armed Conflict Special Report on Kunduz Province, December 2015, http://www.refworld.org/docid/566db0864.html, p. 19; see also UN General Assembly, The Situation in Afghanistan and its Implications for International Peace and Security, 10 December 2015, A/70/601-S/2015/942, http://www.refworld.org/docid/5672aca7c4.html, para. 46.
E. Conflict-Induced Displacement

Conflict and insecurity continue to be major drivers of internal displacement in Afghanistan, affecting all areas of the country.168 By the end of 2015 more than one million Afghans were estimated to live as internally displaced persons (IDPs) as a result of conflict-related events since 2002. This figure includes newly displaced persons as well as persons living in protracted displacement (including persons who have been displaced multiple times). It was estimated that some 384,000 people were newly displaced in 2015, a significant increase from the displacement levels reported in 2014 (about 192,000 persons) and in 2013 (about 127,000 persons). The displacement trends in the first months of 2016 were reported to be in line with those in the last months of 2015.169 Precise figures for the number of IDPs in the country are difficult to obtain. Official figures for the total number of IDPs may under-represent the actual scale of the displacement problem in Afghanistan, as they likely exclude some IDPs dispersed in urban areas, as well as those displaced in rural locations in areas inaccessible to humanitarian actors.170

A National Policy on Internally Displaced Persons (IDPs) was endorsed by the government in November 2013 and launched in February 2014. The policy covers displacement caused by both conflict and natural disaster and sets out the rights of IDPs and roles and responsibilities of the different government ministries, as well as the role of humanitarian and other partners.171 However, challenges to the implementation of the Policy remain.172 IDPs remain among the most vulnerable groups in Afghanistan;173 many – especially in conflict-affected rural areas – are beyond the reach of

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humanitarian organizations. Among IDPs, women, children, elderly persons and persons with disabilities are especially vulnerable. Afghanistan is experiencing a period of rapid urbanization; many IDPs end up in large urban centres that have limited absorption capacity and where access to basic services remains a major concern. The lack of efficient urban policy and regulatory frameworks, as well as weak and ineffective governance, have reportedly contributed to increased poverty and inequality in urban areas. A large proportion of Afghanistan’s middle and low-income urban households are reportedly residing in poorly located and under-serviced informal settlements. According to the Afghan Living Conditions Survey 2013-2014, 73.8 per cent of the urban population in Afghanistan live in slum households. Poverty among urban households is reportedly widespread and the economic situation of urban households is reported to have deteriorated significantly in the past years.

The city of Kabul has seen the biggest population increase of Afghan cities. Official population estimates indicate that by 2015 the city had 3.5 million residents, with an estimated annual population growth of 10 per cent between 2005 and 2015. An estimated 21 per cent of Kabul’s population was born elsewhere, and Kabul has reportedly received close to 40 per cent of all new conflict-induced IDPs in Afghanistan since 2002. Some estimates put the percentage of Kabul’s population living in informal settlements at 70 per cent. The financial situation of Kabul residents and their employment


175 Three out of five IDP children are reported not to attend school. OCHA, 2016 Humanitarian Needs Overview, November 2015, http://reliefweb.int/sites/reliefweb.int/files/resources/afg_2016_hno_final_20151209.pdf, p. 20. In May 2015, an assessment of recently displaced families in Kabul found that most of the children were working to contribute to the families’ income, due to the high living costs and very low incomes. UNHCR, Afghanistan: Conflict-Induced Internal Displacement Monthly Update, May 2015, http://www.refworld.org/docid/55942f544.html, p. 3. Based on interviews with 446 persons from both displaced and non-displaced communities in Kabul, the eastern city of Jalalabad and Kandahar in southern Afghanistan, NRC and the Liaison Office found that “despite some recent achievements by women in Afghanistan, young women and girls face significantly more and qualitatively different challenges in accessing education, health care and employment than their male counterparts. This seems to be even more pronounced in informal settlements.” NRC / The Liaison Office, Listening to Women and Girls Displaced to Urban Afghanistan, 26 March 2015, http://www.refworld.org/docid/5513bce24.html, p. 13.


180 A study on urban poverty in Afghan cities by Samuel Hall found that 78.2 per cent of urban households in Afghanistan live below the official poverty line (in Kabul the estimated percentage is 78.0 per cent), “a sign that the economic situation of urban households has deteriorated significantly over the past 3 years.” Samuel Hall, Urban Poverty Report: A Study of Poverty, Food Insecurity and Resilience in Afghan Cities (report commissioned by Danish Refugee Council and People in Need), November 2014, http://samuelhall.org/wp-content/uploads/2014/11/DRC-PIN-Urban-Poverty-Report.pdf, p. 30. A survey by the Asia Foundation found that “only 21.0% of Afghans say their household financial situation has improved in 2015, compared to 49.8% who said the same in 2012. Meanwhile, the percentage of Afghans who say their household financial situation worsened over the past year is 29.7% in 2015, compared to 6.9% in 2012.” The survey included face-to-face interviews with 9,586 Afghans from 14 different ethnic groups in all 34 provinces of the country, conducted in June 2015. The Asia Foundation, Afghanistan in 2015: A Survey of the Afghan People, November 2015, http://asiafoundation.org/resources/pdfs/Afghanistan2015.pdf, p. 57.


opportunities are reportedly worsening. In the Kabul Informal Settlements (KIS), designated sites of protracted IDPs, returnees and other urban poor targeted for humanitarian assistance, 80 per cent of a population of about 55,000 people are reportedly severely or moderately food insecure.

Within this context, urban IDPs are more vulnerable than the non-displaced urban poor, as they are particularly affected by lack of access to social services and livelihood opportunities, with negative repercussions on food security and social protection mechanisms. The lack of adequate land in urban areas and a lack of affordable housing often forces new and protracted IDPs to reside in informal settlements without an adequate standard of living and limited access to water and sanitation.

Antiquated land tenure policies and lack of security of tenure are reported to leave IDPs and other inhabitants of informal settlements vulnerable to continuous threats of evictions and secondary displacement. Land grabbing, including of land allocated for returning refugees or IDPs, reportedly represents an additional obstacle.

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185 According to The Asia Foundation survey, 73.6% of residents in Kabul reported that their employment opportunities had worsened over the past year, and 55.3% of Kabul residents reported that their household financial situation had worsened over the past year. The Asia Foundation, Afghanistan in 2015: A Survey of the Afghan People, November 2015, http://asiafoundation.org/resources/pdfs/Afghanistan2015.pdf, pp. 56-57.

186 World Food Programme, Kabul Informal Settlement (KIS) Winter Needs Assessment November 2015, 8 December 2015, http://reliefweb.int/sites/reliefweb.int/files/resources/Kabul%20Informal%20Settlement%20Winter%20Needs%20Assessment%20November%202015%20%20Final%20Report%20%20Food%20%20Security.pdf. According to the Samuel Hall Consulting study on urban poverty, “IDPs living in the informal settlements that have been identified by humanitarian actors as areas of particular vulnerability show lower levels of resilience than other groups, but living in a KIS is not nearly as strong a determinant of vulnerability as other criteria such as having addicted members of households or being a female-headed household. The main difference comes from access to basic services, for which IDPs living in the KIS are disadvantaged.” Samuel Hall, Urban Poverty Report: A Study of Poverty, Food Insecurity and Resilience in Afghan Cities (report commissioned by Danish Refugee Council and People in Need), November 2014, http://samuelhall.org/wp-content/uploads/2014/11/DRRC-PIN_Urban-Poverty-Report.pdf, pp. 7-8.

187 The first volume of The State of Afghan Cities found that, “Urban IDPs are extremely vulnerable, particularly in the first year after their displacement. Often lacking identity documents, IDPs can face significant barriers to accessing justice services, enrolling children in school and securing employment in the formal urban economy. ... Largely excluded from participating in urban society, IDPs face a whole range of protection challenges including increased rates of crime, insecurity, increased risk of Gender Based Violence (GBV), child exploitation, and negative coping mechanisms, with women and girls in particular at greater risk. In addition, urban IDPs tend to have significantly higher rates of illiteracy and lower paid jobs, with a clear ‘skills disadvantage’ compared with other urban residents, even the urban poor.” Government of the Islamic Republic of Afghanistan, The State of Afghan Cities 2015, September 2015, http://unhabitat.org/books/soac2015/, p. 17. See also AHIRC, A Report on the IDPs Situation in Afghanistan, 19 December 2015, http://www.aihrc.org.af/home/press_release5230; Samuel Hall, Policy Brief: National Policy on IDPs in Afghanistan - From Policy to Implementation: Engaging with National Procedures, National and International Stakeholders in 2015, 8 April 2015, http://samuelhall.org/REPORTS/Afghanistan%20National%20IDP%20Policy%20Brief.pdf, p. 1.


189 According to the Afghan Living Conditions Survey 2013-2014, “an important number of internally displaced people and former refugees now live in informal settlements located in or around the major cities of the country, like Kabul, Herat, Mazar-e-Sharif, Jalalabad and Kundahar. Indeed, rapid urban growth has been fuelled by the repatriation of refugees, the arrival of IDPs and by the economic migration from rural areas. Therefore, in specific areas of the country, housing conditions are particularly poor and slum dwellers are particularly numerous.” Central Statistics Organization, Afghanistan Living Condition Survey 2013-2014: National Risk and Vulnerability Assessment, 2016, http://cso.gov.af/Content/files/ALCS%202013-14%20Main%20Report%20%20English%20%2020151221.pdf, p. 204. The first volume of The State of Afghan Cities indicates that “Lack of the means to enter the formal housing market, urban IDPs frequently come to reside in informal settlements, with very limited access to water and other basic services [and] sub-standard, overcrowded housing conditions and little or no tenure security.” Government of the Islamic Republic of Afghanistan, The State of Afghan Cities 2015, September 2015, http://unhabitat.org/books/soac2015/, p. 17. UNICEF notes, in the context of the rapid urbanization in Afghanistan, that while “quantitative data indicate urban areas are better off in terms of child well-being and access to basic services,” the data conceal differences among various groups. UNICEF further notes in the context of relocation that “families often have no choice but to settle in slums where they lack access to decent housing, water sources, sanitation, health care and education. Limited land availability has pushed people to settle in precarious places, such as the steep hillsides surrounding Kabul. These informal settlements are characterized by high exposure to natural hazards such as extreme winter weather, limited access to clean water and unhygienic environments, raising serious public health concerns.” UNICEF, Children and Women in Afghanistan: A Situation Analysis 2014, November 2014, http://www.unicef.org/afghanistan/SitAntrys_Long_Report_small_size.pdf, p. 31. In the cities of Herat and Helmand, the majority of IDPs reportedly live in informal settlements or “precarious open spaces”. Samuel Hall Consulting, Displacement Dynamics: IDP Movement Tracking, Needs and Vulnerability Analysis, Herat and Helmand Afghanistan, May 2014, http://samuelhall.org/wp-content/uploads/2014/05/IDP-Movement-Tracking-Needs-and-Vulnerability-Analysis-Afghanistan.pdf, p. 47.

188 While a significant number of plots of intact and uncultivated government land has reportedly been distributed to landless returnees and IDPs according to a government Land Allocation Scheme, only a small proportion of these are reported to have been settled. Government of...
F. Refugees and Returnees

Pakistan and Iran continue to host the vast majority (an estimated 95 per cent) of the Afghan refugee population, totalling an estimated 2.5 million people.°° Since 2002, more than 5.8 million Afghan refugees have returned to Afghanistan, representing about 20 per cent of the Afghan population; the vast majority returned between 2002 and 2008.°°

Because of the complexity of the Afghan situation, which affected the region as a whole, the Islamic Republics of Iran, Afghanistan and Pakistan, with the support of UNHCR, initiated a quadrilateral consultative process in 2011 to identify and implement lasting solutions for Afghan refugees in the region. A Solutions Strategy for Afghan Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance for Host Countries (SSAR) was designed to offer a comprehensive and integrated framework for joint interventions aimed at preserving asylum space for Afghan refugees in neighbouring countries and at supporting sustainable reintegration for those Afghans who voluntarily decide to return to Afghanistan. The latter is particularly important in light of the fact that many Afghans who have returned in previous years are reported to have been unable to reintegrate into their home communities, resulting in significant secondary displacement, mostly to urban areas.°° Returnees reportedly experience severe difficulties in rebuilding their lives in Afghanistan.°° An estimated 40 per cent of returnees are reportedly vulnerable with poor access to livelihood, food, and shelter.°° Obstacles to return for both IDPs and returning refugees include on-going insecurity in their


An estimated 1.5 million Afghan refugees are in Pakistan, and an estimated 950,000 Afghan refugees are in Iran. In addition, an estimated 2 million undocumented Afghans reportedly reside in Pakistan and Iran. UNHCR, High-level Segment on the Afghan Refugee Situation: Background Document, October 2015, http://www.unhcr.org/5662a22979.html, p. 4.


areas of origin; loss of livelihoods and assets; lack of access to health care and education; and difficulties in reclaiming land and property.  

UNHCR recognizes the right of all individuals to return to their country of origin, even under adverse circumstances. UNHCR therefore continues to stand ready to support Afghans who are registered refugees in the countries neighbouring Afghanistan and who, being fully informed of the situation in their places of origin, voluntarily decide to return to Afghanistan. However, the current operational environment in Afghanistan imposes severe limitations on UNHCR’s efforts aimed at sustainable reintegration for returnees and IDPs in Afghanistan. More generally, voluntary repatriation and forced return of rejected asylum-seekers are processes of fundamentally different characters, engaging different responsibilities on the parts of the various actors involved. UNHCR’s engagement with Afghan individuals who voluntarily decide to return to Afghanistan should therefore not be construed as implying an assessment on the part of UNHCR of the safety and other aspects of the situation in Afghanistan for individuals who have applied for international protection in countries of asylum.

While there are no systematic efforts to track the situation of rejected Afghan asylum-seekers who are forcibly returned to Afghanistan from Western countries, research initiatives following selected groups of returnees indicate that the vast majority end up leaving the country again or are intending to do so.  

Among all asylum-seekers who applied for asylum in 44 countries in Europe, North America, Oceania and Asia in 2014, asylum-seekers from Afghanistan were the third largest group with an estimated 59,500 claims. Globally, in the first half of 2015 Afghans lodged some 72,100 claims for asylum, a marked increase from the same period in 2014 (26,500).

III. Eligibility for International Protection

People fleeing Afghanistan may be at risk of persecution for reasons that are related to the ongoing armed conflict in Afghanistan, or on the basis of human rights abuses that are not directly related to the conflict, or a combination of the two.

UNHCR considers that in relation to individuals with the profiles outlined in this Section a particularly careful examination of possible risks is required. However, the profiles listed here are not necessarily exhaustive; they are based on information available to UNHCR at the time of writing. Hence, a claim should not automatically be considered as without merit simply because it does not fall within any of the profiles identified here.

Depending on the specific circumstances of the case, family members or other members of the households of individuals with these profiles may also be in need of international protection on the basis of their association with individuals at risk.

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197 Dr Liza Schuster of City University interviewed around 100 rejected asylum-seekers who had been returned to Kabul and found that “the vast majority of people she interviewed did try to leave the country again, and around 80% of them succeeded.” The Bureau of Investigative Journalism, From Kent to Kabul: The Former Asylum Seeking Children Sent Back to Afghanistan, July 2015, http://labs.thebureauinvestigates.com/from-kent-to-kabul/. According to the Refugee Support Network (RSN), which tracked a group of Afghan individuals who had been returned from the United Kingdom to Afghanistan, the majority of the returnees intended to leave Afghanistan again. RSN, After Return: Documenting The Experiences of Young People Forcibly Removed to Afghanistan, April 2016, https://refugeesupportnetwork.org/sites/default/files/files/After%20Return%20RSN_April%202016.pdf, pp. 6, 7, 19, 30, 43. See also Reuters, Sent Back from Europe, Some Afghan Children Sent Back to Afghanistan, 16 November 2015, http://www.reuters.com/article/2015/11/16/us-afghanistan-migrants-insight-idUSKCN0T50E020151116; Peace Research Institute Oslo (PRIO), Can Afghans Reintegrate after Assisted Return from Europe?, July 2015, http://file.prio.no/publication_files/PRIOP0020-201507068920-PRIO-CAN%20Afghans%20Reintegrate%20after%20Assisted%20Return%20from%20Europe%20-PRIO%20Policy%20Brief%2007-2015.pdf.
Afghanistan continues to be affected by a non-international armed conflict. Individuals fleeing violence or the threat of violence in the context of this conflict may also meet the criteria for refugee status as contained in Article 1(A)(2) of the 1951 Convention. For this to be the case, the feared persecution flowing from the violence must be for reason of a 1951 Convention ground. In the context of Afghanistan, examples of circumstances where civilians are subjected to violence for a 1951 Convention reason include situations where violence is targeted at areas where civilians of specific ethnic, political or religious profiles predominantly reside, or at locations where civilians of such profiles predominantly gather (including markets, mosques, schools, or large social gatherings such as weddings). To qualify for refugee status there is no requirement that an individual be known personally to the agent(s) of persecution or be sought out personally by those agents. Similarly, entire communities may have a well-founded fear of persecution for one or more of the 1951 Convention grounds; there is no requirement that an individual suffer a form or degree of harm above that suffered by other individuals with the same profile.

For civilians fleeing violence to come within the scope of Article 1(A)(2) of the 1951 Convention, the impact of the violence must be sufficiently serious as to amount to persecution. A risk of regular exposure to violent conduct or to the consequences of such conduct can amount to persecution within Article 1(A)(2) of the 1951 Convention, either independently or cumulatively. In the context of the conflict in Afghanistan, relevant considerations to determine whether the consequences of violence for civilians are sufficiently serious to meet the threshold of persecution include the number of civilian casualties and the number of security incidents, as well as the existence of serious violations of international humanitarian law which constitute threats to life or freedom or other serious harm. Such considerations are not, however, limited to the direct impact of the violence, but also encompass the consequences of violence that are more long-term and indirect, including the impact of the conflict on the human rights situation and the extent to which the conflict impedes the ability of the State to protect human rights. In the context of the conflict in Afghanistan, relevant factors in this respect are:

(i) the control over civilian populations by AGEs, including through the imposition of parallel justice structures and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, restrictions on freedom of movement, and the use of extortion and illegal taxation;
(ii) forced recruitment;
(iii) the impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty and the destruction of livelihoods;
(iv) high levels of organized crime and the ability of local strongmen, warlords and corrupt government officials to operate with impunity;
(v) systematic constraints on access to education and basic health care as a result of insecurity; and
(vi) systematic constraints on participation in public life, including in particular for women.

All claims lodged by asylum-seekers, whether on the basis of the refugee criteria in the 1951 Convention, the refugee definitions in regional instruments, UNHCR’s mandate, or complementary forms of protection based on broader international protection criteria, need to be considered on their merits according to fair and efficient status determination procedures and up-to-date and relevant country of origin information. UNHCR considers that individuals with the profiles outlined below require a particularly careful examination of possible risks. Certain claims by asylum-seekers from Afghanistan may require examination for possible exclusion from refugee status (see Section III.D).

202 UNHCR, Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence; Roundtable 13 and 14 September 2012, Cape Town, South Africa, 20 December 2012, http://www.refworld.org/docid/50d32e5e2.html, paras. 10-12. See also Section II.B of these Guidelines.
The status of recognized refugees should be reviewed only in the following circumstances:

(i) If there are indications, in an individual case, that there are grounds for cancellation of refugee status which was wrongly granted in the first instance;

(ii) Revocation of refugee status on the grounds of Article 1F of the 1951 Convention; or

(iii) Cessation of refugee status on the basis of Article 1C(1-4) of the 1951 Convention.203

UNHCR considers that the current situation in Afghanistan does not warrant cessation of refugee status on the basis of Article 1C(5) of the 1951 Convention.

A. Potential Risk Profiles

1. Individuals Associated with, or Perceived as Supportive of, the Government and the International Community, Including the International Military Forces

AGEs are reported to systematically target civilians who are associated with, or who are perceived to be supporting the Afghan Government, Afghan civil society and the international community in Afghanistan, including the international military forces and international humanitarian and development actors.204 In 2015, UNAMA attributed 1,335 civilian casualties (790 deaths and 545 injured) to incidents of targeted killings or attempted targeted killings to AGEs, among which the Taliban claimed responsibility for 135 incidents causing 336 civilian casualties (168 deaths and 168 injured). The number of such casualties increased by 25 per cent from 2014 (716 deaths and 353 injured), while the number of Taliban-claimed incidents increased by 59 per cent.205 UNAMA also attributed 26 civilian casualties (17 deaths and nine injured) from 17 targeted and deliberate killing incidents to ISIS-affiliated groups in 2015.206 Among the primary targets of such attacks are national and local political leaders, government officials, teachers and other civil servants, off-duty police officers, tribal elders, religious leaders, women in the public sphere, civilians accused of spying for pro-government forces, human rights activists, humanitarian and development workers, and construction workers.207

On 22 April 2015, the Taliban announced that, as in previous years, the spring offensive would target government officials and others perceived as supportive of the government and the international community.208 Despite a stated intention by the Taliban to reduce civilian casualties,209 there are...
continued reports of the Taliban specifically targeting civilians and objects protected under international humanitarian law. In 2015 the Taliban admitted to causing civilian casualties in two incidents, but reportedly understated the full impact of these incidents on civilians.

Apart from targeted killings, AGEs are also reported to use threats, intimidation, abductions and arson attacks to intimidate communities and individuals and thus extend their influence and control, targeting those who challenge their authority and ideas.

a) Government Officials and Civil Servants

Throughout 2014 and 2015, UNAMA documented several incidents of AGEs deliberately targeting civilian government employees during ground engagements, as well as civilian government offices and other buildings.

Civilian government employees were also frequently victims of targeted killings. AGEs have targeted politicians and government officials at the local, provincial and national levels of government, including Members of Parliament, members of the HPC, and provincial and district governors and council members.

The announcement of the 2016 spring offensive stated that “the Mujahideen have been unequivocally instructed to implement their operations in such a manner that takes pains to protect civilians and civil infrastructure.” Statement by Leadership Council of Islamic Emirate Regarding Inauguration of Spring Offensive Entitled “Operation Omari”, 12 April 2016, http://shahamat-english.com/statement-by-leadership-council-of-islamic-emirate-regarding-inauguration-of-spring-offensive-entitled-operation-omari/. Similar to the announcement of the 2015 spring offensive stated that top priority would be given to “safeguarding and protecting the lives and properties of the civilian people,” and to avoid targets such as “religious and other educational institutions like mosques, madrassas, schools, universities, health centers like clinics and hospitals, public buildings and other projects of public welfare.” Statement by the Leading Council of the Islamic Emirate Regarding the Inauguration of Spring Operations Called ‘Azm’ (Resolve), 22 April 2015, http://shahamat-english.com/english/index.php/pajhwakan/54149-statement-by-the-leading-council-of-the-islamic-emirate-regarding-the-inauguration-of-spring-operations-called-%E2%80%98azm%E2%80%99-resolve.


