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

United Nations High Commissioner for Refugees (UNHCR)
30 August 2018
HCR/EG/AFG/18/02
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.
Table of Contents

I. EXECUTIVE SUMMARY ................................................. 5
   1. Refugee Status under the 1951 Convention ........................................... 5
   2. Broader UNHCR Mandate Criteria, Regional Instruments and Complementary Forms of Protection .................................................. 6
   3. Internal Flight or Relocation Alternative (IFA/IRA) .................................. 9
   4. Exclusion Considerations .................................................................. 11

II. OVERVIEW OF THE SITUATION IN AFGHANISTAN ..................... 12
   A. MAIN DEVELOPMENTS IN AFGHANISTAN ........................................... 12
      1. Developments Relating to the Conflict in Afghanistan ....................... 12
      2. Political and Economic Developments .......................................... 15
   B. THE SECURITY SITUATION IN AFGHANISTAN: IMPACT OF THE CONFLICT ON CIVILIANS .......................................................... 17
      1. Civilian Casualties .................................................................. 19
      2. Security Incidents .................................................................. 22
   C. HUMAN RIGHTS SITUATION ............................................................ 23
      1. Human Rights Abuses .................................................................. 23
         a) Human Rights Violations by State Actors .................................. 23
         b) Human Rights Abuses by Pro-Government Armed Groups ............ 25
         c) Human Rights Abuses by Anti-Government Elements .................. 26
      2. The Ability and Willingness of the State to Protect Civilians from Human Rights Abuses ...................................................... 29
   D. HUMANITARIAN SITUATION .............................................................. 31
   E. CONFLICT-INDUCED DISPLACEMENT ................................................ 32
   F. REFUGEES AND RETURNEES .............................................................. 36

III. ELIGIBILITY FOR INTERNATIONAL PROTECTION ....................... 37
   A. RISK PROFILES ........................................................................ 39
      1. Individuals Associated with, or Perceived as Supportive of, the Government and the International Community, Including the International Military Forces ........................................... 39
         a) Government Officials and Civil Servants ..................................... 40
         b) Civilian police personnel (including members of the ANP and ALP) and former ANDSF members ............................................. 42
         c) Civilians Associated with or Perceived as Supportive of the ANDSF / pro-government forces ............................................. 43
         d) Civilians Associated with or Perceived as Supportive of the International Military Forces ............................................. 43
         e) Humanitarian Workers and Development Workers ......................... 43
         f) Human Rights Activists .............................................................. 44
         g) Tribal Elders and Religious Leaders .............................................. 45
         h) Women in the Public Sphere ........................................................ 45
         i) Individuals perceived as “Westernized” ......................................... 46
         j) Other Civilians Perceived as Supporting the Government or the International Community ................................................... 47
         k) Family Members of Individuals Associated with, or Perceived as Supportive of, the Government and the International Community ...................................................... 48
         l) Summary ............................................................................ 48
      2. Journalists and Other Media Professionals .......................................... 49
      3. Men of Fighting Age, and Children in the Context of Underage and Forced Recruitment .......................................................... 52
         a) Forced Recruitment by AGEs ..................................................... 52
         b) Forced and Underage Recruitment by Pro-Government Forces .......... 54
         c) Summary ............................................................................ 55
      4. Civilians Suspected of Supporting Anti-Government Elements ................ 55
      5. Members of Minority Religious Groups, and Persons Perceived as Contravening Sharia Law ...................................................... 58
         a) Minority Religious Groups .......................................................... 59
         b) Conversion from Islam ................................................................ 63
         c) Other Acts Contravening Sharia Law ............................................. 64
d) Summary ............................................................................................................. 65

6. Individuals Perceived as Contravening AGEs’ Interpretation of Islamic Principles, Norms and Values .......................................................... 66

7. Women with Certain Profiles or in Specific Circumstances ........................................ 66
   a) Sexual and Gender-Based Violence ................................................................. 71
   b) Harmful Traditional Practices ....................................................................... 74
   c) Summary ........................................................................................................... 76

8. Women and Men Who Are Perceived as Contravening Social Mores ...................... 76

9. Individuals with Disabilities, Including in Particular Mental Disabilities, and Individuals Suffering from Mental Illnesses ......................................... 80