Government-appointed judges and prosecutors have been particularly targeted, with UNAMA reporting 188 civilian casualties (46 deaths and 142 injured) from targeted attacks against judges, prosecutors, and judicial institutions in 2015, a 109 per cent increase from 2014. Teachers, school guards and officials of the Department of Education have also been widely targeted, as have health workers, other civil servants and even contracted workers.

b) Members of the ANP and ALP

Afghan security forces, particularly the ANP, continue to be the object of targeted campaigns. Since the withdrawal of most foreign combat forces in 2014, police bases and checkpoints have been increasingly targeted in attacks by AGEs. ANP police officers have been targeted both on duty and off duty.


219 UNAMA and UNICEF reported in April 2016 that “education personnel, including students, continued to face direct attacks and threats from Anti-Government Elements due to their association with education provided by the Government. For example, UNAMA documented multiple instances of teachers employed by the Government of Afghanistan being killed, beaten, abducted or threatened by Anti-Government Elements after being accused of geo-government alignment.” UNAMA, Education and Healthcare At Risk: Key Trends and Incidents Affecting Children’s Access to Healthcare and Education In Afghanistan, 18 April 2016, https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf. p. 10. ISIS-affiliated groups were reported to force the closure of 25 education institutions in Nangarhar province in August 2015, organizing public meetings where they threatened teachers with severe punishment if they failed to comply with their orders to close schools. Some teachers also reported receiving phone calls threatening their lives. UNAMA, Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict, February 2016, http://www.refworld.org/docid/56c17b714.html. p. 19. Between 1 May and 31 October 2015, the Country Task Force on Monitoring and Reporting within the framework of Security Council resolution 1612 documented 74 attacks against schools and educational personnel. Most incidents were attributed to AGEs, in particular the Taliban. UN General Assembly, The Situation in Afghanistan and Its Implications for International Peace and Security, 10 December 2015, http://www.refworld.org/docid/5672ac7c4.html. para. 34; UN General Assembly, The Situation in Afghanistan and Its Implications for International Peace and Security, 1 September 2015, http://www.refworld.org/docid/558677871e.html. para. 28. Between 1 September 2010 and 31 December 2014, the task force “documented 111 incidents of killing and injuring of educational personnel and 36 incidents of abduction by armed opposition groups, including Taliban.” While a large number of these incidents were reported to have taken place in 2011, with the number of incidents decreasing until 2013, an increase was reported in 2014. The task force also verified “23 of 62 reported incidents of threats against educational personnel and students, most of which targeted girls’ education.” For example, “in August 2014, in the Shah Joy district of Zabul province, the Taliban forcefully entered a school, abducted and later killed a 32 year-old male schoolteacher who had received prior warnings to cease teaching at the school.” UN Secretary-General, Report of the Secretary-General on Children and Armed Conflict in Afghanistan, 15 May 2015, S/2015/336, http://www.refworld.org/docid/55965b254.html paras 45-46.

220 UNAMA and UNICEF documented 66 abductions of health workers in 2015, a sharp increase from 2013 and 2014. All but one of these abductions in the period between 2013 and 2015 were attributed to AGEs. UNAMA, Education and Healthcare At Risk: Key Trends and Incidents Affecting Children’s Access to Healthcare and Education In Afghanistan, 18 April 2016, https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf. p. 10. UNAMA documented an increase in AGES targeting hospitals and health personnel in 2015 (63 incidents, a 47 per cent increase from 2014, out of which Taliban fighters perpetrated 36 and ISIS-affiliated fighters perpetrated 12). Among these incidents, there was a reported increase in incidents of intimidation and threats against health care staff and institutions (31 incidents in 2015 compared to 14 in 2014). UNAMA, Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict, February 2016, http://www.refworld.org/docid/56c17b714.html p. 20. During 2014, at least 10 health-care personnel were reported to be killed and a further 14 abducted. 38 incidents were attributed to armed groups, including 13 to the Taliban. UN Secretary-General, Children and Armed Conflict: Report of the Secretary-General, 5 June 2015, A/69/926-S/2015/409, http://www.refworld.org/docid/557ab9004.html. para. 34.


222 According to UNAMA, “civilians police personnel who are not directly participating in hostilities and are not involved in counter-insurgency operations” are considered civilians. UNAMA. Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict, February 2016, http://www.refworld.org/docid/56c17b714.html. p. 75.


c) Civilians Associated with or Perceived as Supportive of the ANSF / pro-government forces

AGEs are widely reported to target civilians who are suspected of collaborating with, or “spying for”, pro-government forces, including the ANSF.

d) Civilians Associated with or Perceived as Supportive of the International Military Forces

AGEs have reportedly threatened and attacked Afghan civilians who work for the international military forces as drivers, interpreters or in other civilian capacities. There are also reports of AGEs targeting former employees of the international forces and the government.

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226 As ALP members are often stationed in more volatile areas, estimates suggest that their casualty rate is three times higher than that of other ANSF members.

227 AGEs are also reported to target officers of other police forces in Afghanistan, as well as former members of the ANSF.

228 Afghan national security forces. For example, on 26 August, 17 January 2016, p. 53.


230 In 2014, UNAMA documented 525 civilian casualties (201 civilian deaths and 324 injured) from ground engagements where AGEs attacked ANP officers, a 27 per cent increase from 2013. The civilian causalities were either bystanders close to the attacks, ANP officers engaging in civilian law enforcement, or off-duty ANP officers. UNAMA, Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict, February 2015, http://www.refworld.org/docid/54e4e4274.html, p. 32.


233 For example, in February 2016 the Taliban claimed responsibility for killing a 10-year-old boy who had fought against them alongside the ALP. The boy had returned from combat and was attending school when he was killed. New York Times, Taliban Gun Down 10-Year-Old Militia Hero in Afghanistan, 2 February 2016, http://www.nytimes.com/2016/02/03/world/asia/afghanistan-taliban-child-soldiers.html. A former district police chief in Helmand province was wounded in October 2014 when an explosives-laden vehicle exploded near his house. Five persons were killed and 18 others wounded in the explosion. Dawn, Taliban Suicide Attack Kills Five in Afghanistan, 8 October 2014, http://www.dawn.com/news/1136627. In August 2014, a former ANA soldier was reportedly shot when armed men entered a health clinic in Logar province. AAN, The Empty Street of Mohammad Agha: Logar Struggle Against the Taliban, 15 December 2014, https://www.afghanistan-analytics.org/the-empty-streets-of-mohammad-agha-logars-struggle-against-the-taliban/.


236 In August 2015, it was reported that a former interpreter for the British Army in Helmand province was killed in his home after being labelled as a spy by the Taliban. The Telegraph, Britain ‘Owes Afghan Interpreters a Debt of Honour’, 29 August 2015.
e) Humanitarian Workers and Development Workers

AGEs are reported to target civilians who are employees of international or Afghan humanitarian organizations, including Afghan nationals working for UN organizations, employees of international development agencies, employees of national and international non-governmental organizations (NGOs), and truck drivers, construction workers and individuals involved in mining projects and other development projects. Individuals with these profiles are reported to have been killed, abducted, and intimidated.

f) Human Rights Activists

AGEs are reported to target human rights activists, with activists having been killed or injured in targeted attacks. Women human rights defenders are reported to be at particularly high risk.

g) Other Civilians Perceived as Supporting the Government or the International Community

AGEs are reported to kill civilians deliberately to punish them for supporting the government, with the killings intended to serve as a warning to others. AGEs are also reported to use different methods, including abduction, murder, and injury.

http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/11832796/Britain-owes-Afghan-interpreters-a-debt-of-honour.html As the Taliban increased their presence in Oruzgan province in 2014, they were reported to have a detailed list of 116 names of persons who were working, or had worked, for the international forces or the government. The Taliban demanded that these persons present themselves so that a decision could be made on how to deal with them. AAN, The Empty Street of Mohammad Agha: Logar Struggle against the Taleban, 15 December 2014, https://www.afghanistan-analyst.org/the-empty-streets-of-mohammad-aghaj-logar-struggle-against-the-taliban/. A former interpreter for the Danish army was allegedly kidnapped by the Taliban in Kabul in 2013. The Guardian, Afghan Exodus Grows as Taliban Gains Ground and Hope for Future Diminishes, 29 October 2015, http://www.theguardian.com/global-development/2015/oct/29/afghan-exodus-grows-taliban-gain-ground-refugees.html


During the attack on Kunduz in September 2015, the Taliban were reported to have a pre-prepared list of targets which included UNAMA staff members. UN Secretary-General, The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General, 10 December 2015, A/70/601–S/2015/942, http://www.refworld.org/docid/5672ac74e.html para. 31. There were reported 27 security incidents involving United Nations personnel between March and May 2015. UN Secretary-General, The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General, 10 June 2015, A/69/929 – S/2015/422, http://www.refworld.org/docid/58284a4a4.html para. 24.

Following an attack on a hotel in Kabul on 13 May 2015, which killed five Afghans and nine foreign citizens, the Taliban released a statement that categorized Afghans who work with foreigners, including aid workers, as “hirelings” and justifiable targets. HRW, Afghanistan: The Taliban’s Deadly Hypocrisy, 18 May 2015, http://www.hrw.org/news/2015/05/18/afghanistan-talibans-deadly-hypocrisy.


In May 2015, according to a village elder who witnessed the beheading of an engineer by the Taliban, a Taliban commander instructed a Taliban member to record that he had imposed the punishment because the engineer had supposedly supported the Government. The Taliban
mechanisms to warn civilians against supporting the Government, including text messages, local radio broadcasts, social media and “night letters” (shab nameha). In locations where AGEs have been unable to win public support, they are reported to harass and intimidate local communities, and to mete out punishments against the local population for supporting the Government. Citizens of “spoiling for” the Government are reportedly subjected to summary trials in parallel and illegal judicial procedures operated by AGEs; the punishment for such alleged “crimes” is usually execution.

**h) Tribal Elders and Religious Leaders**

AGEs are reported to target local traditional leaders such as tribal elders who are perceived to be supporters of the Government or the international community, or as non-supportive of AGEs. AGEs are also reported to target religious leaders who are perceived as pro-government, or on the basis of their particular interpretations of Islam. Imams have reportedly been targeted for member reportedly placed a piece of paper with a message to this effect on the victim’s body. UNAMA, Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict, February 2016, http://www.refworld.org/docid/56c17b714.html, p. 50. UNAMA, Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict, February 2015, http://www.refworld.org/docid/54e44e274.html, p. 56. In election periods, election workers have been specifically targeted by AGEs. For example, in relation to the 2014 elections UNAMA reported that, “During the Presidential and provincial council elections on 5 April and the Presidential run-off election on 14 June, UNAMA documented 242 incidents of ground attacks by Anti-Government Elements targeting the electoral process. These attacks resulted in 380 civilian casualties (74 killed and 306 injured).” Election workers were also victims of targeted killings. UNAMA, Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict, February 2015, http://www.refworld.org/docid/54e44e274.html, pp. 32-33, 55. According to local residents of Zarai district in Kunduz province, if a member of the Taliban dies, the Taliban search villages for an alleged spy to punish. Rahmatullah Amir, Continuing Conflict, Continuing Displacement in Southern Afghanistan, May 2014, http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/afghanistan.pdf, p. 8.


Between 1 August and 31 December 2014, UNAMA documented 10 incidents of Taliban members burning homes of civilians who had expressed political or verbal opposition to the Taliban. Affected communities and civilians described the house burnings as intimidation intended to spread terror and serve as collective punishment for individuals and families perceived as pro-Government. UNAMA, Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict, February 2015, http://www.refworld.org/docid/54e44e274.html, p. 67. AAR reports that “In Mohammad Agha, everyone must look after the ‘guests’ who arrive at night. The visitors, roaming groups of Talibans, are patrolling the district and regularly knock on doors to ask for food. If villagers in this district of Logar, a province located just southeast of the capital Kabul, refuse to help, they risk being marked as spies of the government and punished – meaning beaten or even killed.” AAN, The Empty Streets of Mohammad Agha: Logar’s Struggle against the Talibans, 15 December 2014, https://www.afghanistan-analysts.org/the-empty-streets-of-mohammad-aga-logars-struggle-against-the-talibans/.

In 2015, UNAMA documented 44 incidents of AGEs, including Talibans, punishing civilians through parallel justice structures for alleged infractions of Sharia law, perceived offences, and allegations of spying. UNAMA, Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict, February 2016, http://www.refworld.org/docid/56c17b714.html, p. 50. In 2014, the Taliban abducted 15 boys, accusing them of being Government spies, UN Secretary-General, Children and Armed Conflict: Report of the Secretary-General, 5 June 2015, A/69/926-S/2015/I49, http://www.refworld.org/docid/557a9b904.html, para. 36. In 2014, UNAMA documented 12 incidents in which AGEs beheaded 17 civilians. In all but one incident, where the motive could not be ascertained, the civilians who were abducted and beheaded were accused by the responsible AGEs of spying for the Government or supporting the ANSF. For example on 10 December 2014, the beheaded body of a civilian was found in the Shukla area of Deh Bala district, Nangarhar province. Residents confirmed that the man was a civilian driver whom the Taliban had accused of spying and assisting the Government. On 5 December 2014, a group of AGEs abducted four civilian men in Deh Bala district, Nangarhar province. Local residents found the beheaded bodies of the four victims on 8 December 2014 and stated that local Talibans had accused the men of spying and supporting the Government. UNAMA, Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict, February 2015, http://www.refworld.org/docid/54e44e274.html, p. 56.

performing funeral ceremonies for members of the ANSF and for individuals who have been killed by the Taliban. 246

i) Women in the Public Sphere

Although women have attained some leadership roles in Afghan Government and civil society since 2001, including as judges and members of parliament, women in the public sphere and those holding public office continue to be subjected to threats, intimidation and violent attacks. 247 There are widespread reports of the targeting of women in the public sphere, including female parliamentarians, provincial council members, civil servants, journalists, lawyers, police officers, teachers, human rights activists and women working for international organizations. 248 They have been targeted by AGEs, 249 local traditional and religious power-holders, community members, and government authorities. 250 Women who seek to engage in public life are often perceived as transgressing social norms, condemned as “immoral” and targeted for intimidation, harassment, or violence. 251 AGEs reportedly use threats and intimidation against women in the public sphere. 252 There are also numerous reports of women in the public sphere having been killed. 253


249 According to the AIHRC, during the first six months of the Afghan year 1394 (equivalent to 21 March – 22 September 2015) there were 89 incidents of targeted killings of women committed by AGEs for political purposes. AIHRC, Elimination of violence against Women 1394, 30 November 2015, http://www.aihrc.org.af/home/research_report/5120.

250 The female governor of Ghor province has reportedly received death threats against herself and her family from local ‘armed commanders’ who demand her resignation. Radio Free Europe/Radio Liberty, Female Afghan Governor Won’t Back Down Amid Threats, Controversy, 19 October 2015, http://www.rferl.org/content/afghanistan-ghor-province-female-governor-death-threats/27314931.html. Afghanistan’s first female fixed-wing military pilot reportedly received death threats both from the Taliban and from members of her extended family after becoming a public person. Wall Street Journal, In Afghanistan, Death Threats Shatter Dream of First Female Pilot, 4 August 2015, http://www.wsj.com/articles/in-afghanistan-death-threats-shatter-dream-of-first-female-pilot-1437837716. Amnesty International reported that “Women human rights defenders face threats and violence not only from the Taliban and other armed opposition groups but also from state actors, and, in particular, law enforcement and security officials. They are also at risk of harm from powerful commanders and warlords, who are either connected to state authorities or are the local officials themselves.” Amnesty International, Afghanistan: Their Lives on the Line: Women Human Rights Defenders under Attack in Afghanistan, 7 April 2015, ASA 11/1279/2015, p. 19.


252 On the eve of the election in April 2014, the Taliban published a list of names and addresses of hundreds of female police officers. The Times, Taliban Step up Their Intimidation of Female Police on Eve of Election, 5 April 2014, http://www.thetimes.co.uk/tto/news/world/asia/afghanistan/article4504066.ece

According to human rights activists, in many instances law enforcement agencies failed to combat impunity for harassment and attacks against women in the public sphere.\(^\text{254}\)

**j) Individuals perceived as “Westernized”**

AGEs reportedly target individuals who are perceived to have adopted values and/or appearances associated with Western countries, due to their imputed support for the Government and the international community.\(^\text{255}\) There are reports of individuals who returned from Western countries having been tortured or killed by AGEs on the grounds that they had become “foreigners” or that they were spies for a Western country.\(^\text{256}\) Individuals who fall under other profiles, such as profile 1.e (humanitarian workers and development workers) and profile 1.i (women in the public sphere) may similarly be accused by AGEs for having adopted values and/or appearances associated with Western countries, and may be targeted for that reason.

**k) Family Members of Individuals Associated with, or Perceived as Supportive of, the Government and the International Community**

AGEs have been reported to target family members of individuals with the above profiles, both as acts of retaliation and on a “guilty by association” basis.\(^\text{257}\) In particular, relatives, including women and children, of government officials and members of the ANSF have been subjected to harassment, kidnappings, violence, and killings.\(^\text{258}\)

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\(^{255}\) Young people with Western connections and mannersisms are reportedly at risk of being mistaken for collaborators with the government and the international community. Bureau of Investigative Journalism, From Kent to Kabul: The Former Asylum Seeking Children Sent Back to Afghanistan, 17 July 2015, http://labs.thebureauinvestigates.com/from-kent-to-kabul/. See also BBC, The Young People Sent Back to Afghanistan, 17 July 2015, http://www.bbc.com/news/magazine-33524193, The Refugee Support Network (RSN), which tracked a group of young men returned from the United Kingdom to Afghanistan, found that, “in some cases, young people have been threatened or targeted as a result of issues connected to their original asylum claims, and, for a significant group, simply being identified as a returnee has put them at considerable risk of violence.” RSN, After Return: Documenting The Experiences of Young People Forcibly Removed to Afghanistan, April 2016, https://refugeesupportnetwork.org/sites/default/files/files/After%20Return_RSN_April%202016.pdf, p. 31. Returnees reportedly face a general assumption that they have become ‘westernized’ or ‘anti-Islamic’ in Europe. PRIO, Can Afghans Reintegrate after Assisted Return from Europe?, July 2015, http://file.prio.no/publication_files/PRIO/Oeppen%20-%20Car%2020Afghan%20Integrate%20After%20Assisted%20Return%20from%20Europe%20-%20Summary.pdf. A former Afghan army soldier who applied for asylum while he attended a military training in the USA was granted asylum by the Board of Immigration Appeals (BIA). The BIA was reported to have held that the fact that the former soldier had attended training in the USA would put him at risk on return to Afghanistan, as the Taliban would likely impute pro-government opinions to him. Reuters, Former Afghan Soldier Who Fled U.S. Training Granted Asylum: Lawyer, 30 June 2015, http://www.reuters.com/article/us-usa-afghanistan-asyllum-suit-KCN0PA2XT20150630.

\(^{256}\) An Afghan asylum-seeker deported from Australia was reportedly accused of being a spy and tortured when he was captured by the Taliban and it was discovered he had pictures from Australia on his phone. The Saturday Paper, Taliban Tortures Abbott Government Deportee, 4 October 2014, https://www.thesaturdaypaper.com.au/news/politics/2014/10/04/taliban-tortures-abbott-government-deportee/14123448001068. An Afghan-Australian man travelling between Ghazni province and Kabul was reportedly killed by the Taliban after being singled out on a bus and accused of being a foreigner. Sacked Habib Masawi Tortured, Killed by Taliban Because He Was Australian, ‘30 September 2014, http://www.theguardian.com/world/2014/sep/30/sayed-habib-masawi-tortured-killed-by-taliban-because-he-was-australian. See also Section III.A.6.

\(^{257}\) On 10 December 2015, a relative of a member of the Afghan security forces was reportedly abducted and later killed by AGEs. The member of the ANSF had recently been involved in the killing of a Taliban commander. UNAMA, Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict, February 2016, http://www.refworld.org/docid/56c17b714.html, p. 49. During the siege of Kunduz in September 2015, the husband of a female NGO worker was allegedly killed by members of the Taliban as they searched her house. Taliban members allegedly also killed two relatives of an ANP officer as they were taking his body away for burial. UNAMA, Afghanistan: Human Rights and Protection of Civilians in Armed Conflict Special Report on Kunduz Province, December 2015, http://www.refworld.org/docid/566f0d6e6.html, p. 13. Family members of government workers are reportedly targets of abductions by AGEs. UNAMA, Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict, August 2015, http://www.refworld.org/docid/55c1c8dc4.html, p. 61. UNAMA reported a new trend of incidents in eastern provinces between 1 August and 31 December 2014, where Taliban members burned homes of individuals and families perceived to be Pro-Government. UNAMA, Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict, February 2015, http://www.refworld.org/docid/54e44e274.html, p. 67. Children are reportedly abducted as a form of reprisal against family members working for or allegedly supporting the Government or international forces. UN Secretary-General, Children and Armed Conflict: Report of the Secretary-General, 15 May 2014, A/68/678/SR.2014/339, http://www.refworld.org/docid/53b3b3564.html, para. 30.

1) Summary

Based on the preceding analysis, UNHCR considers that, depending on the individual circumstances of the case, persons associated with, or perceived as supportive of, the Government or the international community, including the international military forces, may be in need of international refugee protection on the ground of their (imputed) political opinion or other relevant grounds. Such persons include:

a) government officials and civil servants;
b) members of the ANP and ALP;
c) civilians associated with or perceived as supportive of the ANSF / pro-government forces;
d) civilians associated with or perceived as supportive of the international military forces;
e) humanitarian workers and development workers;
f) human rights activists;
g) other civilians perceived as supporting the government or the international community;
h) tribal elders and religious leaders;
i) women in the public sphere;
j) individuals perceived as “westernized”; and
k) family members of individuals associated with, or perceived as supportive of, the government and the international community.

2. Journalists and Other Media Professionals

The Constitution guarantees the right to freedom of expression, and the right to print and publish without prior submission to State authorities, while the 2009 Media Law prohibits censorship and guarantees citizens’ right to obtain information.259 The December 2014 Access to Information Law provides that all government-held information should be presumed available to the public except where this would threaten Afghanistan’s national security, constitute a violation of individual privacy, or threaten a criminal investigation.260 However, concerns remain about threats to the rights to freedom of expression and access to information.261 The 2009 Media Law includes a broadly-worded


provision prohibiting production, reproduction, print, and publishing of works and materials contrary to the principles of Islam or offensive to other religions and sects. While there were no reports of prosecutions under this provision of the law, the government reportedly used the provision for attempts to censure media outlets for content deemed to be against Islam or the national interest, while in one case an investigation was reportedly launched on the orders of the Chief Executive Officer against a newspaper on the grounds that a published opinion piece was blasphemous.

The defamation provision of the Media Law is reportedly sometimes used as a pretext to suppress criticism of government officials. Politicians, security officials, and others in positions of power reportedly arrested, threatened, or harassed journalists as a result of their coverage, in particular those who reported critically on the government and powerful local figures. Media outlets have on occasion been closed by local authorities, reportedly in retaliation for reporting on issues considered as sensitive by the authorities, such as allegations of corruption. Journalists were reported to revert to self-censorship due to fears of reprisals.

Many of the private broadcasting stations and print media were reportedly owned or controlled by warlords, who used such control to further their political agendas and to constrain freedom of speech.

Violence against journalists is reported to be a serious concern, with State authorities reportedly responsible for the majority of incidents. Women journalists are reportedly at a particular risk of


In October 2014 authorities reportedly detained several people tied to the publication of an opinion piece in the Afghanistan Express, on the ground that the piece was blasphemous and in violation of the Media Law. Chief Executive Officer Abdullah reportedly ordered the arrest of Afghanistan Express staff during a Council of Ministers meeting. The investigation was later dropped and the staff released. US Department of State, 2014 Country Reports on Human Rights Practices - Afghanistan, 25 June 2015, http://www.state.gov/j/drl/rls/hrrpt/2014 Country Report_Afghanistan.pdf.


Human Rights Watch reported, “Journalists in Afghanistan who publish articles critical of the authorities and government practices often encounter censorship, harassment, and violence. The perpetrators of that abuse include government officials, police and other members of the Afghan national security forces (ANSF), and government-allied warlords and militias.” HRW, “Stop Reporting or We’ll Kill Your Family”: Threats to Media Freedom in Afghanistan, 21 January 2015, http://www.hrw.org/outreach/5599d58728h.html.


The Afghan Journalists Safety Committee recorded 39 cases of threats and violence against journalists during the first half of 2015, out of which 28 cases were perpetrated by government officials. Afghan Journalists Safety Committee, Six-month Report, 1 January - 30 June 2015, 27 August 2015, http://ajsc.af/wp-content/uploads/2015/08/AJSC-Six-month-Report-English.pdf. In 2014 the Committee recorded eight killings of journalists, and 129 cases of violence against journalists, with government officials and security forces reported to be
harassment and threats.\textsuperscript{271} The perpetrators of violence against journalists are reported to frequently enjoy impunity, and journalists accused the Government of failing to protect them.\textsuperscript{272}

The number of incidents of violence and intimidation of journalists and media outlets at the hands of non-State actors is reported to be increasing; such incidents have the effect of limiting journalists’ ability to report on current affairs without restrictions.\textsuperscript{273} Media outlets and journalists who published stories supportive of the Government and its policies have been designated legitimate military targets by the Taliban.\textsuperscript{274} There are reports of ISIS threatening media outlets to force them to cover its activities.\textsuperscript{275}

In light of the foregoing, UNHCR considers that journalists and other media professionals who engage in critical reporting on what are perceived to be sensitive issues by either State or non-State actors, may be in need of international refugee protection on the ground of their (imputed) political opinion or religious views, or other relevant grounds. Depending on the specific circumstances of the case, family members of individuals with this profile may also be in need of international protection on the basis of their association with individuals at risk.

3. Men of Fighting Age, and Children in the Context of Underage and Forced Recruitment

Incidents of forced recruitment of children are said to be subject to widespread underreporting.\textsuperscript{276} However, the recruitment and use of children by all parties to the conflict, both in support and combat roles, is reported to be observed throughout the country.\textsuperscript{277}

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\textsuperscript{276} A building in Jalalabad that houses Radio Safa, a local station, and the regional office of Radio Killid was attacked on 10 October 2015, following threatening phone calls that sought to force the radio station to report on ISIS activities in the region. Reporters Without Borders, Taliban and Islamic State Treat Media as Targets, 13 October 2015, http://www.refworld.org/docid/562b8534a5.html.


\textsuperscript{278} According to the AIHRC, the commission continues to receive reports of the use of child soldiers both by Afghan forces, in particular the ALP, and by AGEs; see New York Times, Taliban Gun Down 10-Year-Old Militia Hero in Afghanistan, 2 February 2016, http://www.nytimes.com/2016/02/03/world/asia/afghanistan-taliban-child-soldiers.html. Police forces and AGEs in Afghanistan are listed by the UN Security Council according to Resolution 1612 among parties that recruit or use children, kill or maim children, commit rape and other forms of sexual violence against children, or engage in attacks on schools and/or hospitals in situations of armed conflict. UN Secretary-General, Children and Armed Conflict: Report of the Secretary-General, 5 June 2015, http://www.refworld.org/docid/557ab90492.html, p. 48. UNAMA, Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict, February 2015, http://www.refworld.org/docid/54ed4e2747.html, p. 18. Child Soldiers International reports that child recruitment by AGEs mostly affects the southern (Kandahar and Helmand) and eastern (Paktia, Khost and Paktika) provinces, because of the stronger
a) Forced Recruitment by AGEs

In areas where AGEs exercise effective control over territory and the population, they are reported to use a variety of mechanisms to recruit fighters, including recruitment mechanisms based on coercive strategies. It is particularly concerning that persons who resist recruitment, and their family members, are reportedly at risk of being killed or punished.

AGEs are reported to continue to recruit children, both boys and girls, to carry out suicide attacks and as human shields, as well as to participate in active combat, to plant IEDs, to smuggle weapons and uniforms, and to act as spies, guards or scouts for reconnaissance.


In a November 2014 article in the daily newspaper Garbad in Kundahar, NDS officials reportedly state that the Taliban offers different incentives to young people for joining the insurgency. Those who refuse the offer reportedly risk being killed. See Garbad article referenced in ACCORD, *Anfragebeantwortung zu Afghanistan: 1) Aktuelle Berichte über Zwangsrekruierungen durch die Taliban in der Provinz Logar (Lagar); 2) Fülle von Zuwangsrekruierungen durch die Taliban in Afghanistan im Jahr 2014 [a-8939]*, 18 November 2014, [http://www.ecoi.net/local_link/k9017390l11357_en.html](http://www.ecoi.net/local_link/k9017390l11357_en.html). Some Taliban commanders and foot soldiers have reportedly joined the insurgency out of fear for repercussions against their families. Radio Free Europe/Radio Liberty, *Afghan Taliban Trades Ideology For Profit-making*, 5 November 2014, [http://gandhara.rferl.org/content/taliban-war-profitmaking/26675311.html](http://gandhara.rferl.org/content/taliban-war-profitmaking/26675311.html).


b) Forcible and Underage Recruitment by Pro-Government Forces

In January 2011 the UN and the Government signed an action plan for the prevention of underage recruitment. In July 2014 the Government endorsed a road map towards compliance with the action plan. In February 2015 President Ghani endorsed a law which had been passed by the Parliament and the Senate in 2014, criminalizing underage recruitment into the ANSF. Despite the Government’s support for the action plan and the progress made thus far, challenges are reported to remain, including a lack of accountability for underage recruitment. In March 2016, the Special Representative of the Secretary-General for Children and Armed Conflict noted that while there had been substantial progress in implementing the action plan, the UN continued to document the recruitment and use of boys by the ALP and ANP, as well as some cases attributed to ANA. Pro-government armed groups have also been reported to force locals to send young men to join the fight against the Taliban and other AGEs.

c) Summary

In light of the foregoing, UNHCR considers that, depending on the specific circumstances of the case, men of fighting age and children living in areas under the effective control of AGEs, or in areas where pro-government forces, AGEs and/or armed groups affiliated to ISIS are engaged in a struggle for control, may be in need of international refugee protection on the ground of their membership of a particular social group or other relevant grounds. Depending on the specific circumstances of the case,

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men of fighting age and children living in areas where ALP commanders are in a sufficiently powerful position to forcibly recruit community members into the ALP may equally be in need of international refugee protection on the ground of their membership of a particular social group or other relevant grounds. Men of fighting age and children who resist forced recruitment may also be in need of international refugee protection on the ground of their (imputed) political opinion or other relevant grounds. Depending on the specific circumstances of the case, family members of men and children with this profile may be in need of international protection on the basis of their association with individuals at risk.

Asylum claims made by children need to be assessed carefully and in accordance with the UNHCR Guidelines on child asylum claims, including in relation to the examination of any exclusion considerations for former child soldiers. Where children associated with armed groups are alleged to have committed crimes, it is important to bear in mind that they may be victims of offences against international law and not only perpetrators.

4. Civilians Suspected of Supporting Anti-Government Elements

The Constitution provides that no one shall be arrested or detained without due process of law, and contains an absolute prohibition on the use of torture. The use of torture is criminalized in the Penal Code, while harsh punishment against children is prohibited in the Juvenile Code.

Despite these legal guarantees, concerns have been raised about the use of torture and cruel, inhuman or degrading treatment against detainees, especially conflict-related detainees accused of supporting AGEs, in detention facilities operated by the NDS, ANP, ANA and ALP. In 2015 UNAMA reported that the use of torture was “systematic or regular and prevalent” in NDS facilities in four provinces, and “systematic” in ANP or ANBP detention facilities in three provinces. Among the detainees who were found to have been subjected to torture were children. UNAMA also reported

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291 The Paris Principles state: “Children who are accused of crimes under international law allegedly committed while they were associated with armed forces or armed groups should be considered primarily as victims of offences against international law, not only as perpetrators. They must be treated in accordance with international law in a framework of restorative justice and social rehabilitation, consistent with international law which offers children special protection through numerous agreements and principles”. UNICEF, The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, February 2007, http://www.refworld.org/docid/465198442.html. Afghanistan has ratified the Convention Against Torture (CAT), but not its Optional Protocol which establishes a system of independent monitoring visits to detention centres. See http://indicators.ohchr.org/ for ratification status. Afghanistan has also ratified the International Covenant on Civil and Political Rights (ICCPR), which provides that no one shall be subject to arbitrary arrest or detention (Article 9).


293 Between 1 February 2013 and 31 December 2014, UNAMA interviewed 790 pre-trial detainees and convicted prisoners, including 105 children, who were detained by the ANP, ANBP, ANA, ALP and NDS. UNAMA found credible evidence that 278 interviewees (35 per cent) had experienced torture or ill-treatment on arrest or in certain facilities of the NDS, ANP, ANA and ALP over the 23-month period.


296 Twenty-five of the 161 detainees (16 per cent) who were found to have experienced torture by the NDS were children. In ANP and ANBP facilities, the victims in 16 of the 92 documented cases of torture (17 per cent) were children. UNAMA, Update on the Treatment of Conflict Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129, February 2015, http://www.refworld.org/docid/54f06e814.html, pp. 43, 54. In 2014, 258 boys were detained on national security charges, including for alleged support to AGEs. UN Secretary-General, Report of the Secretary-General on children and armed conflict in Afghanistan, 15 May 2014.
incidents of extrajudicial killings and enforced disappearances of detainees held by the ANP and ALP.\textsuperscript{295} Criminal courts reportedly routinely allow confessions obtained by means of torture to be used as evidence.\textsuperscript{296} UNAMA found that “ impunity continues because there are still no consequences for the use of torture: perpetrators are not prosecuted and no disciplinary sanctions such as removal from duty or functions have been taken.”\textsuperscript{297}

Concerns also continue to be raised about arbitrary detention.\textsuperscript{298} In September 2015 through a Presidential Decree, an annex to the Penal Code was endorsed which allows indefinite detention without trial of people who are suspected of planning “acts of terrorism.”\textsuperscript{299} Detainees reportedly lack access to remedial mechanisms, independent medical examination and care, as well as meaningful access to defence counsel, especially during the investigation and the prolonged pre-trial detention period, including in particular in remote detention facilities.\textsuperscript{300} ALP officers and members of pro-government armed groups also reportedly use threats, intimidation and physical violence against civilians suspected of supporting AGEs,\textsuperscript{301} while in some instances such civilians have reportedly been killed.\textsuperscript{302}

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299 UNAMA/OHCHR notes that “provisions of the Criminal Procedure Code were already in breach of Afghanistan’s international obligations under the International Convention on Civil and Political Rights,” and “the legislative amendment introduced by the Presidential Decree represents an even more egregious violation of the relevant international standards and significantly increases the risk of ill-treatment and torture for those who remain in detention for extended periods without judicial oversight and access by monitors.” UNAMA/OHCHR, Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Afghanistan and on the Achievements of Technical Assistance in the Field of Human Rights in 2015, 11 February 2016, A/HRC/31/46, http://www.refworld.org/docid/56171fc4.html, paras. 52-54. According to AAN, the Annex allows the State to “detain, without trial, people who are strongly suspected of having committed a crime – and keep suspects it thinks may commit (again) acts of terrorism, or ‘crimes against internal and external security’ in the future after their release from detention, even when there is not enough evidence to launch an investigation.” AAN, Casting a Very Wide Net: Did Ghani Just Authorise Interning Afghans Without Trial?, 21 January 2016, https://www.afghanistan-analysts.org/casting-a-very-wide-net-did-ghani-just-authorise-interning-afghans-without-trial/, See also HRW, Afghanistan: Reject Indefinite Detention Without Trial, 15 November 2015, http://www.refworld.org/docid/56b8a1d24.html.


302 For example, a student whose father had been a government official during the Taliban rule was reported to have been arrested and detained by the police in early 2016 on suspicion of involvement with the Taliban. Two months later his body was found in Kandahar. Family members alleged that he had been tortured by the security forces. Los Angeles Times, Another Mysterious Death in Kandahar, and Allegations of Official Torture, 7 April 2016, http://www.latimes.com/world/mideastles/taliban-inťečt-afghanistan-colin-stain/20160407-story.html. On 30 August 2015 a pro-government armed group reportedly entered a village in Pashtun Kot district, Faryab province, and killed two civilian men they accused of supporting local Taliban. UNAMA, Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict, February 2016, http://www.refworld.org/docid/5617b714.html, p. 65. On 19 October 2013, in the Bala Buluk district of Farah province, four boys were reportedly executed by the ALP after being abducted and blamed for planting IEDs. UN Secretary-General,
In areas where armed groups affiliated to ISIS are present, civilians suspected of supporting the Taliban have reportedly been threatened and killed by such groups.

In light of the foregoing, UNHCR considers that civilians suspected of supporting AGEs may be in need of international refugee protection on the ground of (imputed) political opinion or other relevant grounds, depending on their individual profile and circumstances of the case. In view of the need to maintain the civilian and humanitarian character of asylum, former armed elements should only be considered as asylum-seekers if it has been established that they have genuinely and permanently renounced military activities. Claims by former armed elements, may, furthermore, give rise to the need to examine possible exclusion from refugee status. In view of the particular circumstances and vulnerabilities of children, the application of the exclusion clauses to children needs to be exercised with great caution. Where children associated with armed groups are alleged to have committed crimes, it is important to bear in mind that they may be victims of offences against international law and not only perpetrators.

5. Members of Minority Religious Groups, and Persons Perceived as Contravening Sharia Law

The Constitution provides that followers of religions other than Islam are “free within the bounds of law in the exercise and performance of their religious rights.” However, the Constitution also declares that Islam is the official religion of the State and that “[n]o law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan.” The Constitution provides furthermore that the courts shall follow Hanafi jurisprudence, a school of Sunni Islamic jurisprudence common across two-thirds of the Muslim world, in situations where neither the Constitution nor other laws provide guidance. Afghan jurists and government officials have been criticized for giving precedence to Islamic law over Afghanistan’s obligations under international human rights law.


For further guidance on the application of the exclusion clauses to children, see UNHCR, Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, HCR/GIP/09/08, 22 December 2009, http://www.refworld.org/docid/4b2f54fd2.html, paras 58-64.

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Article 6 of the Constitution provides that “The State shall create a prosperous and progressive society based on [...] protection of human rights”, while Article 7 provides that “The United Nations Charter, inter-state agreements, as well as international treaties to which
situations where the Constitution’s commitments to the two bodies of law are in conflict, in particular in relation to the rights of those Afghans who are not Sunni Muslims and in relation to the rights of women.  

a) Minority Religious Groups

Non-Muslim minority groups, particularly Christian, Hindu, and Sikh groups, continue to suffer discrimination under the law. As noted above, in situations where the Constitution and Afghanistan’s codified laws do not provide guidance, the Constitution defers to Hanafi Sunni jurisprudence. This applies to all Afghan citizens, regardless of their religion. The only exception is for matters of personal law where all parties are Shi’ites, in which case the Shi’ite Personal Status Law applies. There is no separate law for other religious minorities. Non-Muslims can reportedly be married to each other only if they do not publicly acknowledge their non-Islamic beliefs.

The Penal Code addresses “crimes against religions” and states that a person who attacks a follower of any religion shall receive a short-term prison sentence of not less than three months and a fine. Nevertheless, non-Muslim minority groups are reported to continue to suffer societal harassment and in some cases violence. Members of religious minorities such as Baha’i and Christians reportedly avoid stating their beliefs publicly or gathering openly to worship, out of fear of discrimination, ill-treatment, arbitrary detention, or death.


Freedom House, Freedom in the World 2015 - Afghanistan, 20 March 2015, http://www.refworld.org/docid/55116f411.html; US Commission on International Religious Freedom, USCIRF Annual Report 2015 - Tier 2: Afghanistan, 1 May 2015, http://www.refworld.org/docid/55b355c20.html. While reliable data on religious demography is not available, estimates suggest that 80 per cent of the population is Sunni Muslim, 19 per cent Shia Muslim, while 1 per cent belong to other religious groups. The US State Department notes that, “Sunni Muslims comprise 80 percent of the population and Shia Muslims make up about 19 percent of the population. The Shia population includes Ismailis and a majority of ethnic Hazaras. Other religious groups comprise the remaining 1 percent. Sikh and Hindu leaders estimate there are 600 Sikh and Hindu families totaling 3,000 individuals. A Sikh leader stated that 700 Sikh and Hindu individuals emigrated during the year to Europe and elsewhere. Reliable estimates of the Bahai and Christian communities are harder to make, because neither group practices openly. There are small numbers of practitioners of other religions, including one Jew.” US Department of State, 2014 Report on International Religious Freedom - Afghanistan, 14 October 2015, http://www.refworld.org/docid/562105e015.html. According to other figures, the Sikh population decreased dramatically from an estimated 100,000 persons in the 1990s to 2,500 persons today. Associated Press, Afghanistan's Sikhs Feel Alienated, Pressured to Leave, 10 June 2015, http://bipstory.ap.org/article/a634645c281475e90f3e8047296eeb/afghanistans-sikhs-feel-alienated-pressured-leave. According to a report by Dr A. Giustozzi dated 28 February 2015 and cited in a November 2015 UK Home Office report, there are approximately 130 Sikh families left in Kabul, some of which stated that the only reason they remained was because they were too poor to leave. United Kingdom: Home Office, Country Information and Guidance - Afghanistan: Hindus and Sikhs, November 2015, Version 1.0, http://www.refworld.org/docid/5629e9de4.html. para. 5.1.5. The US State Department noted in 2011 that most members of the non-Muslim communities in Afghanistan left the country during the civil war and the period of Taliban rule that followed, so that by 2001 these non-Muslim populations had been virtually eliminated. US Department of State, 2011 Report on International Religious Freedom - Afghanistan, 30 July 2012, http://www.refworld.org/docid/502105e25a.html.


Sufis
Practitioners of Sufism, a school of Islam sometime seen as heretical by followers of other schools of Islam, have reportedly been targeted by AGEs. For example, in March 2015 eleven Sufis were killed while they were praying in a private house in Kabul. 318

Baha’is
In May 2007, the General Directorate of Fatwas and Accounts of the Afghan Supreme Court ruled that the Baha’i faith was distinct from Islam and a form of blasphemy. It held that all Muslims who converted to the Baha’i faith were apostates and that all Baha’is are infidels. 319 Baha’is are reported to have lived a covert existence since the ruling. 320

Christians
Societal attitudes towards Christians reportedly remained openly hostile, and Christians are effectively forced to conceal their faith. 321 There are no public churches left in Afghanistan, 322 and Christians worship alone or in small congregations in private homes. In 2013 four Members of Parliament reportedly called for the execution of converts to Christianity, 323 the Taliban have reportedly attacked foreign charities and their compounds on the basis that these were centres of Christian faith. 324

Shi’ites
The number of Shi’ite Members of Parliament is roughly proportional to Shi’ite’s overall representation in the population. 325 While some sources report that overt discrimination by Sunnis against the Shi’ite community has decreased, 326 other sources report that such discrimination

325 US Department of State, 2014 Report on International Religious Freedom - Afghanistan, 14 October 2015, http://www.refworld.org/docid/562105e015.html. The State Department reported that, “During a session of parliament in July 2013, four members of parliament called for the execution of converts to Christianity and the speaker of parliament’s lower house stated that security officials should investigate the spread of Christianity in the country.”
328 In October 2015 the US Department of State reported that, “While historically the minority Shiia have faced discrimination from the majority Sunni population, observers stated that discrimination against the Shia significantly decreased, with no reported incidents in the capital and major outlying areas. Shia were represented in the government, holding major positions, and were free to participate fully in public life. There were reported incidents, however, of unofficial discrimination and poor treatment that varied by locality. For example in Herat province where there was a large Shia population and both Shia and Sunni leaders reported a high general degree of harmony, many senior Herati Shia cited the low number of Shia in senior and middle-level government positions as a structural problem designed to limit Shia political influence in the province.” US Department of State, 2014 Report on International Religious Freedom - Afghanistan, 14 October 2015, http://www.refworld.org/docid/562105e015.html. See also United States Commission on International Religious Freedom, USCIRF Annual Report 2015 - Tier 2: Afghanistan, 1 May 2015, http://www.refworld.org/docid/554b355e20.html. The October 2014 US State Department report also notes that while four members of the Shi’ite Ismaili community served as Members of Parliament, some members of the Ismaili community complained of being marginalized from positions of political authority.
continues. Moreover, violent attacks by AGEs targeting the Shi'ite population continue to occur. It should be noted that in Afghanistan ethnicity and religion are often inextricably linked, especially in the case of the Hazaras, who are predominantly Shi'ites. As a result, it is not always possible to distinguish clearly between discrimination and ill-treatment on the ground of religion and discrimination and ill-treatment on the ground of ethnicity.