10. Children with Certain Profiles or in Specific Circumstances .................................. 81
   a) Bonded or Hazardous Child Labour .............................................................. 81
   b) Violence against Children, including Sexual and Gender-Based Violence .... 82
   c) Systematic Denial of Access to Education .................................................... 83
   d) Abductions, Punishments and Reprisals by the ANDSF and AGEs ............... 85
   e) Summary ........................................................................................................... 85

11. Survivors of Trafficking or Bonded Labour and Persons at Risk of Being Trafficked or of Bonded Labour ................................................................. 86

12. Individuals of Diverse Sexual Orientations and/or Gender Identities ...................... 88

13. Members of (Minority) Ethnic Groups .................................................................. 90
   a) Kuchis ............................................................................................................. 92
   b) Hazaras .......................................................................................................... 93
   c) Members of the Jat ethnic group, including the Jogi, Chori Fosh, Gorbat and Mosuli communities ................................................................. 94
   d) Land Disputes with an Ethnic or Tribal Dimension ........................................ 95
   e) Summary ........................................................................................................... 96

14. Individuals Involved in Blood Feuds .................................................................... 97

15. Business People, Other People of Means and Their Family Members ................. 98

B. REFUGEE STATUS UNDER UNHCR’S BROADER MANDATE CRITERIA OR REGIONAL INSTRUMENTS, OR ELIGIBILITY FOR COMPLEMENTARY FORMS OF PROTECTION ......................................................... 101

1. Refugee Status under UNHCR’s Broader Mandate Criteria and Regional Instruments ................................................................. 101
   a) Refugee Status under UNHCR’s Broader Mandate Criteria ....... ........................... 101
   b) Refugee Status under Article 1(2) of the 1969 OAU Convention .......... ............................ 102
   c) Refugee Status under the Cartagena Declaration ............................................................................ 103

2. Eligibility for Subsidiary Protection under the EU Qualification Directive .......... 103

C. INTERNAL FLIGHT, RELOCATION OR PROTECTION ALTERNATIVE ......................................................... 105

1. Relevance Analysis .............................................................................................. 106

2. Reasonableness Analysis ..................................................................................... 107
   a) The Applicant’s Personal Circumstances ........................................................................ 107
   b) Safety and Security ............................................................................................... 108
   c) Respect for Human Rights and Economic Survival ............................................. 109

3. Internal Flight or Relocation Alternative in Afghanistan’s Cities ........... ............................ 110

4. Internal Flight or Relocation Alternative in Kabul .................................................. 112
   a) The relevance of Kabul as an IFA/IRA ........................................................................... 112
   b) The reasonableness of Kabul as an IFA/IRA ............................................................... 113
   c) Conclusion on the Availability of an IFA/IRA in Kabul .............................................. 114

D. EXCLUSION FROM INTERNATIONAL REFUGEE PROTECTION ......................................................... 114

1. The Communist Regimes: Former Members of the Armed Forces and the Intelligence/Security Apparatus, Including KhAD/WAD Agents, as well as Former Officials ...... 118

2. Former Members of Armed Groups and Militia Forces During and After the Communist Regimes ................................................................................................. 119

3. Members and Commanders of AGEs .................................................................... 120

4. Members of the Afghan Security Forces, including the NDS, the ANP and the ALP ................................................................. 123