**Sikhs and Hindus**

Although reliable data about the current size of the Sikh and Hindu communities in Afghanistan are not available, large numbers of Sikhs and Hindus are believed to have left Afghanistan as a result of the severe difficulties they faced. The small number of Sikhs and Hindus who are reported to remain in Afghanistan have reportedly been left even more vulnerable to abuse, particularly by the police and by extremist elements of the Muslim community. Although the Sikh and Hindu communities are allowed to practise their religion publicly, they reportedly continue to face discrimination at the hands of the State, including when seeking political participation and government jobs, despite public statements by President Ghani to promote tolerance and increase their political representation.

They reportedly also continue to face societal discrimination and intimidation. Both communities report difficulties in carrying out funerals in accordance with their customs, due to harassment and discrimination. While the police are reported to provide protection...

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327 The US Department of State reported, “Societal discrimination against Shia Hazaras continued along class, race, and religious lines in the form of extortion of money through illegal taxation, forced recruitment and forced labor, physical abuse, and detention. According to NGOs, the government frequently assigned Hazara ANP officers to symbolic positions with little authority within the Ministry of Interior. NGOs also reported Hazara ANSF officers were more likely than non-Hazara officers to be posted to insecure areas of the country.” US Department of State, 2015 Country Reports on Human Rights Practices - Afghanistan, 13 April 2016, http://www.refworld.org/docid/5711040d4.html.


331 For further analysis of the situation of members of ethnic minority groups, see Section III.A.13. In previous years there were reports of AGEs threatening and attacking Shi'ite religious leaders because of their links to the government and of their interpretation of Islam: see for example US Department of State, 2013 Report on International Religious Freedom - Afghanistan, 28 July 2014, http://www.refworld.org/docid/53b907b814.html.


331 One seat in the upper house of Parliament is reserved for the appointment of a Sikh or Hindu representative. In September 2013, then president Karzai issued a presidential decree reserving a seat in the lower house for a Sikh or Hindu in the next parliamentary elections. The lower house voted to reject the decree, but the upper house voted to approve it. The decree was sent to a joint committee; it was reported that by the end of 2014 final resolution remained pending. US Department of State, 2014 Country Reports on Human Rights Practices - Afghanistan, 25 June 2015, http://www.refworld.org/docid/559b558728.html; Radio Free Europe, First Afghan Hindu Envoy Takes Pride in Serving His Country, 15 May 2015, http://gandhara.rferl.org/content/article/25386024.html; Al Jazeera, Afghanistan’s Sikhs Face an Uncertain Future, 23 February 2014, http://www.aljazeera.com/indethep/Features/2014/02/afghanistan-sikhs-face-an-uncertain-future-201422312395677967.html.


to Hindu and Sikh communities during burial rituals, members of the two communities report feeling unprotected by State authorities in other contexts, including in relation to land disputes. \(^{335}\) Sikhs and Hindus have reportedly been victims of illegal occupation and seizure of their land, and have been unable to regain access to property that was seized during the Mujahideen era. \(^{336}\) Members of the Sikh and Hindu communities reportedly refrain from pursuing restitution through the courts, for fear of retaliation. \(^{337}\) A small number of schools for Hindu and Sikh children have reportedly been established, but Hindu and Sikh children attending government schools in Kabul are reported to be subjected to harassment and bullying by other students. \(^{338}\)

**b) Conversion from Islam**

Conversion from Islam is considered apostasy; under the courts’ interpretation of Islamic law it is punishable by death. \(^{339}\) While Afghanistan’s Penal Code does not explicitly mention apostasy as a crime and the Constitution provides that no deed shall be considered a crime unless defined as such by law, the Penal Code states that egregious crimes, including apostasy, should be punished in line with the Hanafi jurisprudence of Islamic law and should be handled by the Attorney General’s office. Male citizens over age 18 or female citizens over age 16 of sound mind who convert from Islam and face the risk of criminal prosecution by the authorities.

\(^{335}\) http://www.refworld.org/docid/562105e015.html


\(^{337}\) http://www.refworld.org/docid/562105e015.html

\(^{338}\) http://www.refworld.org/docid/562105e015.html

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\(^{340}\) http://www.refworld.org/docid/562105e015.html

\(^{341}\) http://www.refworld.org/docid/562105e015.html
Public opinion is reportedly hostile towards individuals and organizations that proselytize. Lawyers who assist defendants accused of apostasy may reportedly themselves be charged with apostasy and may be at risk of death threats.

c) Other Acts Contravening Sharia Law

Afghanistan’s courts also rely on Islamic law in relation to blasphemy, as Afghanistan’s laws are silent on the issue. Under the courts’ interpretation of Islamic law blasphemy is a capital crime; men over the age of 18 and women over the age of 16 who are of sound mind and who are accused of blasphemy may thus be sentenced to death. As with apostasy, those accused of blasphemy have three days to recant.

Furthermore, persons accused of committing crimes against Sharia law, such as apostasy, blasphemy, having consensual same-sex relations, or adultery (zina), are at risk not only of prosecution, but also of social rejection and violence at the hands of their families, other community members and the Taliban and other AGEs.

d) Summary

Based on the preceding analysis, UNHCR considers that persons perceived as contravening Sharia law, including persons accused of blasphemy and converts from Islam, as well as members of minority religious groups, may be in need of international refugee protection on the ground of religion or other relevant grounds, depending on the individual circumstances of the case.


This can include anti-Islamic writings or speech, although the Constitution protects freedom of expression and the press. Chapter Eight of the Mass Media Law of 2006 prohibits the publication of matters contrary to the principles of Islam and offensive to other religions and sects. The English text of the law is available at: http://www.refworld.org/docid/4a5712902.html.


For further guidance on religion-based asylum claims, see UNHCR, Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, HCR/GIP/04/06, 28 April 2004, http://www.refworld.org/docid/40909794.html. The risk that Christian converts may face in Afghanistan has been recognized in national jurisdictions. For example, the UK Asylum and Immigration Tribunal held that a Christian convert from Islam would be at real risk of serious ill-treatment amounting to persecution on return to Afghanistan; see NM (Christian Converts) CG [2009] UKAIT 00045, 13 November 2009, http://www.refworld.org/docid/4a0df8ab.html. Similarly, the Verwaltungsgericht in Germany has held that Hindus from Afghanistan had a well-founded fear of persecution on the grounds of their religion; see Case No. K 103/09.K.S.A, Verwaltungsgericht (VG) Kassel, judgment of 27 July 2010, http://www.asyl.net/fileadmin/user_upload/dokumente/17462.pdf; and Case No. 7 K 746/09.F.A, Verwaltungsgericht (VG) Frankfurt/Main, Judgment of 11 February 2010, http://www.asyl.net/fileadmin/user_upload/dokumente/18127.pdf.
6. Individuals Perceived as Contravening AGEs’ Interpretation of Islamic Principles, Norms and Values

The Taliban have reportedly killed, attacked and threatened individuals and communities who are perceived to contravene the Taliban’s interpretation of Islamic principles, norms and values.\(^{348}\) In areas where the Taliban are trying to win the hearts and minds of the local population, the Taliban have reportedly softened their stance. However, once areas are under its effective control, the Taliban are reported to enforce a strict interpretation of Islamic principles, norms and values.\(^{349}\) There are reports of officers of the Taliban’s Ministry for the Promotion of Virtue and the Prevention of Vice patrolling the streets, and people are reportedly detained for shaving their beards or for having haircuts that are deemed to be vain.\(^{350}\) Women are reportedly only allowed to leave their homes when accompanied by their husbands or male family members, and only for a small number of authorized purposes such as visiting a doctor;\(^{351}\) men and women who violate the rules have reportedly been punished by public lashings.\(^{352}\)

In areas controlled by groups affiliated with ISIS, a puritanical way of life is reportedly enforced with strict decrees and punitive actions.\(^{353}\) Displaced families in the Eastern region of Afghanistan have reported that strict rules, including dress codes, and reduced freedom of movement have been applied to women.\(^{354}\)

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\(^{348}\) For analysis of the situation of religious leaders who are at risk from AGEs, see Section III.A.1.h. For analysis of the situation of women and men who are perceived to contravene social mores, see Section III.A.8. For analysis of the specific situation of individuals of diverse sexual orientations and/or gender identities, see Section III.A.12. Imams who advocate for perceived modern ideas, such as the use of contraception, reportedly receive death threats and are at risk of abductions from the Taliban. The Guardian, Condoms and Conflict: Imams Defy Taliban to Spread Contraception, 4 November 2015, http://www.theguardian.com/world/2015/nov/04/afghanistan-imams-defy-taliban-spread-contraception-condoms. On 11 December 2014 a suicide attack against the French Institute of Kabul caused 12 casualties (2 killed and 10 injured) during a theatre performance. The Taliban claimed responsibility stating the performance was targeted because it attempted “to humiliate Islamic values and spread propaganda about our jihad operations.” The Taliban also stated the attack was a warning to others organizing such events. UNAMA, Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict, February 2015, http://www.refworld.org/docid/554e44e274.html, p. 70. Some individuals who returned to Afghanistan after having lived in western countries as a refugee for a number of years reported difficulties due to the fact that they were perceived as having lapsed in their practice of Islam. A research project tracking the fate of young Afghans returned from the UK to Kabul found that a quarter of those tracked had experienced “harms or difficulties as a result of being viewed as ‘Westernized outsiders’”, which in some cases was reportedly due to a perceived lapse in their practice of Islam. Catherine Gladwell, No Longer a Child: From the UK to Afghanistan, September 2013, Forced Migration Review: Issue 44, http://www.fmrreview.org/en/detention.pdf, p. 63.


\(^{351}\) In February 2016, Tolo News reported on two incidents of the Taliban meting out punishments for incidents where women were accused of going against Islamic values by communicating or associating with men who were strangers. Tolo News, Taliban Lashes Afghan Woman after Being Out with Relative, 11 February 2016, http://www.tolonews.com/en/afghanistan/23732-taliban-lashes-afghan-woman-after-being-out-with-relative.


circumstances of the case, be in need of international refugee protection on the grounds of religion, imputed political opinion, or other relevant grounds.

7. Women with Certain Profiles or in Specific Circumstances

Since 2001, the Government has taken important steps to improve the situation of women in the country, including the incorporation of international standards for the protection of women’s rights into national legislation, notably through the adoption of the Law on Elimination of Violence against Women (EVAW law); the adoption of measures to increase women’s political participation; and the establishment of a Ministry for Women’s Affairs. However, improvements in the situation of women and girls have reportedly remained marginal and Afghanistan continues to be considered a “very dangerous” country for women and girls. The

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358 The Ministry for Women’s Affairs (MoWA) was established in 2001, shortly after the fall of the Taliban and in accordance with the Bonn Agreement. For more information on the mandate and activities of the Ministry, see http://www.mowa.gov.af/en. All of the 34 provinces have a Department of Women’s Affairs (DoWA); these provincial DoWA report to the MoWA. Women can present their complaints to the local DoWA or to the Department of Haqq eq, which operates under the Ministry of Justice. See UNAMA, A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan, December 2013, http://www.refworld.org/docid/5256fd0f4.html, p. 3.

deterioration of the security situation in some parts of the country has undone some of the earlier progress in relation to women’s human rights. 360 Deep-rooted discrimination against women remains endemic. 361 Violence against women and girls remains widespread and is reported to be on the rise; 362 impunity in relation to such violence is reportedly common. 363 Women are said to continue to face serious challenges to the full enjoyment of their economic, social and cultural rights. 364 Despite advances, poverty, illiteracy, and poor health care continue to affect women disproportionately. 365 Observers have noted that the implementation of legislation to protect women’s rights remains slow. 366 This includes in particular the implementation of the EVAW law. The law, promulgated in

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For example, in November 2014, the Special Rapporteur on violence against women, its causes and consequences “highlighted the absence of comprehensive and coherent data collection [on violence against women], as well as the lack of effective interpretation and implementation of laws and resources to support shelters as a protective remedy, which includes a requirement to tackle negative perceptions of these facilities.” UN Secretary-General, The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General, 9 December 2014, A/69/647-S/2014/876, http://www.refworld.org/docid/549808194.html, para. 34. In what threatened to be a reversal of previous progress made, in early 2014 both houses of Parliament voted on a new draft Criminal Procedure Code that included provisions to bar the testimony of relatives in rape cases. The amendments were later withdrawn to reinstate

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August 2009, criminalizes 22 acts of violence and harmful traditional practices against women, including child marriage, forced marriage and acts of violence against women such as rape and domestic violence; it also specifies punishments for perpetrators. The authorities are reported to lack the political will to implement the law, and reportedly do not enforce it in full, particularly in the rural areas. The vast majority of cases, including instances of serious crimes against women, are still being mediated by traditional dispute resolution mechanisms rather than prosecuted as required by the law. UNAMA reports that both the ANP and prosecutors’ offices continue to refer numerous cases, including serious crimes, to jirgas and shuras for advice or resolution, thereby undermining the implementation of the EVAW law and reinforcing harmful traditional practices. Decisions of these mechanisms place women and girls at risk of further victimization and ostracism. The Shi’ite Personal Status Law, which regulates family law matters such as marriage, divorce and inheritance rights for members of the Shi’ite community, includes a number of provisions that discriminate against women, notably in relation to guardianship, inheritance, under-age marriages, and limitations on movements outside the home. While the human rights concerns identified in this section affect women and girls across the country, the situation in areas under the effective control of AGEs is reported to be of particular concern. In areas under their control, AGEs are reported to have severely curtailed the rights of girls and women, the possibility for women to testify. UN Secretary-General, The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General, 27 February 2015, A/69/801-E/2015/151, http://www.refworld.org/docid/556585104.html. p. 29.


UNAMA notes that as a result of the lack of due oversight by the entity that refers the case to a traditional dispute resolution mechanism, such as the provincial department of women’s affairs, the ANP, or prosecutors, women often remain at risk of recurrent violence when they returned to their families following such mediation. UNAMA, A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan, December 2013, http://www.refworld.org/docid/55814b3c4.html. p. 4.


The controversial provision requiring a wife to provide for the sexual enjoyment of her husband was removed from the Law following domestic and international pressure. However, Afghan legal experts are of the view that Article 162 of the amended Law could be used by a husband to effectively deny maintenance to a wife if she refuses him what he perceives as his conjugal rights; see UN Committee on Economic, Social and Cultural Rights (CESCR), Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Afghanistan, E/C/12/AFG/CO/2-4, 7 June 2010, http://www.refworld.org/docid/4c1732d2c.html. See also NRC/IDMC, Strengthening Displaced Women’s Housing, Land and Property Rights in Afghanistan, November 2014, http://www.refworld.org/docid/5486c4684.html. pp. 47-48.
including their freedom of movement and political participation. Moreover, in areas under the effective control of AGEs women are likely to face particular difficulties in accessing justice and obtaining effective remedies for any violations of their rights. Indeed, the parallel justice structures operated by the AGEs in areas under their control are reported to routinely violate women’s rights.

a) Sexual and Gender-Based Violence

Sexual and gender-based violence against women in Afghanistan reportedly remains widespread. Such violence includes “honour killings”, abduction, rape, forced abortion and domestic violence. As sexual acts committed outside marriage are widely seen in Afghan society to dishonour families, victims of rape outside marriage are at risk of ostracism, forced abortions, imprisonment, or even death. Societal taboos and fear of stigmatization and reprisals, including at the hands of their own community and family members, often deter survivors from reporting sexual and gender-based violence.

At the same time, incidents of self-immolation as a result of domestic violence continued to be reported.

Government authorities continue to refer most complaints of domestic violence to traditional dispute-resolution mechanisms. Women and girls who flee their homes due to abuse or threats of forced marriage are often themselves accused of vaguely defined or even undefined “moral crimes”, including adultery (zina), or “running away from home”. Men responsible for the domestic violence


or forced marriages reportedly almost always enjoy impunity, while many women in these circumstances are convicted and imprisoned, in violation of international human rights standards and jurisprudence.\textsuperscript{383} In addition, since women are usually economically dependent on the perpetrators of domestic violence, many women are effectively prevented from raising complaints; they have few options but to continue to live in abusive situations.\textsuperscript{384}

Access to justice for women seeking to report violence is further hampered by the fact that women police officers constitute less than two per cent of all police officers in the country.\textsuperscript{385} Women police officers are reportedly themselves at risk of sexual harassment and assault in the workplace, including rape by male colleagues.\textsuperscript{386} They are also at risk of violent attacks by AGEs.\textsuperscript{387}

Impunity for acts of sexual violence is further reported to persist due to the fact that in some areas of the country, alleged rapists are powerful commanders or members of armed groups or criminal gangs, or have links to such groups or influential individuals who protect them from arrest and prosecution.\textsuperscript{388}

\textbf{b) Harmful Traditional Practices}

Harmful traditional practices continue to be pervasive in Afghanistan,\textsuperscript{389} occurring in varying degrees in both rural and urban communities throughout the country, and among all ethnic groups.\textsuperscript{390} Rooted in discriminatory views about the role and position of women in Afghan society, harmful traditional

intercourse outside marriage) is a crime under the Penal Code, while “running away” or “intention to commit zina” are not crimes under Afghan law or in Sharia law. HRW, Afghanistan: End ‘Moral Crimes’ Prosecutions, June 2014, http://www.hrw.org/news/2014/06/23/afghanistan-end-moral-crimes-prosecutions. See also footnote 408 in Section III.A.8.


Specific concerns have been expressed in relation to the Shi’ite Personal Status Law. The law was adopted pursuant to Article 131 of the Constitution of Afghanistan and regulates family law matters (e.g. marriage, divorce and inheritance rights) of the Shi’ite community in Afghanistan: Shi’ite Personal Status Law, March 2009, http://www.refworld.org/docid/4a24ed5b2.html. While the law was welcomed by some prominent Shi’ites and Shi’ite groups for officially recognizing Shi’ite jurisprudence, the law in its initial form was the subject of domestic and international criticism for its failure to protect women’s rights. The criticisms led to amendments of the law, but the law retains some of the contentious provisions, including discriminatory provisions regarding guardianship, inheritance, under-age marriages, and limitations on movements outside the home. The controversial provision requiring a wife to provide for the sexual enjoyment of her husband was removed. However, Afghan legal experts are of the view that Article 162 of the amended Law could be used by a husband to effectively deny maintenance to a wife if she refuses him what he perceives as his conjugal rights; see UN CESCR, Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Afghanistan, E/C.12/AFG/CO/2-4, 7 June 2010, http://www.refworld.org/docid/4c1732dc2.html. The United High Commissioner for Human Rights denounced the law as legitimizing harmful traditional and customary practices that disadvantage women and called for its repeal; UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Afghanistan and on the Achievements of Technical Assistance in the Field of Human Rights, A/HRC/13/62, 1 January 2010, http://www.refworld.org/docid/4bc2c8d62.html, paras 4 and 21-23.
practices disproportionately affect women and girls. Such practices include various forms of forced marriages, including child marriages; forced isolation in the home; and “honour killings”. Coerced forms of marriage in Afghanistan include:

(i) “sale” marriage, where women and girls are sold for a fixed quantity of goods or cash, or to settle a family debt;
(ii) *baad dadan*, a tribal form of dispute-settling in which the offending family offers a girl for marriage into the “wronged” family, for instance to settle a blood debt;
(iii) *baadal*, where two families exchange their daughters in order to minimize marriage costs;
(iv) the coerction of widows into marrying a man from their deceased husband’s family.


Economic insecurity and ongoing conflict, related displacement, loss of assets and the impoverishment of the family perpetuate the problem of child marriages, with the practice often seen as the only means of survival for the girl and her family. 396

The EVAW law criminalizes several harmful traditional practices, including the buying and selling of women for marriage, offering women for dispute resolution under baad, and child and forced marriages. However, as noted above, implementation of the law has been slow and inconsistent. 399

c) Summary

Depending on the individual circumstances of the case, UNHCR considers that women falling in the following categories are likely to be in need of international refugee protection:

a) Survivors and those at risk of sexual and gender-based violence;

b) Survivors and those at risk of harmful traditional practices; and

c) Women perceived as contravening social mores (see Section III.A.8).

Depending on the individual circumstances of the case, they may be in need of international refugee protection on the grounds of their membership of the particular social group defined as women in Afghanistan, their religion, their (imputed) political opinion, or other relevant grounds.

8. Women and Men Who Are Perceived as Contravening Social Mores 400

Despite Government efforts to promote gender equality, women continue to face pervasive social, political and economic discrimination due to persistent stereotypes and customary practices that marginalize them. 401 Women who are perceived as transgressing social norms continue to face social stigma, general discrimination and threats to their safety, particularly in rural areas and in areas under the control of AGEs. 402 Such norms include requirements that restrict women’s freedom of movement, such as the requirement to be accompanied by a male relative chaperone when appearing in public. 403

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For analysis of the situation of individuals who are perceived as contravening AGES’ interpretation of Islamic principles, norms and values, see Section III.A.6. For analysis of the specific situation of individuals of diverse sexual orientations and/or gender identities, see Section III.A.12. For analysis of the situation of women in the public sphere, see Section III.A.1.i. For more information on the situation of women, see Section III.A.7.


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Women without male support and protection, including widows, are at particular risk. They generally lack the means of survival, given existing social norms imposing restrictions on women living alone, including limitations on their freedom of movement and on their ability to earn a living. Detention for breaches of customary or Sharia law is reported to disproportionately affect women and girls, including detention on the ground of perceived “moral crimes” such as being improperly unaccompanied, refusing marriage, engaging in sexual intercourse outside of marriage (which is considered adultery) or “running away from home” (including in situations of domestic violence). Over half of the girls and women detained in the country have been charged with “moral


UNAMA, Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication, April 2015, http://www.refworld.org/docid/55814b3c4.html; p. 32; NRC/IDMC, Strengthening Displaced Women's Housing, Land and Property Rights in Afghanistan, November 2014, http://www.refworld.org/docid/5486c4684.html. According to the USIP, traditional customs regarding women’s mobility and low employment levels mean that women simply cannot survive independently within Afghanistan. USIP, quoted in Civil-Military Fusion Centre, The Peace Process and Afghanistan’s Women, April 2012, http://www.operationsafrica.net/DATA/DOCUMENT/70255-v-The Peace Process and Afghanistan’s Women, Part II.pdf, p. 6. In N v. Sweden, the European Court of Human Rights noted that women were at a particularly heightened risk of ill-treatment in Afghanistan if they were perceived as not conforming to the gender roles ascribed to them by society, tradition or the legal system. The mere fact that the applicant had lived in Sweden might well be perceived as having crossed the line of acceptable behaviour. The fact that she wanted to divorce her husband, and in any event, might result in sexual harassment or other life-threatening repercussions upon her return to Afghanistan. Reports had further shown that a high proportion of Afghan women were affected by domestic violence, acts which the authorities saw as legitimate and therefore did not prosecute. Unaccompanied women, or women without a male “tutor”, faced continuous severe limitations to having a personal or professional life, and social exclusion. They also often plainly lacked the means for survival if not protected by a male relative. Consequently, the Court found that if N were deported to Afghanistan, Sweden would be in violation of Article 3 of ECHR. European Court of Human Rights, N v. Sweden, Application no. 235/05/09, 20 July 2010, http://www.refworld.org/docid/4c4d4e4e2.html. See also RRTA Case No. 100562 [2010] RRTA 822, Refugee Review Tribunal of Australia, 21 September 2010, http://www.austlit.edu.au/cgi-bin/sndisajn Nikola, 4 April 2015, A/HRC/29/27/Add.3, http://www.refworld.org/docid/5583f8224.html.


US Department of State, 2015 Country Reports on Human Rights Practices - Afghanistan, 13 April 2016, http://www.refworld.org/docid/5711104d4.html; UN Secretary-General, The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General, 27 February 2015, A/69/801-S/2015/151, http://www.refworld.org/docid/556585104.html, para. 26. In August 2010, the High Council of the Supreme Court instructed prosecutors on how to handle “runaway” cases, by invoking article 130 of the Constitution (Constitution of Afghanistan, 3 January 2004, http://www.refworld.org/docid/404d8a594.html. According to the instruction, courts should assess whether women who have run away are single or married, the cause and motive for running away and the place to which the woman has run. If a woman has run away to escape harassment by family members and goes to a relative’s house, the house of a legitimate mahram (unmarriageable kin) or if she seeks help
crimes”. Since accusations of adultery and other “moral crimes” may elicit “honour killings”, in some instances the authorities are reported to have sought to justify the detention of women accused of such acts as a protective measure.

Men who are perceived to be acting contrary to prevailing customs may also be at risk of ill-treatment, particularly in situations of accusations of adultery and sexual relations outside of marriage.

In areas under the effective control of the Taliban and other AGEs, women and men accused of immoral behaviour risk being tried by these AGEs’ parallel justice structures and being given harsh sentences, including lashings and death.

from the authorities, then this shall not be regarded as a crime under Sharia law. However, according to the instruction, if a woman goes to a stranger’s house, even if it is to escape ill-treatment at home, she exposes herself to crimes such as “adultery and other associated offences”, which are considered illegal under Sharia law. UNAMA, Still a Long Way to Go: Implementation of the Law on Elimination of Violence Against Women in Afghanistan, December 2012, http://www.refworld.org/docid/50c72e0d2.html, p. 22. A copy of the Supreme Court decree (in Dari), dated 1 August 2010, is on record with UNHCR. UNAMA noted that while the instruction was initially viewed as a way to stop the common practice of arresting girls who had run away by qualifying that a woman who flees to a relative’s house or a justice institution should not be arrested, in practice the instruction was in fact used to legitimize a traditional practice that restricts women’s freedom of movement. Ibid., pp. 22-23. Later, points on the correct handling of “runaway” cases have been issued by the Attorney General’s Office, which requested units for the elimination of violence against women to issue instructions to all prosecution offices not to press charges against women for “running away” or “attempted zina” (“attempted adultery”), as these are not actual codified crimes under Afghan law. In December 2012 the Supreme Court sent a letter to the Attorney General’s Office stating that running away from home to escape domestic violence and seeking assistance from justice institutions, legal organizations or relatives was not a crime and should not be prosecuted. UN Human Rights Council, Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan, 12 May 2015, A/HRC/29/27/Add.3, http://www.refworld.org/docid/5583f0224.html, para. 38. The practice of arresting women who run away from home has nevertheless persisted; see for example HRW, Afghanistan: End ‘Moral Crimes’ Prosecutions, 23 June 2014, https://www.hrw.org/news/2014/06/23/afghanistan-end-moral-crimes-prosecutions. Human Rights Watch had previously noted that in light of the discrimination at the hands of law enforcement officials faced by women who seek protection and/or access to justice, seeking government assistance is an unsafe and unfeasible option for most women and girls who are victims of domestic violence or harmful traditional practices. HRW, “I Had to Run Away”: The Imprisonment of Women for ‘Moral Crimes’ in Afghanistan, March 2012, http://www.refworld.org/docid/4787d142.html, p. 5. An absence of female police interrogators, lawyers and prosecutors may pose a further obstacle to access to justice for women accused of moral crimes. Institute for War and Peace Reporting, Lack of Female Lawyers in Eastern Afghanistan, 5 April 2012, http://www.refworld.org/docid/4f82f00c2.html.


UNHCR considers that depending on the individual circumstances of the case, persons with disabilities, including in particular persons with mental disabilities, and persons suffering from mental illnesses may be in need of international refugee protection on the ground of membership of a particular social group or other relevant grounds.

9. Individuals with Disabilities, Including in Particular Mental Disabilities, and Individuals Suffering from Mental Illnesses

Persons with disabilities, including in particular persons with mental disabilities, and persons suffering from mental illnesses are reportedly subjected to ill-treatment by members of society, including their own family members, on the grounds that their illness or disability is a punishment for sins committed by the persons affected or by their parents.416

UNHCR considers that persons perceived as contravening social mores may, depending on the individual circumstances of the case, be in need of international refugee protection on the ground of religion, their imputed political opinion, membership of a particular social group, or other relevant grounds.

10. Children with Certain Profiles or in Specific Circumstances 417

Children may fall within a number of the other risk profiles contained in these guidelines.418 Children may, however, also be at risk of child-specific forms of persecution, including under-age recruitment, child trafficking, kidnapping, bonded or hazardous child labour, domestic violence against children, forced and/or underage marriage, child prostitution and child pornography and the systematic denial of education.419

151104004814183.html. For further information about public executions of women accused of immoral behaviour by the Taliban, see the discussion on honour killings in Section III.A.7.


See in particular the profiles for men of fighting age and children in the context of underage and forced recruitment (Section III.A.3); civilians suspected of supporting AGEs (Section III.A.4); members of minority religious groups and persons perceived as contravening Sharia law (Section III.A.5); persons perceived as contravening AGEs’ interpretation of Islamic principles, norms and values (Section III.A.6); women (Section III.A.7); survivors of trafficking and individuals at risk of trafficking (Section III.A.11); individuals of diverse sexual orientations and gender identities (Section III.A.12); members of minority ethnic groups (Section III.A.13); and individuals involved in blood feuds (Section III.A.14).

In compliance with the Convention on the Rights of the Child, which Afghanistan ratified in 1994, The Juvenile Code of 2005 recognizes international standards on child protection and emphasizes children’s right to proper care, guidance, protection and the opportunity for social reintegration. It increased the age of criminal responsibility from 7 to 12 years and laid out alternatives to detention. However, UNICEF notes that while the Code was developed to protect the interests of children, it fails to redress the situation of children who are victims of sexual abuse, exploitation or forced marriage. See UNICEF, Children and Women in Afghanistan: A Situation Analysis 2014, November 2014, http://www.unicef.org/afghanistan/SitAn_small_size_.pdf, p. 39. In the first six months of 2015, 4,824 child protection cases, particularly related to rape, sexual abuse, physical abuse, child marriage, separated children, child trafficking, child kidnapping, drug abuse, children in conflict with the law and children affected by armed conflict, were reported to the Child Protection Action Network (CPAN), a network of government, non-governmental and civil society organizations working in the area of child protection in collaboration with the Ministry of Labor, Social Affairs, Martyrs & Disabled. Between 2007 and 2014, 18,304 cases were reported to the CPAN. See UNICEF, Child Notice Afghanistan, 2015, http://www.refworld.org/docid/566e68344.html, pp. 55-56.
a) Bonded or Hazardous Child Labour

Under the Labour Law children younger than 14 are prohibited from working under any circumstance. Children between the ages of 15 and 18 may engage in “light work” for up to 35 hours per week, but may not be employed in work activities likely to threaten their health or cause disability. Despite this, child labour reportedly remains widespread. Manifestations of child labour in Afghanistan are reported to include the worst forms of child labour, such as debt bondage and other forms of forced labour, the use of children in illicit activities including the drug trade, as well as the use of children in prostitution. Children are reportedly also engaged in hazardous work likely to harm their health, safety or morals. Poor institutional capacity reportedly remains a serious impediment to effective enforcement of the Labour Law, including inadequate resources for inspections and the enforcement of sanctions for violations. In addition, the authorities’ capacity to enforce the Labour Law’s provisions in relation to children is reported to be further limited by the fact that fewer than 10 per cent of children are reported to have formal birth registrations.

Street children are among the most exposed and vulnerable groups in Afghanistan, with little or no access to government services. Poverty and food shortages are reported to be key reasons for families to send their children on to the streets to beg for food and money.

b) Violence against Children, including Sexual and Gender-Based Violence

Child abuse is reported to be widespread, with the number of reported cases on the rise. Common forms of abuse include physical violence, sexual abuse, abandonment and general neglect. Some

420 US Department of Labor, 2014 Findings on the Worst Forms of Child Labor - Afghanistan, 30 September 2015, http://www.refworld.org/docid/560e3e180.html. UNICEF, Children and Women in Afghanistan: A Situation Analysis 2014, November 2014, http://www.unicef.org/afghanistan/SitAn_ - Long Report- small size.pdf, p. 42. The Ministry of Labor, Social Affairs, Martyrs & Disabled released a list of hazardous occupations in which children cannot be engaged, such as begging and garbage collection; work in blast furnaces, waste-processing plants, and large slaughterhouses; work with hospital waste; drug-related work; security guard services; and work related to war. However, enforcement of the Labour Law was reported to be weak, due to a lack of institutional capacity on the part of the government, and because fewer than 10 per cent of children had formal birth registrations, limiting authorities’ ability to enforce the law.


A spokesperson for the Ministry of Interior was quoted saying that many street children are engaged in robbery, theft and drug smuggling, and represent a security challenge. Institute for War and Peace Reporting, Afghanistan’s Working Children, 19 August 2015, ARR Issue 520, http://go.iwpr.net/1hMbXGQ. For further analysis on the use of children in illicit activities, including the drug trade and child prostitution, see Section III.A.11.


For further analysis on the situation of girls subject to harmful traditional practices and sexual and gender-based violence, see Section III.A.7.
forms of domestic violence against children is reported to take place in the name of discipline.429 Sexual abuse of children reportedly remains pervasive.430 While most child victims of sexual abuse, particularly girls, are reported to be abused by family members,431 boys and girls were also reported to be at risk of sexual violence at the hands of pro-government forces,432 AGEs, and ordinary members of society.433 Young boys continue to be at risk of bacha bazi, a practice in which boys are kept by powerful figures, who make them dance in female clothes for male audiences, and who use them for sexual exploitation.434 The practice is reported to be on the rise.435

Impunity for sexual abuse of children is reported to remain a problem: most abusers are not arrested, and there are reports of children raped with impunity by security officials and police officers.436 Some children who were prosecuted for “moralmurders” were survivors of abuse rather than perpetrators of crime; having reported instances of sexual abuse, they are perceived to have brought shame on their


431 The Afghanistan Multiple Indicator Cluster Survey 2010-2011 found that 74 per cent of children aged 2-14 years were subjected to at least one form of psychological or physical punishment by their mothers/caretakers or other household members, while 38 per cent of children were subjected to severe physical punishment. Central Statistics Organisation and UNICEF, Afghanistan Multiple Indicator Cluster Survey 2010-2011, June 2012, pp. 129-131. The US Department of State noted further that, outside the domestic sphere, corporal punishment in schools, rehabilitation centres, and other public institutions remained common, even though it was against the law. US Department of State, 2015 Country Reports on Human Rights Practices - Afghanistan, 13 April 2016, http://www.refworld.org/docid/5711040d4.html. In 2012, the AHIRC noted that in 80 per cent of the cases of sexual assault reported by the Commission the survivors were teenage girls under the age of 18. Inter Press Service, Violence Against Women on the Rise, 5 October 2012, http://www.ipsnews.net/2012/12/violence-against-afghan-women-on-the-rise/.


family and to be in need of punishment. Some children were reportedly imprisoned as a family proxy for the actual perpetrator.

c) Systematic Denial of Access to Education

Children are reported to face significant obstacles to access to education. Concerns have been expressed about the fact that official government statistics for school attendance may significantly overestimate the number of children attending school in the country, as well as about the quality of education on offer. School attendance by girls continued to be substantially lower than for boys. High levels of insecurity are a major factor in hampering access to education. The reported use of schools for military purposes by both AGEs and pro-government forces poses further concerns.


In 2015, UNAMA and UNICEF documented 132 conflict-related incidents affecting education and education-related personnel, an 86 per cent increase compared to the same period in 2014 and a 2010 per cent increase compared to 2013. The incidents were reported to significantly impact the availability, access and quality of education, as more than 369 schools closed partially or completely affecting at least 139,048 students (65,057 boys and 73,991 girls) and 600 teachers. UNAMA, Education and Healthcare At Risk: Key Trends and Incidents Affecting Children’s Access to Healthcare and Education in Afghanistan, 18 April 2016, https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf, p. 6. In July 2015, one hundred schools were closed down for security reasons in Helmand province. Tolo News, Security Threats Cause over 100 Helmand Schools to Close, 24 July 2015, http://www.tolonews.com/en/afghanistan/20585-security-threats-cause-over-100-helmand-schools-to-close. In September 2015 it was reported that 58 schools in Nangarhar province were either shut down by armed groups affiliated to ISIS, or had to be closed due to security threats posed by these groups, leaving 800,000 children without access to education. Khaama Press, 300,000 Children Face Uneducated Future Because of Daesh in Nangarhar, 20 September 2015, http://www.khaama.com/300000-school-children-face-uneducated-future-because-of-daesh-in-nangarhar-3925. During the siege of Kunduz, over 330,000 students were affected by the closure of 497 schools; furthermore, the Taliban used four schools and the ANSF used one school for military purposes. UN General Assembly, The Situation in Afghanistan and its Implications for International Peace and Security, 10 December 2015, A/70/601 - S/2015/942, http://www.refworld.org/docid/5672ac7c4.html, para. 34. At the end of 2015, in Helmand province 150 schools were closed, impeding access to education to 100,000 children. IRIN, School Closures Fuel Taliban Recruitment, 16 December 2015, http://www.refworld.org/docid/569412b682d2.html. According to the US Department of State, a Representative from the Ministry of Education estimated in May 2014 that approximately 150,000 schoolchildren in insecure areas did not have access to education. US Department of State, 2015 Country Reports on Human Rights Practices - Afghanistan, 13 April 2016, http://www.refworld.org/docid/5711040d4.html. The UN Secretary-General reported that in 2014 at least 469 schools remained closed for reason of insecurity. UN Secretary-General, Children and Armed Conflict: Report of the Secretary-General, 5 June 2015, A/69/926 – S/2015/409, http://www.refworld.org/docid/557ab9049.html, para. 33.

In 2015, 35 schools (compared to 12 schools in 2014 and ten schools in 2013) were reportedly used for military purposes for a cumulative total of 1,311 days. The military use of schools was reported to vary from a few days to months, and to have impeded access to education for at least 8,905 students (5,614 boys and 3,291 girls). UNAMA, Education and Healthcare At Risk, Key Trends and Incidents Affecting Children’s Access to Healthcare and Education in Afghanistan, 18 April 2016, https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf, p. 19. See also UN Secretary-General, Children and Armed Conflict: Report of the Secretary-General, 5 June 2015, A/69/926 – S/2015/409, http://www.refworld.org/docid/557ab9049.html, para. 35. The militarization of schools in situations of conflict can amount to persecution within Article 1(A)(2) of the 1951 Convention. See UNHCR, Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence; Roundtable 13 and 14 September 2012, Cape Town, South Africa, 20 December 2013, http://www.refworld.org/docid/509d325e52.html, para. 11; and see also UNHCR, Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, HCR/GIP/09/08, 22 December 2009, http://www.refworld.org/docid/4b2f416d2.html, para. 36.
AGEs are also reported to carry out direct attacks against schools, teachers and students, especially in relation to education for girls. While the majority of reported attacks are attributed to the Taliban, groups affiliated to ISIS are also reported to forcibly close schools and to threaten and intimidate teachers. Other obstacles to girls’ education in particular included poverty, early and forced marriage, lack of family support, lack of female teachers, and long distances to the nearest school.

\[ d \] Abductions, Punishments and Reprisals by the ANSF and AGEs

The ANSF and AGEs are reported to abduct children for various purposes, including reprisals and punishment of the victim’s family members. Children are also reported to be abducted, and subsequently to be executed, maimed or raped, on the basis of accusations of having assisted the opposing party.

444 The UN Secretary-General reported that in 2014, 163 attacks against schools were verified, including 28 incidents where IEDs were placed inside school premises. The vast majority of the attacks were carried out by AGEs and included the burning of schools, targeted killings of teachers and staff, armed attacks on education facilities, occupation of schools and intimidation and closure of schools, particularly girls’ schools. UN Secretary-General, Children and Armed Conflict: Report of the Secretary-General, 5 June 2015, A/69/926–S/2015/409, http://www.refworld.org/docid/557ab9094.html, para. 33. Between 1 April and 30 June 2015, the country task force on monitoring and reporting on children and armed conflict verified 33 (out of 52 reported) attacks by AGEs involving actions against educational premises and staff, including the burning of schools, targeted killings and abductions. In the previous three-month period, 15 incidents were reported out of which three incidents were verified. UN Secretary-General, The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General, 1 September 2015, A/70/359–S/2015/684, http://www.refworld.org/docid/55f677871.html, para. 28. The Taliban are listed as a party to the conflict responsible for specific grave violations against children in the UN Secretary-General’s Report on Children and Armed Conflict for 2015. The violations include recruitment and use of children, killing and maiming of children, and attacks against schools and/or hospitals. UN Secretary-General, Children and Armed Conflict: Report of the Secretary-General, 5 June 2015, A/69/926–S/2015/409, http://www.refworld.org/docid/557ab9094.html, p. 48.

445 In 2015, UNAMA and UNICEF documented 19 incidents where AGEs directly or indirectly limited girls’ access to education. UNAMA, Education and Healthcare At Risk: Key Trends and Incidents Affecting Children’s Access to Healthcare and Education In Afghanistan, 18 April 2016, https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf, p. 8. The Taliban particularly targets girls’ education by, for example, distributing leaflets with serious threats against students and intimidating female teachers. UN Secretary-General, Children and Armed Conflict: Report of the Secretary-General, 5 June 2015, A/69/926–S/2015/409, http://www.refworld.org/docid/557ab9094.html, para. 33. In January 2014, the Head of the Herat Education Department announced that all schools in Shindand district of Herat province would remain closed for girls, thus depriving nearly 40,000 girls from education, because of Taliban threats to burn down schools and commit suicide attacks if girls continued to attend school. ToBo News, Insecurities in Shindand Result in Closing of Girls Schools, 21 July 2014, http://www.tolonews.com/en/afghanistan/15647-insecurities-in-shindand-result-in-closing-of-girls-schools. In March 2014 an expert from the AAN, Claudio Franco, was quoted as saying, “[In the Pashtun belt in particular] there have been attempts by the Taliban to curtail or pre-empt girls’ education, and these attempts have been largely successful. The local populace is very often sympathetic towards this kind of stance, simply because of an instinctive, well-rooted conservatism. […] As a consequence, there have been attacks on girls travelling to and from school, or on teachers and/or administrators who did not comply with this ban.”

446 UNAMA noted that in 2015, one third of the attacks carried out by groups affiliated to ISIS targeted education and health facilities and personnel. UNAMA, Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict, February 2016, http://www.refworld.org/docid/56c17b714.html, p. 56. The emergence of groups affiliated to ISIS in the eastern region was reported to be directly correlated to an increase in incidents of threats and intimidation targeting education-related personnel. In 2015, eight such cases were attributed to groups affiliated with ISIS, including “extortion of teachers’ salaries and forced closure of some 68 schools throughout the province, affecting more than 48,751 students and teachers, including at least 16,896 girls.” UNAMA, Education and Healthcare At Risk: Key Trends and Incidents Affecting Children’s Access to Healthcare and Education in Afghanistan, 18 April 2016, https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf, p. 8. See also UNAMA, Afghanistan: Annual Report 2015, p. 19.


449 UN Secretary-General, Report of the Secretary-General on Children and Armed Conflict in Afghanistan, 15 May 2015, S/2015/354,
 Depending on the particular circumstances of the case, UNHCR considers that children falling under the following categories may be in need of international refugee protection:

   a) Children from areas where either AGEs or elements of the ANSF use underage recruitment;\(^{450}\)

   b) Children from social milieus where bonded or hazardous child labour is practised;

   c) Survivors and those at risk of violence against children (including sexual and gender-based violence), including children from social milieus where such violence is practised;

   d) School-age children, particularly girls;\(^{451}\) and

   e) Children against whose parents the ANSF or AGEs are seeking to exact reprisals, and children who are accused by the ANSF or AGEs or having assisted the opposing party.

Depending on the individual circumstances of the case, they may be in need of international protection on the grounds of their membership of a particular social group, their religion, their (imputed) political opinion, or other relevant grounds.

Asylum claims made by children including any examination of exclusion considerations for former child soldiers, need to be assessed carefully in accordance with the UNHCR Guidelines on child asylum claims.\(^{452}\)

### 11. Survivors of Trafficking or Bonded Labour and Persons at Risk of Being Trafficked or Bonded Labour

Afghan men, women and children are reported to be trafficked for forced labour, sexual exploitation, and in the case of girls also for forced marriage.\(^{453}\) Afghans who fall victim to trafficking are reportedly trafficked within Afghanistan and to the Middle East, Europe, and South Asia,\(^{454}\) but trafficking within Afghanistan is reported to be more prevalent than transnational trafficking.\(^{455}\) The majority of Afghans who fall victim to trafficking are reported to be children. They may be trafficked for the purposes of labour exploitation, in sectors of the economy such as agriculture, brick making, mining, construction, carpet weaving, domestic work and services industries. They may also be exploited in illicit sectors of the economy, such as drug smuggling and production, other criminal activities, forced combat and other forms of violence, and begging. Children may also be trafficked

\(^{450}\) For further analysis on the issue of under-age recruitment, see Section III.A.3.


for the purposes of sexual exploitation and forced marriage. Afghan women, girls and boys are reported to be especially vulnerable to trafficking for sexual exploitation; in the case of boys this includes the practice of bacha bazi, where powerful men use young boys for social and sexual entertainment. Children are reportedly sometimes sold by their families for financial gain or to settle debts. Afghan women and men are reportedly trafficked abroad and subjected to forced labour and debt bondage, including in domestic servitude and in agricultural and construction sectors. Some Afghan families, including children, are reported to be trapped in cycles of bonded labour, including in brick-making factories.