5. Members of Pro-Government Paramilitary Groups and Militias .................................... 124
**List of Abbreviations**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>AAN</td>
<td>Afghanistan Analysts Network</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>AJSC</td>
<td>Afghan Journalists Safety Committee</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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<tr>
<td>ANBP (or ABP)</td>
<td>Afghan National Border Police (or Afghan Border Police)</td>
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<tr>
<td>ANCOP</td>
<td>Afghan National Civil Order Police</td>
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<tr>
<td>ANDSF (or ANSF)</td>
<td>Afghan National Defence and Security Forces</td>
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<tr>
<td>ANP</td>
<td>Afghan National Police</td>
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<tr>
<td>APPRO</td>
<td>Afghanistan Public Policy Research Organization</td>
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<td>AREU</td>
<td>Afghanistan Research and Evaluation Unit</td>
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<td>CPJ</td>
<td>Committee to Protect Journalists</td>
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<tr>
<td>EASO</td>
<td>European Asylum Support Office</td>
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<tr>
<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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<tr>
<td>FIDH</td>
<td><em>Fédération Internationale des ligues des droits de l’Homme / International Federation for Human Rights</em></td>
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<tr>
<td>HPC</td>
<td>High Peace Council</td>
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<td>HRW</td>
<td>Human Rights Watch</td>
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<tr>
<td>ICC</td>
<td>International Criminal Court</td>
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<tr>
<td>IDP</td>
<td>Internally Displaced Person</td>
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<tr>
<td>IEC</td>
<td>Independent Election Commission</td>
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<tr>
<td>IED</td>
<td>Improvised Explosive Device</td>
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<td>IFJ</td>
<td>International Federation of Journalists</td>
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<td>IGC</td>
<td>International Crisis Group</td>
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<td>IHL</td>
<td>International Humanitarian Law</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>IRIN</td>
<td>Integrated Regional Information Networks</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>IWPR</td>
<td>Institute for War and Peace Reporting</td>
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<td>KIS</td>
<td>Kabul Informal Settlements</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<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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<td>NUG</td>
<td>National Unity Government</td>
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<tr>
<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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<tr>
<td>OHCHR</td>
<td>Office of the United Nations High Commissioner for Human Rights</td>
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<tr>
<td>RFE/RL</td>
<td>Radio Free Europe / Radio Liberty</td>
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<tr>
<td>RSM</td>
<td>Resolute Support Mission</td>
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<tr>
<td>SIGAR</td>
<td>Special Inspector General for Afghanistan Reconstruction</td>
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<tr>
<td>START</td>
<td>National Consortium for the Study of Terrorism and Responses to Terrorism</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNAMA</td>
<td>United Nations Assistance Mission in Afghanistan</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
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<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<tr>
<td>UNICEF</td>
<td>United Nations Children's Fund</td>
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<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
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<tr>
<td>UNSG</td>
<td>United Nations Secretary-General</td>
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<tr>
<td>USCIRF</td>
<td>US Commission on International Religious Freedom</td>
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<td>USIP</td>
<td>United States Institute of Peace</td>
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I. Executive Summary

These Guidelines supersede the April 2016 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 and 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.

These Guidelines include 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”)3 and its 1967 Protocol,4 UNHCR’s mandate, regional refugee instruments, or on the basis of broader international protection criteria, including complementary forms of protection.

1. 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 individuals falling into one or more of the following risk profiles may be in need of international refugee protection, depending on the individual circumstances of the case:

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. Business people, other people of means and their family members.

This list is not necessarily exhaustive and is based on information available to UNHCR at the time of writing. A claim should not automatically be considered as without merit simply because it does not

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2 These Guidelines are based on information available to UNHCR as of 31 May 2018, unless otherwise stated.
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 found to be at risk of persecution 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).

Human rights violations and exposure to 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 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 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. 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 risk of persecution 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.

2. 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 should 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 nevertheless

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6 See also, UNHCR, Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions, 2 December 2016, HCR/GIP/16/12, http://www.refworld.org/docid/583595f04.html. See also Section II.B of these Guidelines.


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 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 combat 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 qualify for refugee status under Article I(2) of the 1969 OAU 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 combat 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 Convention.

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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. 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 under the terms of the Cartagena Declaration. In particular, UNHCR considers that individuals originating from areas in Afghanistan affected by active combat 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. 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 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. 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, IIC, ILD and IIE 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 reliable information about the situation in Afghanistan, giving due weight to the future-oriented nature of assessments of protection needs.