In 2008 the Government adopted an anti-trafficking law. While efforts to enforce the law have reportedly been modest, there reportedly continues to be a lack of awareness and understanding of trafficking among law enforcement and judicial officials. Corruption and lack of political will to hold perpetrators accountable are also reported, and government employees have reportedly been accused of complicity in human trafficking. The Government also reportedly arrested, imprisoned or otherwise punished persons who had fallen victim to trafficking, penalizing such persons for crimes such as prostitution or “moral crimes”.

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12. Individuals of Diverse Sexual Orientations and/or Gender Identities

Consensual same-sex relations are illegal in Afghanistan and are punishable by “long imprisonment” under the Afghan Penal Code.\(^{466}\) Under Sharia law, the maximum sentence for same-sex relations is the death penalty, but no death sentences for same-sex relations are reported to have been passed by the judiciary since the fall of the Taliban.\(^{467}\)

Social taboos around homosexuality remain strong.\(^{468}\) Gay men and boys, and those perceived to be gay, are reported to face discrimination and violence, including at the hands of the authorities, family and community members, as well as AGES.\(^{469}\) The police reportedly subject individuals to harassment, violence, and detention on the basis of their real or perceived sexual orientation; police

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officers also allegedly rob and rape gay men. Organizations dedicated to the protection of the rights of persons of diverse sexual orientations reportedly remain underground. Given the pervading social taboos related to same-sex relations, there is little information available on the treatment of individuals of diverse sexual orientations in Afghanistan. What little information there is pertains to gay men; the situation of lesbians and of bisexual individuals is largely undocumented. Similarly, little is known about the situation of transgender individuals in Afghanistan. The absence of information should not be taken to mean that there is no risk for individuals of diverse sexual orientations and/or gender identities.

In light of the criminalization of same-sex relations, as well as the strong social taboos, UNHCR considers that individuals of diverse sexual orientations and/or gender identities are likely to be in need of international refugee protection on account of their membership of a particular social group based on their sexual orientation and/or gender identity, since they do not, or are perceived not to conform to prevailing legal, religious and social norms. They may also be in need of international protection on other relevant grounds. Individuals who are perceived to be of diverse sexual orientations and/or gender identities are similarly likely to be in need of international refugee protection on the same grounds.

It should be borne in mind that individuals of diverse sexual orientations and/or gender identities cannot be expected to change or conceal their identity in order to avoid persecution. Furthermore, the existence of significant criminal sanctions for same-sex relations is a bar to State protection for individuals of diverse sexual identities, including where persecutory acts are perpetrated by non-State actors such as family or community members.

13. Members of (Minority) Ethnic Groups

The population of Afghanistan comprises a number of different ethnic groups, which have traditionally maintained a large measure of autonomy vis-à-vis the central Government. As a result


473 For further guidance on applications for refugee status from individuals of diverse sexual orientations and/or gender identities, see UNHCR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 23 October 2012, HCR/GIP/12/015, http://www.refworld.org/docid/50348a6f2.html. See also Court of Justice of the European Union, A, B, C v. Staatssecretaris van Veiligheid en Justitie, C-148/13 to C-150/13, 2 December 2014, http://www.refworld.org/docid/547d943da.html.

474 Maley, William, The Afghan Wars, 2002, New York, Palgrave Macmillan, pp. 8-9: “The population of Afghanistan has never been counted in a complete census, but the results of a partial census in 1979, adjusted to take account of other relevant data, suggested a population of approximately 13.05 million, including around 800,000 nomads (Eighmy, 1990: 10). This population was in no sense homogenous, and indeed it is something of a misnomer to talk of “Afghan society”, for the term suggests a degree of coherent structure which was never really present. Rather, Afghanistan has encompassed a kaleidoscopic collection of ‘micro-societies’ (often identified by the label qawm, or ‘network’), with porous and flexible boundaries. One scholar even went so far as to dub Afghanistan a ‘Nation of Minorities’ (Jawad, 1992).

Ethnicity, religion, occupation, and gender have historically offered to Afghans a range of bases upon which they may seek to identify with their fellows, and while some of these are effectively ascriptive – that is, unchangeable, or changeable only at enormous social cost – the relative emphasis given to one over another is frequently a matter of strategic choice. (...) Afghanistan is first of all a multiethnic country.”

As noted by William Maley, quoted above, no population census has been conducted due to the Soviet invasion. Based on an extrapolation of the data from the 1979 census, the current population of Afghanistan is estimated at 32.6 million. See US Central Intelligence Agency, CIA Factbook: Afghanistan, https://www.cia.gov/library/publications/the-world-factbook/geos/af.html. The CIA Factbook notes that “current statistical data on the sensitive subject of ethnicity in Afghanistan is not available, and ethnicity data from small samples of respondents to opinion polls are not a reliable alternative”. Ibid. See also Civil-Military Fusion Centre, Afghanistan Ethnic Groups: A Brief Investigation, August 2011, http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation. Out of the 9.586 Afghans residing in all 34 provinces who were interviewed for the purposes of its 2015 survey, the Asia Foundation reported that 40 per cent defined themselves as Pashtuns, 34 per cent as Tajik, 11 per cent as Hazara, eight per cent as Uzbek, and two per cent as Turkmen. Other groups (one per cent or less of responses) include Arab and Baloch groups. See Asia Foundation, Afghanistan in 2015: A Survey of the Afghan People, November 2015, http://asiafoundation.org/resources/pdfs/AFghanistan2015.pdf, pp. 166-101. A detailed map showing the geographic distribution of Afghanistan’s ethnic groups can be found in Congressional Research Service, Afghanistan: Post-Taliban Governance, Security, and U.S. Policy, 22 December 2015, http://www.fas.org/sgp/crs/crow/RL30588.pdf. p. 75, Figure 2: “Map of Afghan Ethnicities”. The Constitution of Afghanistan provides that, “The nation of Afghanistan shall be comprised of Pashtun, Tajik, Hazara, Uzbek, Turkman, Baluch, Pachaie, 73
of a variety of historical population movements, both forced and voluntary, some members of ethnic groups now reside outside areas where they traditionally represented a majority. Consequently, individuals belonging to one of the largest ethnic groups nationwide may in fact constitute a minority ethnic group in their area of residence, and may accordingly face discrimination or ill-treatment in their home area due to their ethnicity. Conversely, a member of an ethnic group or clan constituting a minority at the national level may not face any discrimination on the grounds of ethnicity in areas where this ethnic group or clan represents the local majority. It should also be noted that the various ethnic groups are not necessarily homogenous communities. Among Pashtuns, for example, strong rivalries between different sub-groups may be a cause of tensions and conflicts.

It should also be noted that ethnicity and religion are often inextricably linked, especially in the case of the Hazara ethnic group which is predominantly Shi’ite. As a result, it is not always possible to distinguish between religion and ethnicity as the primary element behind certain incidents or tensions. Similarly, since political allegiance is often guided by ethnicity, (imputed) political opinion and ethnicity may be inextricably-linked elements in conflicts and tensions between different groups.

Ethnic divisions in Afghanistan remain strong. The Peoples under Threat Index compiled by Minority Rights Group International lists Afghanistan as the fourth most dangerous country in the world for ethnic minorities, especially because of targeted attacks against individuals based on their ethnicity and religion. The index refers specifically to the Hazaras, Pashtuns, Tajiks, Uzbeks, Turkmen and Baluchis as ethnic minorities at risk in Afghanistan.

Minority Rights Group International lists Afghanistan as the fourth most dangerous country in the world for ethnic minorities, especially because of targeted attacks against individuals based on their ethnicity and religion.
The Constitution guarantees “equality among all ethnic groups and tribes.” However, members of certain ethnic groups have complained of discrimination by the State, including in the form of unequal access to local government jobs in areas where they were in the minority.

a) Kuchis

Nomadic people in Afghanistan are commonly known as Kuchi; they form a marginalized group. The majority of Kuchis are ethnic Pashtuns. Since the fall of the Taliban regime in 2001, human development indicators for Kuchis are reported to have stayed behind those of other ethnic groups; they are among the poorest people in Afghanistan. Traditionally the Kuchis are nomads, but the majority of Kuchis have now reportedly settled in towns, villages or on the outskirts of larger urban settlements. The Constitution provides that the State shall take measures to improve the livelihoods of nomads and to improve access to education for nomads (Article 44). However, the Afghanistan Independent Human Rights Commission (AIHRC) reports that the Government has seldom acted on its pledges to build mobile schools and clinics for Kuchis. As a result, literacy rates among nomadic Kuchis are reported to be among the lowest in the world. Kuchis also have very limited access to health facilities.

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483 In recognition of this fact, ten seats in the lower house of the national assembly are reserved for Kuchis and two seats in the upper house.
b) Hazaras

Hazaras have been reported to face continuing societal discrimination, as well as to be targeted for extortion through illegal taxation, forced recruitment and forced labour, and physical abuse.\(^{490}\) Hazaras have historically been marginalized and discriminated against by the Pashtuns. While they were reported to have made significant economic and political advances since the 2001 fall of the Taliban regime,\(^{491}\) more recently there has reportedly been a significant increase in harassment, intimidation, kidnappings and killings at the hands of the Taliban and other AGEs.\(^{492}\)


\(^{493}\) Among the most marginalized communities in Afghanistan are those of Jat ethnicity, which encompasses the Jogi, Chori Frosh, Gorbat and Mosuli communities. Institutional discrimination reportedly forms a major obstacle for members of these communities, with the Ministry of Interior reportedly refusing to consider members of the Jogi and Mosuli ethnic groups as nationals of Afghanistan. This in turn means that they are not issued with the nationality card, the tazkira. As a result, they are reported to have limited access to social services, government schools, employment and land ownership.\(^{494}\)

c) Members of the Jat ethnic group, including the Jogi, Chori Frosh, Gorbat and Mosuli communities

The Jogi, Jat, Gorbat and Chori Frosh “suffer from severe social, economic and political barriers constraining access to education and
d) Land Disputes with an Ethnic or Tribal Dimension

Land ownership is in many cases difficult to establish and, as a result, land disputes are common in Afghanistan; they frequently turn violent. Land grabbing is reportedly widespread, reportedly often involving powerful actors with connections to the Government, as well as public officials. All land registration, distribution and dispute resolution mechanisms, whether formal or informal, are reported to be afflicted by corruption.

Conflicts about land ownership and land use rights often have an ethnic dimension, in part as a result of population movements. Afghans who seek to reclaim their land after returning home from displacement may be particularly vulnerable to land disputes with an ethnic dimension.


In the provinces of Wardak and Ghazni, the annual migration of nomadic Kuchis in search of grazing pastures for their animals in areas settled by Hazaras has given rise to recurring violence between Kuchis and Hazaras. Despite government efforts to address these conflicts, the violence has continued to lead to deaths and injuries among both groups, and displacement of Hazara villagers.

**e) Summary**

Based on the foregoing, UNHCR considers that individuals who belong to one of Afghanistan’s minority ethnic groups, particularly in areas where they do not constitute an ethnic majority, may be in need of international refugee protection on the basis of their nationality or ethnicity/race, or other relevant grounds, depending on the individual circumstances of the case. Relevant considerations include the relative power position of the ethnic group in the applicant’s area of origin, and the history of inter-ethnic relations in that area.

Individuals who belong to one of Afghanistan’s dominant ethnic groups may also be in need of international refugee protection on the basis of their nationality or ethnicity/race, or other relevant grounds, depending on the individual circumstances of the case. Relevant considerations include the question of whether the ethnic group also constitutes a majority in the area of origin or constitutes a minority there.

International protection needs based on ethnicity/race may overlap with those based on religion and/or (imputed) political opinion. Due consideration should also be given to whether other risk profiles outlined in these Guidelines apply to the person concerned.

### 14. Individuals Involved in Blood Feuds

In general, a blood feud involves the members of one family killing members of another family in retaliatory acts of vengeance which are carried out according to an ancient code of honour and behaviour. In the context of Afghanistan, while blood feuds are primarily a Pashtun tradition rooted in Pashtuns’ customary law system, Pashtunwali, they are also reported to occur among other ethnic communities. These feuds are often triggered by minor incidents, such as a dispute over grazing rights or land use, and can escalate into deadly violence.

groups. Blood feuds can be triggered by murders, but also by other offences, such as the infliction of permanent, serious injury, the kidnapping or violation of married women, or unresolved disputes over land, access to water supplies or property. Blood feuds may give rise to long cycles of retaliatory violence and revenge. Under Pashtunwali, in principle revenge must be taken against the offender, but under certain circumstances the offender’s brother or other patrilineal kin may become the target for revenge. In general, revenge is not reported to be exacted against women and children. When the victim’s family is not in a position to exact revenge, a blood feud may reportedly lie dormant until such time as the victim’s family believes it is capable of taking revenge. Revenge can thus be taken years or even generations after the original offence. Sentencing of the offender in the formal judicial system does not necessarily preclude violent retaliation by the victim’s family: unless a settlement has been reached through a traditional dispute settlement mechanism to end the blood feud, the victim’s family will reportedly still be expected to exact revenge against the offender after he has served his sentence.

In light of the foregoing, UNHCR considers that persons involved in a blood feud may, depending on the circumstances of the individual case, be in need of international refugee protection on account of membership of a particular social group or other relevant grounds. Claims by persons involved in blood feuds may, however, give rise to the need to examine possible exclusion from refugee status. Depending on the specific circumstances of the case, family members, partners or other dependants of individuals involved in blood feuds may also be in need of international protection on the basis of their association with individuals at risk.

15. (Family Members of) Business People and Other People of Means

Afghans continue to be concerned about widespread corruption, racketeering and extortion. Afghan security forces are reported to operate illegal checkpoints and to extort money and goods from
travellers.\textsuperscript{511} The ALP in many areas are reported to demand payment of informal taxes and to use violence at police checkpoints against persons who have not paid.\textsuperscript{512} Pro-government forces, including in particular the ALP, are reported to engage in rent-seeking behaviour, for example by detaining individuals on the basis of alleged relations with the Taliban and releasing them only after extorting payments from the detainees.\textsuperscript{513} Civilians are also reported to be asked for bribes by corrections and detention officials in order to be released from prison after having served their sentence.\textsuperscript{514}

Pro-government armed groups are also reported to subject the civilian population to illegal taxation and other forms of intimidation, including in districts where no or few abuses were previously documented.\textsuperscript{515} For example, in Sancharak district in Sari Pul province, human rights abuses perpetrated by pro-government armed groups were reported to include deliberate illegal taxation and other forms of extortion, forced labour, land theft, and property destruction.\textsuperscript{516} In Khanabad district in Kunduz province, pro-government militias reportedly targeted businessmen, shopkeepers and farmers for “predatory taxation”.\textsuperscript{517}

AGEs are reported to operate illegal checkpoints and to extort money and goods from the civilian population.\textsuperscript{518} The Taliban are reported to make extensive profits from illegal activities, including extortion and kidnapping for ransom.\textsuperscript{519} In August 2015 UNAMA expressed its “deep concern” about the rising number of conflict-related abductions of civilians by AGEs and the execution of civilian hostages.\textsuperscript{520} UNAMA noted that in the majority of cases, AGEs targeted “civilian Government workers and contractors, family members of Government workers, persons perceived to be supporting the Government or security forces, as well as ANP with civilian status and former Afghan security forces”.


forces members. UNAMA noted that a significant number of kidnapping victims are Hazaras. However, in other cases the primary reason for the kidnappings is reported to be financial gain, with businessmen and other individuals who have or who are perceived to have financial means the main targets. According to UNAMA, victims of abductions released by AGEs continue to be contacted by their former captors with demands for money or other forms of support.

Practices of illegal taxation and extortion would not normally rise to the level of persecution, nor would other forms of crime. However, certain methods of extortion may rise to the level of persecution, including kidnapping for ransom, while other forms of extortion may contribute to persecution on cumulative grounds. Where individuals are targeted for extortion or for kidnapping for ransom on the basis of their (imputed) political opinion (for example because they are (perceived to be) associated with the government); or on the basis of their race/ethnicity or their religion, the individual concerned may, depending on the individual circumstances of the case, be in need of international protection on these grounds. In other cases, a person at risk of kidnapping for ransom may be found to be targeted as a member of a particular social group, and may, depending on the individual circumstances of the case, be in need of international protection on this basis.

UNHCR considers that separate considerations apply to the situation of family members of individuals who are or who are perceived to be associated with the government, as well as family members of individuals who have or are perceived to have wealth. Where family members, including children, are at risk of kidnapping for ransom for reason of their being related to such individuals, they may, depending on the individual circumstances of the case, be in need of international protection on the basis of their membership of a particular social group or other relevant grounds.

B. Internal Flight or Relocation Alternative for Individuals at Risk of Persecution

A detailed analytical framework for assessing the availability of an internal flight or relocation alternative (IFA/IRA), sometimes also referred to as internal protection alternative, is contained in the UNHCR Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees.

An assessment of the possibility of relocation requires an assessment of the relevance as well as the reasonableness of the proposed IFA/IRA. In cases where a well-founded fear of persecution has been placed in some localized part of the country of origin, the determination of whether the

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526 See Section III.A.1.
528 European Union, Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 13 December 2011, [http://www.refworld.org/docid/4f197d802.html](http://www.refworld.org/docid/4f197d802.html), Article 8.
529 UNHCR, Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, HCR/GIP/03/004, 23 July 2003, [http://www.refworld.org/docid/3f2791a44.html](http://www.refworld.org/docid/3f2791a44.html).
530 In relation to applications for international protection in EU Member States, Article 8 of the 2011 Qualification Directive applies. It includes both a relevance and reasonable test. 2011 Qualification Directive, Article 8.

81
proposed internal flight or relocation area is an appropriate alternative for the individual concerned requires an assessment over time, taking into account not only the circumstances that gave rise to the risk feared, and that prompted flight from the area of origin, but also whether the proposed area provides a safe and meaningful alternative in the future. The personal circumstances of the individual applicant and the conditions in the area of relocation need to be considered.\(^5\)

If an IFA/IRA is considered in asylum procedures, a particular area of proposed relocation must be identified, and the applicant must be given an adequate opportunity to respond to the purported relevance and reasonableness of the proposed IFA/IRA.\(^5\)

1. **Relevance Analysis**

In assessing the relevance of an IFA/IRA for Afghan applicants, it is of particular importance to consider: (i) the requirement that the proposed area of relocation must be durably safe, and (ii) the fact that the area of prospective IFA/IRA must be practically, safely and legally accessible to the individual.\(^5\) In light of the first requirement, particular attention must be given to the volatility and fluidity of the armed conflict in Afghanistan, and the fact that provinces and districts that were previously not directly affected by the conflict have seen a deterioration of the security situation and attendant displacement.\(^5\) The second requirement entails an assessment of the concrete prospects of safely accessing the proposed area of relocation, including by assessing the risks associated with the widespread use of IEDs and presence of landmines and explosive remnants of war (ERW) throughout the country; attacks and fighting taking place on roads; and restrictions on civilians’ freedom of movement imposed by AGEs.\(^5\)

Where the applicant has a well-founded fear of persecution at the hands of the State or its agents, there is a presumption that consideration of an IFA/IRA is not relevant for areas under the control of the State.\(^5\)

In light of the available evidence of serious and widespread human rights abuses by AGEs in areas under their effective control, as well as the inability of the State to provide protection against such abuses in these areas, UNHCR considers that an IFA/IRA is not available in areas of the country that are under the effective control of AGEs, with the possible exception of individuals with previously-established links with the AGE leadership in the proposed area of relocation.

UNHCR considers that no IFA/IRA is available in areas affected by active conflict, regardless of the actor of persecution.

Where the agents of persecution are AGEs, consideration must be given to whether the persecutor is...
likely to pursue the applicant in the proposed area of relocation. Given the wide geographic reach of some AGEs, a viable IFA/IRA may not be available to individuals at risk of being targeted by such groups. It is particularly important to note the operational capacity of the Taliban, the Haqqani network, Hezb-e-Islami Hekmatyar, groups claiming affiliation with ISIS and other armed groups to carry out attacks in all parts of the country, including areas that are not under the effective control of these AGEs, as evidenced for example by the increased frequency of high-profile complex attacks in urban areas under the control of pro-government forces.537

Where the applicant may be exposed to further risks of persecution or serious harm at the hands of AGEs in the proposed area of relocation, the evidence provided in Section II.C needs to be taken into account regarding the limitations on the ability of the State to provide protection as a result of ineffective governance and high levels of corruption.

For individuals who fear harm as a result of harmful traditional practices and religious norms of a persecutory nature, such as women and children and persons of diverse sexual orientations and/or gender identities, the endorsement of such norms and practices by large segments of society and powerful conservative elements at all levels of government needs to be taken into account as a factor that weighs against the relevance of an IFA/IRA.

2. Reasonableness Analysis

Whether an IFA/IRA is “reasonable” must be determined on a case-by-case basis, taking into account the personal circumstances of the applicant, including the impact of any past persecution on the applicant.538 Other factors that must be taken into account include the safety and security situation in the proposed area of relocation; respect for human rights in that area, and the possibilities for economic survival in dignified conditions.539

UNHCR considers that an IFA/IRA is not available in areas affected by active conflict. For other areas of Afghanistan, an IFA/IRA would only be available if the applicant is able to live there in safety and security, free from danger and risk of injury. These conditions must be durable, not illusory or unpredictable.540 The increasing number of provinces in Afghanistan affected by conflict and forced movement of population; the rapid shifting of fronts; and the inability of most of the parties in conflict to maintain territorial gains are also factors to be taken into consideration. Information presented in Section II.B of these Guidelines and reliable, up-to-date information about the security situation in the proposed area of relocation would be important elements in assessing the reasonableness of the proposed IFA/IRA.541

In light of the available information presented in Section II.C of these Guidelines relating to serious and widespread human rights abuses committed by AGEs in Afghanistan, and the inability of the State to protect individuals from human rights abuses committed by AGEs in areas under the effective control of such AGEs, UNHCR considers that areas of Afghanistan that are under the effective control of AGEs do not present a reasonable IFA/IRA, with the possible exception of applicants with previously-established links with the AGE leadership in the proposed area of relocation (provided that requirements (i) – (iv) below are met).

For the remaining areas of Afghanistan, i.e. areas that are neither affected by active conflict nor controlled by AGEs, an assessment of the reasonableness of a proposed IFA/IRA must give particular attention to:

539 See UNHCR, ibid., paras 24, 27-30.
540 See UNHCR, ibid., para. 27.
541 See UNHCR, ibid., para. 28.
Afghans originating from rural areas, with few marketable professional skills beyond agriculture and animal husbandry, may have more difficulty reintegrating elsewhere. They are likely to have few or no savings and no property (because property has been destroyed, looted or left behind during displacement), no social support networks in the places of relocation and perhaps even communications difficulties, due to language or dialect limitations.

According to a survey conducted by the Food Security and Agricultural Cluster Afghanistan in May-June 2015, 5.9 per cent of the population (1.57 million people) is severely food insecure, compared to 4.7 per cent in 2014. A further 27.5 per cent (7.3 million people) is moderately food insecure. The survey also indicated that the proportion of severely food insecure people who have already exhausted their capacity to cope with these emergencies has increased, meaning many more are now forced to sell land, take children out of school to work, or depend on relatives for support. Food Security and Agricultural Cluster Afghanistan, Seasonal Food Security Assessment (SFSA) May-June 2015 Afghanistan, 31 August 2015, http://foodsecuritycluster.net/sites/default/files/SFSA_2015_Final_0.pdf, pp. 5-7. Families that host IDPs are themselves at risk of depleting their resources; see for example UNHCR, Afghanistan - Conflict-Induced Internal Displacement Monthly Update, May 2015, http://www.refworld.org/docid/5594f2544.html, p. 3.

While some safety nets reportedly exist at the communal level in urban areas, through which vulnerable households can access informal loans and intra-community charity, such mechanisms are reportedly in decline and can also be exclusionary towards newly arrived IDPs. Samuel Hall Consulting, Urban Poverty Report: A Study of Poverty, Food Insecurity and Resilience in Afghan Cities (report commissioned by Danish Refugee Council and People in Need), November 2014, http://samuelhall.org/wp-content/uploads/2014/11/DRC-PIN-Urban-Poverty-Report.pdf, p. 9. A spate of ‘insider attacks’, where perpetrators pretend to be a friendly guest only for them then to attack their hosts, has reportedly weakened the tradition of ‘Pashtunwali’ and its strict codes of hospitality. New York Times, Afghans See a Collapse of Tradition in a Spate of Devious Attacks, 3 September 2015, http://www.nytimes.com/2015/09/04/world/asia/afghans-see-devious-attacks-assign-of-wars-toll-on-traditional-values.html. Due to the deteriorating security situation, returnees reportedly “end up stuck in an overcrowded Kabul, far from family networks essential to survival in Afghanistan.” Reuters, Sent Back from Europe, Some Afghans Prepare to Try Again, 16 November 2015, http://www.reuters.com/article/2015/11/16/us-afghanistan-migrants-insight-idUSKCN0T5OE020151116. According to the Afghanistan Migrants Advice and Support Organisation: “There are a large number of returnees who fled Afghanistan as minors and have been returned to Afghanistan now. Most of the boys interviewed by the organisation have been searching for their families for years and years, when they did not find any clues they give up. They are living alone now.” UNICEF, Child Notice Afghanistan, November 2015, http://www.refworld.org/docid/56430b2d4.html.

Family networks are reported to play an essential role in offering support and livelihood opportunities for returnees. However, such support may be withdrawn if the returnee is perceived to bring shame to the family, including because the returnee is perceived to have come under the influence of Western culture. Schuster, L. & Majidi, N., What Happens Post-Deportation? The Experience of Deported Afghans, 2013, Migration studies, 1(2), pp. 221-240, http://orendacess.city.ac.uk/4717/1/2013%20Schuster%20Majidi%20.pdf. According to long-term research by the Refugee Support Network (RSN) tracking a group of young men returned from the United Kingdom to Afghanistan, “The simple existence of family in Afghanistan does not equate to protection for the returnees. Some young people are not welcomed by family as they have returned from the UK without having met family expectations of their initial migration, while, for others families’ resources are too limited for them to provide for a returning young person.” The RSN also noted that the majority of those tracked struggled to re-establish contact with their families upon return, find it impossible to continue their education and to obtain sustainable employment, and experience mental health difficulties and a lasting deterioration in their emotional well-being. RSN, After Return: Documenting The Experiences of Young People Forcibly Removed to Afghanistan, April 2016, https://refugeesoapportnetwork.org/sites/default/files/Files/After%20Return_RSN_Apri%202016.pdf, pp. 6, 22. According to interviews carried out by USIP in Kabul in November 2013, “NGOs involved in the reintegration of returnees report challenges that young people in particular face, including feelings of alienation from the wider community, especially in urban areas, as well as discrimination.” USIP, The Forced Return of Afghan Refugees and Implications for Stability, January 2016, http://www.usip.org/sites/default/files/EP199-The-Forced-Return-of-Afghan-Refugees-and-Implications-for-Stability.pdf, p. 3. Returnees reportedly face a general assumption that they have become ‘westernized’ or ‘anti-Islamic’ in Europe. Many also reportedly feel they have disappointed their family and become a drain on the family’s
Where the proposed area of relocation is an urban area where the applicant has no access to pre-identified accommodation and livelihood options, and where he or she cannot reasonably be expected to be able to fall back on meaningful support networks, the applicant would likely find him- or herself in a situation comparable to that of other urban IDPs. To assess the reasonableness of such an outcome, adjudicators need to take into account the scale of internal displacement in the area of prospective relocation, and the living conditions of IDPs in that location. Relevant considerations in this regard include the fact that IDPs are considered to be among the most vulnerable groups in Afghanistan, many of whom are beyond the reach of humanitarian organizations;\textsuperscript{546} as well as available information to the effect that urban IDPs are more vulnerable than the non-displaced urban poor, as they are particularly affected by unemployment; limited access to water and sanitation; and food insecurity.\textsuperscript{547} The limited availability of adequate housing must also be taken into account, including in particular for IDPs, with land allocation schemes reportedly often ill-managed and marred with corruption (see also Section II.E).\textsuperscript{548}

The particular circumstances of children as well as the legal obligations of States under the Convention on the Rights of the Child – in particular the obligations to ensure that the best interests of the child are a primary consideration in all decision-making affecting children and to give due weight to the views of the child in light of his or her age and maturity – need to be taken into account in assessing the reasonableness of an IFA/IRA involving children.\textsuperscript{549} Adjudicators need to give due consideration to the fact that what is considered merely inconvenient for adults may constitute undue hardship for a child. These considerations take on additional importance in relation to unaccompanied and separated children.\textsuperscript{550}

In assessing the reasonableness of an IFA/IRA, particular attention should be paid to the circumstances of individuals with specific needs, including persons living with disabilities and elderly persons, in terms of food insecurity, the lack of access to livelihoods opportunities, and the lack of access to essential services, including appropriate social and psychosocial support as well as health care.

In light of traditional restrictions on women’s freedom of movement, coupled with low employment rates for women, UNHCR considers that an IFA/IRA is not reasonable for women who are single

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\textsuperscript{547} For further details, see Section II.E.


heads of household with no male protection, as they will not be able to lead a life without undue hardship and they can be at heightened risk, including in urban areas.

Against this background, UNHCR considers that a proposed IFA/IRA is reasonable only where the individual has access to (i) shelter, (ii) essential services such as sanitation, health care and education; and (iii) livelihood opportunities. Moreover, UNHCR considers an IFA/IRA as reasonable only where the individual has access to a traditional support network of members of his or her (extended) family or members of his or her larger ethnic community in the area of prospective relocation, who have been assessed to be willing and able to provide genuine support to the applicant in practice.

To determine the reasonableness of a proposed IFA/IRA for persons with specific needs, including persons with disabilities and elderly persons, it would be particularly important to establish that members of their (extended) family or members of their larger ethnic community in the area of prospective relocation are willing and able to provide durable support to meet the person’s identified needs in a sustainable – and where necessary permanent – manner.

UNHCR considers that the only exception to the requirement of external support are single able-bodied men and married couples of working age without identified specific vulnerabilities as described above. Such persons may in certain circumstances be able to subsist without family and community support in urban and semi-urban areas that have the necessary infrastructure and livelihood opportunities to meet the basic necessities of life and that are under effective Government control.

In the case of unaccompanied and separated children from Afghanistan, UNHCR considers that in addition to the requirement of meaningful support of the child’s own (extended) family or larger ethnic community in the area of prospective relocation, it must be established that relocation is in the best interest of the child. The return of unaccompanied and separated children to Afghanistan is furthermore subject to the minimum safeguards identified in the 2010 Aide-mémoire: Special Measures Applying to the Return of Unaccompanied and Separated Children to Afghanistan.

C. Refugee Status under UNHCR’s Broader Mandate Criteria or Regional Instruments, or Eligibility for Complementary Forms of Protection

The 1951 Convention forms the cornerstone of the international refugee protection regime. The criteria for refugee status in the 1951 Convention should be interpreted in such a manner that

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551 The Higher Administrative Court in Lower Saxony has reportedly determined that westernized Afghan women would be exposed to violence and severe violations of human rights if they were to return to Afghanistan. Deutscher Welle, Deportation to Afghanistan: Safe or Unsafe Origin?, 8 November 2015, [http://www.dw.com/en/deportation-to-afghanistan-safe-or-unsafe-origin/a-18835069](http://www.dw.com/en/deportation-to-afghanistan-safe-or-unsafe-origin/a-18835069). A study by the NRC and The Liaison Office found that women IDPs reportedly face greater difficulties in accessing community support, as in addition to the loss of networks from their places of origin, they also “have a hard time establishing new networks in the places of displacement due to not being permitted to venture outside their homes.” Many displaced women and girls the researchers interviewed “demonstrated a palpable feeling of despair, [with] an alarming number wishing for death or regret at having been born” due to their disproportionately poor living conditions and restricted mobility and community support. Norwegian Refugee Council / The Liaison Office, Listening to Women and Girls Displaced to Urban Afghanistan, 26 March 2015, [http://www.refworld.org/docid/5513bec24.html](http://www.refworld.org/docid/5513bec24.html), pp. 8, 16. See also United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), AK (Article 15(c)) Afghanistan CG v. Secretary of State for the Home Department, [2012] UKUT 00163(IAC), 18 May 2012, [http://www.refworld.org/docid/4fba09826.html](http://www.refworld.org/docid/4fba09826.html), where the Tribunal states, “Nevertheless, this position is qualified (both in relation to Kabul and other potential places of internal relocation) for certain categories of women. The purport of the current Home Office OGN on Afghanistan is that whilst women with a male support network may be able to relocate internally, ‘...it would be unreasonable to expect lone women and female heads of household to relocate internally’” (February 2012 OGN, 3.10.8) and the Tribunal sees no basis for taking a different view.” In N v. Sweden (Application no. 23505/09, 20 July 2010, [http://www.refworld.org/docid/4c4d4e4e2.html](http://www.refworld.org/docid/4c4d4e4e2.html)), the European Court of Human Rights noted that women were at a particularly heightened risk of ill-treatment in Afghanistan if they were perceived as not conforming to the gender roles ascribed to them by society, tradition or the legal system. The mere fact that the applicant had lived in Sweden might well be perceived as having crossed the line of acceptable behaviour. The fact that she wanted to divorce her husband, and in any event did not want to live with him any longer, might result in serious life-threatening repercussions upon her return to Afghanistan. Reports had further shown that a high proportion of Afghan women were affected by domestic violence, acts which the authorities saw as legitimate and therefore did not prosecute. Unaccompanied women, or women without a male “tutor”, faced continuous severe limitations to having a personal or professional life, and social exclusion. They also often plainly lacked the means for survival if not protected by a male relative. Consequently, the Court found that if N. were deported to Afghanistan, Sweden would be in violation of Article 3 of ECHR.

552 UNHCR, Special Measures Applying to the Return of Unaccompanied and Separated Children to Afghanistan, August 2010, [http://www.refworld.org/docid/4c91dbb27.html](http://www.refworld.org/docid/4c91dbb27.html).
individuals or groups of persons who meet these criteria are duly recognized and protected under that instrument. Only when an asylum-seeker is found not to meet the refugee criteria in the 1951 Convention should broader international protection criteria as contained in UNHCR’s mandate and regional instruments be examined, including subsidiary protection.\textsuperscript{553}

This section of the Guidelines provides guidance for the determination of eligibility for international protection of Afghan asylum-seekers who are found not to meet the refugee criteria contained in Article 1(A) of the 1951 Convention. Individuals who do not come within the criteria set out in the 1951 Convention may nevertheless be in need of international protection. In particular, individuals who flee situations of violence where there is no nexus with a 1951 Convention ground may be found to come within the terms of UNHCR’s mandate, or the criteria set out in regional instruments.\textsuperscript{554}

Given the fluid nature of the conflict in Afghanistan, applications by Afghans for international protection under UNHCR’s broader mandate criteria or under the regional instruments, or for forms of complementary protection, including subsidiary protection under Article 15 of the 2011 EU Qualification Directive, should each be assessed carefully in light of the evidence presented by the applicant and other current and reliable information about the situation in Afghanistan.

\begin{table}
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<table>
<thead>
<tr>
<th>Index</th>
<th>text</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.</td>
<td>Refugee Status under UNHCR’s Broader Mandate Criteria and Regional Instruments</td>
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<td>\textbf{a)}</td>
<td>Refugee Status under UNHCR’s Broader Mandate Criteria</td>
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<td>UNHCR’s mandate encompasses individuals who meet the refugee criteria under the 1951 Convention and its 1967 Protocol,\textsuperscript{555} but has been broadened through successive UN General Assembly and ECOSOC resolutions to a variety of other situations of forced displacement resulting from indiscriminate violence or public disorder.\textsuperscript{556} In light of this evolution, UNHCR’s competence to provide international protection to refugees extends to individuals who are outside their country of origin or habitual residence and who are unable or unwilling to return there owing to serious threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.\textsuperscript{557}</td>
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<td>In the context of Afghanistan, indicators to assess the threat to life, physical integrity or freedom resulting from generalized violence include: (i) the number of civilian casualties as a result of indiscriminate acts of violence, including bombings, air strikes, suicide attacks, IED explosions and landmines (see Section II.B.1); (ii) the number of conflict-related security incidents (see Section II.B.2); and (iii) the number of people who have been forcibly displaced due to conflict (see Section II.E).</td>
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<td>Such considerations are not, however, limited to the direct impact of the violence. They also encompass the longer-term, more indirect consequences of conflict-related violence that, either alone or on a cumulative basis, give rise to threats to life, physical integrity or freedom. In this respect,</td>
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</tbody>
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\textsuperscript{554} As regards regional instruments, see the refugee definitions contained in the 1969 OAU Convention, Organization of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa (“OAU Convention”), 10 September 1969, 1001 U.N.T.S. 45, \textcolor{red}{http://www.refworld.org/docid/3ae6b36018.html} and in the Cartagena Declaration, Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, \textcolor{red}{http://www.refworld.org/docid/3ae6b36ec.html}. Complementary forms of protection include subsidiary protection under Article 15 of the 2011 Qualification Directive. European Union, Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 13 December 2011, \textcolor{red}{http://www.refworld.org/docid/41f197d02.html}.


relevant elements include the information presented in Sections II.C and II.D relating to (i) the control over civilian populations by AGEs, including through the imposition of parallel justice structures and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, restrictions on freedom of movement, and the use of extortion and illegal taxation; (ii) forced recruitment; (iii) the impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty, the destruction of livelihoods and the loss of assets; (iv) high levels of organized crime and the ability of local strongmen, warlords and corrupt government officials to operate with impunity; (v) systematic constraints on access to education and basic health care as a result of insecurity; and (vi) systematic constraints on participation in public life, including in particular for women.558

In the exceptional circumstances of Afghanistan, relevant considerations to assess the threat to life, physical integrity or freedom resulting from events seriously disturbing public order include the fact that in certain parts of the country the Government has lost effective control to AGEs and is unable to provide protection to civilians. Available information indicates that the exercise of control over key aspects of people’s lives in these areas is repressive, coercive and undermines an *ordre public* based on respect for the rule of law and human dignity. Such situations are characterized by the systematic use of intimidation and violence directed against the civilian population, in a climate of widespread human rights abuses.

Against this background, UNHCR considers that individuals who originate from areas affected by active conflict between pro-government forces and AGEs, or between different AGEs, or from areas under the effective control of AGEs as characterized above, may, depending on the individual circumstances of the case, be in need of international protection. Those who are found not to meet the refugee criteria of the 1951 Convention may be eligible for international protection under UNHCR’s broader mandate on the grounds of serious threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.

b) *Refugee Status under Article I(2) of the 1969 OAU Convention*

Afghans and others originating from Afghanistan who seek international protection in countries that are States Parties to the 1969 OAU Convention may qualify for refugee status under Article I(2) of that instrument, on the grounds that they were compelled to leave their place of habitual residence owing to events seriously disturbing public order in either part or the whole of Afghanistan, in order to seek refuge outside Afghanistan.559

In the context of the 1969 OAU Convention, the phrase “events seriously disturbing public order” encompasses situations of conflict or violence that threaten civilians’ lives, freedom or security, as well as other serious disruptions of the *ordre public*.560 For the same reasons as above, UNHCR considers that areas of Afghanistan that are affected by active conflict as part of the ongoing struggle for control between pro-government forces and AGEs, between different AGEs, as well as areas of Afghanistan that are under the effective control of AGEs should be regarded as areas affected by events seriously disturbing public order. Consequently, UNHCR considers that individuals originating

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from such areas and who have been found not to meet the criteria of the 1951 Refugee Convention may be in need of international protection under the terms of Article I(2) of the 1969 OAU Convention, on the grounds that they were compelled to leave their place of habitual residence owing to threats to their lives, freedom or security as a result of events seriously disturbing public order.

c) Refugee Status under the Cartagena Declaration

Afghan asylum-seekers who seek international protection in any of the countries that have incorporated the Cartagena Declaration on Refugees (“Cartagena Declaration”) into their national legislation may qualify for refugee status on the grounds that their lives, safety or freedom have been threatened by generalized violence, internal conflict, massive violation of human rights or other circumstances that have seriously disturbed public order.561

Following similar considerations as for UNHCR’s broader mandate criteria and the 1969 OAU Convention (Sections III.C.1.a and b), UNHCR considers that individuals originating from areas in Afghanistan affected by active conflict between pro-government forces and AGEs, between different AGEs, or from areas under the effective control of AGEs, and who have been found not to meet the criteria of the 1951 Refugee Convention, may be in need of international protection under the terms of the Cartagena Declaration, on the grounds that their lives, safety or freedom were threatened by circumstances that have seriously disturbed public order, either in the form of direct or indirect consequences of conflict-related violence, or as a result of serious and widespread human rights abuses committed by AGEs in areas under their effective control.

2. Internal Flight or Relocation Alternative under UNHCR’s Broader Mandate Criteria and Regional Instruments

The consideration of possible internal relocation is not generally relevant to the determination of refugee status under Article I(2) of the OAU Convention.562 For individuals found to be in need of international protection under UNHCR’s broader mandate criteria or under the Cartagena Declaration, an assessment of the possibility of relocation requires an assessment on a case-by-case basis of the relevance as well as the reasonableness of the proposed IFA/IRA. The individual elements of the relevance test and the reasonableness test as set out in Section III.B apply.

As in the case of IFA/IRA in relation to applications for international protection under the 1951 Refugee Convention (see Section III.B.2), UNHCR considers that for individuals found to be in need of international protection under UNHCR’s broader mandate criteria or under the Cartagena Declaration no IFA/IRA is available in areas of Afghanistan that are under the effective control of the Taliban and/or other AGEs, with the possible exception of applicants with previously-established links with the AGE leadership in the proposed area of relocation.563 UNHCR considers that an IFA/IRA is also not available in areas affected by active conflict.564

561 Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, http://www.refworld.org/docid/3ae6b36ec.html, Section III.3. Although the Cartagena Declaration is included in a non-binding regional instrument, the Cartagena refugee definition has attained a particular standing in the region, not least through its incorporation into 14 national laws and State practice. For guidance on the interpretation of the refugee definition in the Cartagena Declaration, see: UNHCR, Summary Conclusions on the Interpretation of the Extended Refugee Definition in the 1984 Cartagena Declaration: Roundtable 15 and 16 October 2013, Montevideo, Uruguay, 7 July 2014, http://www.refworld.org/docid/53c52e7d4.html, para. 5. Article I(2) of the 1969 Convention extends the refugee definition to “every person, who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality” [emphasis added]. The same considerations apply to individuals coming within the refugee definition as contained in Article I(2) of the Bangkok Principles, which is identical to the refugee definition of the 1969 OAU Convention.

562 UNHCR, Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, HCR/GIP/03/04, 23 July 2003, http://www.refworld.org/docid/3f2791a44.html, para. 5. Article I(2) of the 1969 Convention extends the refugee definition to “every person, who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality” [emphasis added]. The same considerations apply to individuals coming within the refugee definition as contained in Article I(2) of the Bangkok Principles, which is identical to the refugee definition of the 1969 OAU Convention.

563 See UNHCR, ibid., para. 28.

564 See UNHCR, ibid., para. 27.
3. Eligibility for Subsidiary Protection under the EU Qualification Directive

Afghans who seek international protection in Member States of the European Union and who are found not to be refugees under the 1951 Convention may qualify for subsidiary protection under Article 15 of the 2011 Qualification Directive, if there are substantial grounds for believing that they would face a real risk of serious harm in Afghanistan.\(^{565}\) In light of the information presented in Section II.C of these Guidelines, applicants may, depending on the individual circumstances of the case, be in need of subsidiary protection under Article 15(a) or Article 15(b) on the grounds of a real risk of the relevant forms of serious harm (death penalty,\(^{566}\) or execution; or torture or inhuman or degrading treatment or punishment), either at the hands of the State or its agents, or at the hands of AGEs.\(^{567}\)

Equally, in light of the fact that Afghanistan continues to be affected by a non-international armed conflict and in light of the information presented in Sections II.B, II.C, II.D and II.E of these Guidelines, applicants originating from or previously residing in conflict-affected areas may, depending on the individual circumstances of the case, be in need of subsidiary protection under Article 15(c) on the grounds of a serious and individual threat to their life or person by reason of indiscriminate violence.

In the context of the armed conflict in Afghanistan, factors to be taken into account to assess the threat to the life or person of an applicant by reason of indiscriminate violence in a particular part of the country include the number of civilian casualties, the number of security incidents, as well as the existence of serious violations of international humanitarian law which constitute threats to life or physical integrity. Such considerations are not, however, limited to the direct impact of the violence, but also encompass the consequences of violence that are more long-term and indirect, including the impact of the conflict on the human rights situation and the extent to which the conflict impedes the ability of the State to protect human rights. In the context of the conflict in Afghanistan, relevant factors in this respect are (i) the control over civilian populations by AGEs, including through the imposition of parallel justice structures and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, restrictions on freedom of movement, and the use of extortion and illegal taxation; (ii) forced recruitment; (iii) the impact of violence and insecurity on the human rights situation as manifested by food insecurity, poverty, the destruction of livelihoods and the loss of assets; (iv) high levels of organized crime and the ability of local strongmen, warlords and corrupt government officials to operate with impunity; (v) systematic constraints on access to education and basic health care as a result of insecurity; and (vi) systematic constraints on participation in public life, including in particular for women.\(^{568}\)

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565 Serious harm for the purposes of the Qualification Directive is defined as (a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict. European Union, Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 13 December 2011, http://www.refworld.org/docid/4f1f97f02.html, arts 2(f), 15.


567 It should be noted that where applicants face a real risk of such treatment for reason of a 1951 Convention ground, they should be accorded refugee status under the Convention (unless they are to be excluded from the benefit of protection under the Refugee Convention under Article 1.F); only where there is no nexus between the risk of serious harm and one of the Convention grounds should the applicant be accorded subsidiary protection.

of Afghanistan that is sufficiently serious to engage Article 15(c) without the need for the applicant to demonstrate individual factors or circumstances increasing the risk of harm. Where, after all relevant evidence has been considered, this is found not to be the case in the part of Afghanistan from which the applicant originates, it falls to be considered whether the applicant’s individual characteristics are such as to reveal specific vulnerabilities which, combined with the nature and the extent of the violence, give rise to a serious and individual threat to the applicant’s life or person.

4. Internal Protection Considerations for Individuals at Risk of Serious Harm under the EU Qualification Directive

Where it has been established that an individual would be at risk of serious harm in their area of origin in Afghanistan, decision-makers in EU Member States may proceed to consider the possibility of internal protection in another part of Afghanistan under Article 8 of the Qualification Directive. In relation to decisions about the availability of internal protection in Afghanistan, the considerations regarding the relevance and reasonableness of an internal protection alternative presented in Section III.B apply.

D. Exclusion from International Refugee Protection

In light of the serious human rights abuses and violations of international humanitarian law during Afghanistan’s long history of armed conflicts, exclusion considerations under Article 1F of the 1951 Convention may arise in individual claims by Afghan asylum-seekers. Exclusion considerations will be triggered if there are elements in the applicant’s claim that suggest that he or she may have been associated with the commission of crimes within the scope of Article 1F. Given the potentially serious consequences of exclusion from international refugee protection, the exclusion clauses need to be interpreted restrictively and applied with caution. A full assessment of the circumstances of the individual case is required in all cases.

In the context of Afghanistan, exclusion considerations may be raised in the cases of asylum-seekers with certain backgrounds and profiles, in particular those who have participated in the revolution of April 1978 that brought to power the People’s Democratic Party of Afghanistan (PDPA) and which was followed by the brutal crackdown on later uprisings; and those who were involved in the armed conflicts in Afghanistan from 1979 until present, that is (i) the non-international armed conflict between the PDPA Government and armed opponents backed by local elites from the summer of 1979 until the Soviet invasion on 24 December 1979, (ii) the decade of international armed conflict beginning with the overthrow on 27 December 1979 of the existing Afghan Government and subsequent occupation of Afghanistan by the Soviet Union until the withdrawal of Soviet military was completed in February 1989; (iii) the non-international armed conflict which followed, with mujahideen forces led by various commanders fighting against the Government and pro-government

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569 See Court of Justice of the European Union, Elgafaji v. Staatssecretaris van Justitie, C-465/07, 17 February 2009, http://www.refworld.org/docid/499aaee52.html, where the Court of Justice of the European Union held (at para. 43) that the existence of a serious and individual threat to the life or person of an applicant “can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place […] reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.”

570 European Union, Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 13 December 2011, http://www.refworld.org/docid/51f197f02.html, article 8.


572 For an overview of the events leading up to the Soviet invasion in 1979 and a discussion of the applicable rules of international humanitarian law (IHL), see Michael Reisman and James Silk, “Which Law Applies to the Afghan Conflict?”, Faculty Scholarship Series, Paper 752, 1988, http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1745&context=fss_papers.
armed groups until the Taliban took control over Kabul in September 1996; (iii) the non-international armed conflict between the Taliban and the United Front, also known as Northern Alliance between 1996 and the ouster of the Taliban in 2001; (iv) the international armed conflict which began with the intervention on 6 October 2001 led by the United States and which ended with the election of an Afghan Government in June 2002, following a period of occupation from the fall of the Taliban regime573 and (v) the non-international armed conflict between the Government and the Taliban and other armed groups which continues until the present day.574

When considering claims of individuals who were involved in the above-listed events and armed conflicts, Article 1F(a) is of particular relevance. Where an applicant may have been associated with acts committed in connection and associated with an armed conflict, the starting point for the exclusion analysis will be to examine whether or not these acts were in violation of the applicable rules of international humanitarian law and corresponding provisions of international criminal law and may thus constitute war crimes as referred to in Article 1F(a).575 Where the crimes in question constitute fundamentally inhumane acts committed as part of a widespread or systematic attack against a civilian population, the exclusion ground of crimes against humanity as referred to in Article 1F(a) may also be relevant.576 Acts reportedly committed by the parties to the various armed conflicts in Afghanistan include, inter alia, abductions and enforced disappearances, indiscriminate attacks on civilians, forced displacement, torture and other cruel, inhuman and degrading treatment, including political assassinations, mass killings, extrajudicial and summary executions and forced recruitment for military service and/or labour, including recruitment of children.577

A range of actors have reportedly engaged in serious crimes, including the illegal drugs trade, illegal taxation, trafficking in arms and trafficking in human beings.578 These actors include not only organized criminal networks, but also warlords and AGEs. The crimes in question may be linked to the armed conflicts in Afghanistan.579 If this is the case, they would need to be assessed against

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574 War crimes are serious violations of IHL which entail responsibility directly under international law. The applicable rules of IHL and corresponding provisions of international criminal law differ, depending on whether the armed conflict is international (including situations of occupation) or non-international in character. For more detailed guidance, see UNHCR, Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, 4 September 2003, http://www.refworld.org/docid/3f5857d24.html, paras 30-32. In the context of a non-international armed conflict, the notion of “war crimes” may be applied to serious violations of the relevant rules of IHL (i.e. Common Article 3 of the 1949 Geneva Conventions, certain provisions of Additional Protocol II and rules of customary international law) from the early 1990s onwards. The International Criminal Tribunal for the former Yugoslavia (ICTY) held that by that time, violations of IHL applicable to non-international armed conflicts could be considered to entail criminal responsibility under customary international law; see Prosecutor v. Dusko Tadic aka “Dule”, Decision on the Defense Undertakings Associated with the Taliban and the Threat International Terrorism Poses to Afghanistan, 22 May 2015, S/2015/366, pp. 2, 8-9; UN Security Council, Security Council resolution 2255 (2015) [on Sanctions Concerning Individuals and Entities and Other Groups and Undertakings Associated with the Taliban and the Threat International Terrorism Poses to Afghanistan], 22 December 2015, S/RES/2255 (2015), http://www.refworld.org/docid/5686f2d454.html; HRW, Afghanistan: Generals Put Civilians at Risk, 29 June 2015, http://www.refworld.org/docid/55963b794.html; HRW, “Today We Shall All Die”: Afghanistan’s Strongmen and the Legacy of Impunity, 3 March 2015, http://www.refworld.org/docid/54f07e2215.html; Amnesty International, Amnesty International Report 2014/15 - Afghanistan, 25 February 2015, http://www.refworld.org/docid/54f07e2215.html. For additional information, see Section II.


applicable rules of international humanitarian law and may fall within the scope of war crimes as referred to in Article 1F(a), if committed from the early 1990s onwards.\textsuperscript{580} Otherwise, such crimes may give rise to exclusion as serious non-political crimes within the meaning of Article 1F(b) of the 1951 Convention.\textsuperscript{581}

In some cases, the question may arise whether Article 1F(c) of the 1951 Convention is applicable to acts committed by Afghan applicants. In UNHCR’s view, this exclusion provision may apply only to crimes which, because of their nature and gravity, have an international impact in the sense that they are capable of infringing on international peace and security or the friendly relations between States.\textsuperscript{582}

Exclusion considerations may also arise with regard to individuals who may have been associated with acts considered to be of a “terrorist” nature. In UNHCR’s view, such crimes may fall within any of the exclusion grounds provided for in Article 1F, if the relevant criteria are met. In many such cases, Article 1F(b) will be applicable, as violent acts of terrorism are likely to meet the seriousness threshold for the application of this provision, and to fail the predominance test used to determine whether the crime is political.\textsuperscript{583} In certain circumstances, such acts may fall within Article 1F(a) as a crime against humanity or as a war crime, if the act in question was committed during an armed conflict, and if it constitutes a serious violation of relevant provisions of international humanitarian law and international criminal law.\textsuperscript{584} Under certain circumstances, acts considered to be of a terrorist nature may give rise to exclusion based on Article 1F(c). This would apply where the acts in question constitute war crimes and/or crimes against humanity within the meaning of Article 1F(a),\textsuperscript{585} but also with regard to crimes prohibited under international Conventions and Protocols pertaining to terrorism, if they are characterized by the above-mentioned larger characteristics in terms of their impact on the international plane.\textsuperscript{586}

For exclusion to be justified, individual responsibility must be established in relation to a crime within the scope of Article 1F. Such responsibility flows from a person having committed a crime or


As noted in footnote 575 above, where such acts were linked with a non-international armed conflict and took place from the early 1990s onward, they may give rise to exclusion under Article 1F(a) – “war crimes”. Serious violations of the rules of IHL applicable to a non-international armed conflict before that time may result in exclusion based on Article 1F(b) – “serious non-political crimes committed outside the country of refuge prior to admission to that country as a refugee” – or Article 1F(c) – “crimes against humanity”\textsuperscript{581}.


For exclusion based on Article 1F(b) to apply, the geographic (‘outside the country of refuge’) and temporal (‘prior to admission to that country as a refugee’) criteria under this provision must also be met; see UNHCR, Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, 4 September 2003, http://www.refworld.org/docid/3f5857d24.html, paras 41 and 81.

IHL does not provide a definition of terrorism. However, it prohibits, during armed conflict, most acts that would commonly be considered terrorist if they were committed in peacetime. The decisive question is whether a particular conduct satisfies the material and mental elements required to establish a war crime under IHL. Those acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are specifically prohibited in Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II to the 1949 Geneva Conventions. In its Commentary to Article 13 of Additional Protocol II, the ICRC notes that “attacks aimed at terrorizing are just one type of attack, but they are particularly reprehensible.” See ICRC, Commentary to Article 13 of Additional Protocol No. II of 1977, http://www.icrc.org/ihl.nsf/COM/475-760019?OpenDocument, para. 4785. More detailed information on terrorism and the law of armed conflict can be found on the website of the ICRC, at http://www.icrc.org/eng/resources/documentsfaq/terrorism-faq-050504.htm. See also ICTY, Prosecutor v. Galic, Case No. IT-98-29A, Appeal Chamber judgment of 30 November 2006, http://www.refworld.org/docid/476f1b565.html, paras 98 and 102-104.

There is an overlap between these two exclusion grounds, as acts which fall within Article 1F(a) are also “contrary to the purposes and principles of the United Nations”; see UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, December 2011, HCR/1P/ENG/REV. 3, http://www.refworld.org/docid/4f33c8d92.html, paras 162.

Rather than focus on the “terrorist” label, a more reliable guide to the correct application of Article 1F(c) in cases involving a terrorist act is the extent to which the act impinges on the international plane – in terms of its gravity, international impact, and implications for international peace and security. In UNHCR’s view, only terrorist acts that are distinguished by these larger characteristics may qualify for exclusion under this provision. For more detailed guidance, see UNHCR, Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, 4 September 2003, http://www.refworld.org/docid/3f5857d24.html, paras 46-49. See also UNHCR, Yasser al-Siri (Appellant) v. Secretary of State for the Home Department (Respondent) and DD (Afghanistan) (Appellant) v. Secretary of State for the Home Department (Respondent): UNHCR’s Composite Case in the Two Linked Appeals, 23 March 2012, http://www.refworld.org/docid/4f6c92b12.html.
participated in its commission in a manner that gives rise to criminal liability, for example through ordering, instigating, aiding and abetting, or by contributing to the commission of a crime by a group of persons acting with a common purpose. For persons in positions of authority within a military or civilian hierarchy, individual responsibility may also arise on the basis of command/superior responsibility. Defences to criminal responsibility, if any, as well as considerations related to proportionality apply. Evidence about practices of forced recruitment, including in particular of children, needs to be taken into consideration in this regard.

Membership in government armed forces, police, intelligence or security apparatus, or in an armed group or militia, is not in itself a sufficient basis to exclude an individual from refugee status. The same applies to government officials and civil servants. In all such cases, it is necessary to consider whether the individual concerned was personally involved in excludable acts, or participated in the commission of such acts in a manner that gives rise to individual responsibility under the relevant criteria of international law. A careful assessment of the circumstances pertaining to each individual case is required.  

In 2008, the Government adopted the National Stability and Reconciliation Law, which grants amnesty from prosecution to all those who were engaged in armed conflict before the formation of the Interim Administration in Afghanistan in December 2001. In UNHCR’s view, this does not mean that exclusion may not be applied where crimes within the scope of Article 1F were committed prior to that date. Given the heinous nature of many of the crimes committed by various actors in Afghanistan throughout the past decades, UNHCR considers that the amnesty law is without incidence for the examination of the possible application of exclusion clauses under Article 1F.

In the context of Afghanistan, careful consideration needs to be given in particular to the following profiles:

- (i) Former members of the armed forces and the intelligence/security apparatus, including KhAD/WAD agents, as well as former officials of the Communist regimes;
- (ii) Former members of armed groups and militia forces during and after the Communist regimes;
- (iii) (Former) members and commanders of AGEs;
- (iv) (Former) members of the ANSF, including the NDS, the ANP and the ALP;
- (v) (Former) members of paramilitary groups and militias; and
- (vi) (Former) members of groups and networks engaged in organized crime.

587 These considerations would apply to applicants who held official functions as government officials or civil servants in the Afghan Interim Administration between December 2001 and July 2002, the Afghan Transitional Administration between July 2002 and October 2004, or the Government of Afghanistan since the formation of the first Government led by President Karzai in late 2004. For more detailed guidance, see UNHCR, Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, 4 September 2003, [http://www.refworld.org/docid/4bb445c2.html](http://www.refworld.org/docid/4bb445c2.html), paras 50-73 and paras 76-78.

588 There is some confusion as to the exact date and circumstances of the adoption of the law. The law was passed by Parliament in 2007, but following international pressure President Karzai promised not to sign it. In January 2010, it emerged that the law had been gazetted in 2008, although according to some sources, it was not published until January 2010; see UN Secretary-General, The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General, A/64/705-S/2010/127, 10 March 2010, [http://www.refworld.org/docid/4bb445c2.html](http://www.refworld.org/docid/4bb445c2.html); and HRW, Afghanistan: Repeal Amnesty Law, 10 March 2010, [http://www.hrw.org/en/news/2010/03/10/afghanistan](http://www.hrw.org/en/news/2010/03/10/afghanistan).


More detailed information on serious human rights abuses and violations of international humanitarian law by members of the first five above-mentioned groups is provided below.

1. The Communist Regimes: Former Members of the Armed Forces and the Intelligence/Security Apparatus, Including KhAD/WAD Agents, as well as Former Officials

Members of military, police and security services, as well as high-ranking Government officials during the Taraki, Hafizullah Amin, Babrak Karmal, and Najibullah regimes, were involved in operations subjecting civilians to arrest, disappearances, torture, inhuman and degrading treatment and punishment, and extrajudicial executions. These included the mass killings after the 1978 coup d’état and the reprisals against resistance to the decrees on land-reforms issued under Hafizullah Amin’s regime. In addition, incidents of deliberate targeting of civilians during military operations are well-documented.

In this context, careful consideration needs to be given to cases of former employees of the Khadamate Etelulae Dowlati (KhAD), the State Information Service, which later became the Wezarat-e Amniyat-e Dowlati (WAD) or Ministry of State Security. Although the functions of the KhAD/WAD evolved over time, culminating in the coordination and undertaking of military operations following the withdrawal of Soviet troops in 1989, it also included non-operational (support) directorates at central, provincial and district levels. Information available to UNHCR does not link the support directorates to human rights violations in the same manner as the operational units. Thus the mere fact of having been an employee of the KhAD/WAD would not automatically lead to exclusion, taking into account that UNHCR has not been able to confirm that there was a systematic rotation policy inside the Khad/WAD. The individual exclusion assessment needs to take into consideration the individual’s role, rank and functions within the organization.

In cases of applicants who held official functions during the Communist regimes, it is necessary to examine the nature of their positions and the tasks and responsibilities entrusted to them. When examining the possible application of exclusion under Article 1F to a former official of these regimes, an individualized assessment is required to determine whether the applicant was associated with crimes within the scope of Article 1F in a manner that gives rise to individual responsibility. Exclusion of such persons merely on the basis of their former membership of the State administration, without evidence that they have committed excludable crimes or participated in their commission

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591 This period of recent Afghan history started with a military coup d’état on 27 April 1978 that brought to power a Government dominated by the PDPA, continued during the Soviet occupation that started on 27 December 1979, and lasted until the fall of the Najibullah Government on 15 April 1986.


594 In 1986, the KhAD was upgraded to ministry level and from then on was known as WAD (Wezarat-e Amniyat-e Dowlati or Ministry of State Security). For detailed information on (i) the origins of the KhAD/WAD; (ii) its structure and staffing; (iii) linkages between these services and the Afghan military and militias; (iv) the distinction between operational and support services; and (v) rotation and promotion policies within the KhAD/WAD, see UNHCR, Note on the Structure and Operation of the KhAD/WAD in Afghanistan 1978-1992, May 2008, http://www.refworld.org/docid/4829477b2.html.


596 UNHCR, Note on the Structure and Operation of the KhAD/WAD in Afghanistan 1978-1992, May 2008, http://www.refworld.org/docid/4829477b2.html. In this Note, UNHCR observes that “UNHCR is not able to confirm that there was a systematic rotation policy inside KhAD/WAD. Sources consulted by UNHCR affirmed that rotations within the KhAD/WAD structures were largely based on expertise and experience. In emergency situations, staff may have been shifted to work on a given operation, but within its area of expertise. Military personnel operated within its rank and levels of expertise. One expert […] stated that, in his view, there was no mandatory rotation; he believes that people could change jobs within the KhAD/WAD, but that it was not a rule or requirement. In the view of that source, such a rotation policy would have gone against any sense of professionalism within the institution. Other sources state that the activities of KhAD/WAD officers were regulated by a number of principles, one of which was confidentiality. For this reason, they believe that the KhAD/WAD could not resort to a general rotation policy, as this would have risked disclosure of information from one Directorate to another.” Ibid., para. 24.
through one of the modes for incurring individual responsibility established in international law, would not be consistent with international refugee law.

2. Former Members of Armed Groups and Militia Forces During and After the Communist Regimes

The activities of members of armed groups and militia forces during the period of the armed resistance against the Communist regimes and the Soviet occupation – from 27 April 1978 until the fall of Najibullah in April 1992 – may give rise to exclusion concerns. Examples of relevant acts include political assassinations, reprisals and extrajudicial killings, and rape, including of civilians for reasons such as working for Government institutions and schools, or transgressing Islamic principles and norms. Other reported crimes by armed groups and militia forces include extrajudicial executions of prisoners and attacks on civilian targets. The armed conflict between 1992 and 1995, in particular, was characterized by serious violations of international human rights and humanitarian law, including the shelling of urban centres by all parties to the conflict.

3. Members of AGEs

Elements from the former Taliban regime, combined with new recruits, started to mount armed operations in Afghanistan as early as 2002. The applicability of the exclusion clauses is relevant in relation to former members and military commanders of the Taliban, during its time in power and following its ouster, in cases where there is sufficient evidence to support findings of serious reasons for considering that they were associated with serious abuses of human rights and/or violations of humanitarian law. As noted in Section II.C.1.b, there are widespread reports about deliberate attacks on civilians by Taliban forces, summary executions, and illegal punishments meted out by parallel justice structures enforced by the Taliban. Some of these acts may constitute war crimes.

The applicability of the exclusion clauses will also need to be considered in relation to individual members and military commanders of other AGEs, including Al-Qaeda, the Haqqani Network, Hezb-e-Islami (Party of Islam), the Islamic Movement of Uzbekistan, the Islamic Jihad Union, Afghanistan: Post-Communist Central Asia's Resilience, 11 September 2015, http://www.ctc.usma.edu/posts/assessing-al-qaeda-central-asias-resilience; American Foreign Policy Council, World Almanac of Islamism: Al Qaeda, page accessed on 29 February 2016; last updated 13 October 2013, http://almanac.afpc.org/alqaeda.


Applicants who apply for refugee status include commanders and members of the following Islamic parties with armed factions: Hezb-e-Islami (Hekmatyar and Khalis), Hezb-e-Wahdat (both branches or all nine parties that formed Hezb-e-Wahdat), Jamiat-e-Islami (including Shura-e-Nazar), Jonbesh-e-Melli-Islami, Ittehad-e-Islami, Harakat-e-Esref-e-Islami (led by Mohammad Nabi Mohammadi) and Harakat-e-Islami.


the Lashkari Tayyiba, Tora-Bora Nizami Mahaz (Tora-Bora Military Front), and members of groups that are affiliated to ISIS.

4. Members of the Afghan Security Forces, including the NDS, the ANP and the ALP

The applicability of the exclusion clauses will need to be considered in relation to members of the ANSF, in cases where there are indications that they may have been associated with serious abuses of human rights and/or violations of humanitarian law. As noted in Section II.C.1.a, elements of the ANSF are reported to have committed serious human rights violations, including unlawful killings; torture and cruel, inhuman or degrading treatment or punishment; and sexual violence, including rape of detainees and the sexual exploitation of children.

5. Members of Pro-Government Paramilitary Groups and Militias

The applicability of the exclusion clauses will need to be considered in relation to members of pro-government paramilitary groups and militias, in cases where there are indications that they may have been associated with serious abuses of human rights and/or violations of humanitarian law. As noted in Section II.C.1.b, paramilitary groups and militias are reported to have committed serious human rights abuses, including extrajudicial killings, assaults and extortion.