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/3a9eb376c.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 15 national laws and State practice. For guidance on the interpretation of the refugee definition in the Cartagena Declaration, see: UNHCR, Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions, 2 December 2016, HCR/GIP/16/12, http://www.refworld.org/docid/5839595f4.html, para 61-85.
14 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/4f6fa5e2.html, arts 2(f), 15.
15 Article 170 of Afghanistan’s revised Penal Code, which entered into force on 15 February 2018, lists the crimes which can incur the death penalty. Afghanistan, Penal Code, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR). In addition, in accordance with Article 2 of the Penal Code, those found guilty of hudood crimes are to be punished in accordance with the principles of Hanafi jurisprudence of Sharia law; hudood punishments include execution and stoning to death. See also, Hossein Gholami, Basics of Afghan Law and Criminal Justice, undated, http://www.auswaertiges-amt.de/cae/servlet/contentblob/343976/publicationFile/3727/Polizei-Guidelines.pdf; Cornell Law School, Death Penalty Database, http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Afghanistan.
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.
3. *Internal Flight or Relocation Alternative (IFA/IRA)*

In light of the available evidence of serious and widespread human rights abuses by AGEs in areas under their effective control, with 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 an IFA/IRA is also not available in areas of the country affected by active combat between pro-government forces and AGEs, or between different AGEs.

For detailed guidance for the assessment of the availability of an IFA/IRA in parts of Afghanistan that are neither under the control of AGEs nor affected by active combat, please see Sections III.C.1 (relevance analysis) and III.C.2 (reasonableness analysis) of these guidelines.

In the specific case of Kabul as a proposed area of IFA/IRA, UNHCR provides the following guidance (see Section III.C.4). To assess the **relevance** of Kabul as a proposed IFA/IRA, and in particular the risk that the applicant would face a real risk of serious harm, including a serious risk to life, safety, liberty or health, or one of serious discrimination, decision-makers must pay due regard to the negative trends in relation to the security situation for civilians in Kabul. Of particular relevance is the February 2018 annual report on the protection of civilians, where UNAMA noted that in 2017 it “continued to document the highest levels of civilian casualties in Kabul province, mainly from indiscriminate attacks in Kabul city. Of the 1,831 civilian casualties (479 deaths and 1,352 injured) documented in Kabul province, 88 per cent resulted from suicide and complex attacks carried out by Anti-Government Elements in Kabul city.”

UNAMA reported that the number of civilian casualties in Kabul city caused by suicide and complex attacks in 2017 represented 70 per cent of all civilian casualties in Afghanistan in 2017 caused by such attacks.

UNHCR notes that civilians who partake in day-to-day economic and social activities in Kabul are exposed to a risk of falling victim to the generalized violence that affects the city. Such activities include travelling to and from a place of work, travelling to hospitals and clinics, or travelling to school; livelihood activities that take place in the city’s streets, such as street vending; as well as going to markets, mosques and other places where people gather.

To assess the **reasonableness** of Kabul as a proposed IFA/IRA, it must be established that the applicant will have access in Kabul to:

(i) shelter;
(ii) essential services, such as potable water and sanitation, health care and education;
(iii) livelihood opportunities, or proven and sustainable support to enable access to an adequate standard of living.

Relevant information to be taken into account by decision-makers in this regard includes the grave concerns expressed by humanitarian and development actors about the limits of Kabul’s absorption capacity. Since the fall of the former Taliban regime in 2001, Kabul City Region has seen the largest population increase in Afghanistan. Official population estimates indicate that by early 2016 Kabul City

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Region had 5 million residents, 60 per cent of which were in Kabul city.\textsuperscript{20} In addition, as noted in Section II.F, in 2016 more than one million Afghans returned from Iran and Pakistan, followed by an additional 620,000 returnees in 2017. The Protection Cluster in Afghanistan noted already in April 2017, following the 2016 returns but prior to most of the 2017 returns, “The enormous surge in returns [from Pakistan and Iran] resulted in extreme stress on the already overstretched absorption capacity in Afghanistan’s main provincial and district centres, as many Afghans joined the legions of IDPs unable to return to their areas of origin due to the worsening conflict. […] With limited job opportunities, no social protection nets and poor shelter conditions, displaced people not only face increased protection risks in their daily life, but are also forced into secondary displacement and negative coping strategies, like child labour, early marriage, reducing quantity and quality of food etc.”\textsuperscript{21}

According to the Afghan Living Conditions Survey 2016-2017, 72.4 per cent of the urban population in Afghanistan live in slums, informal settlements or inadequate housing households.\textsuperscript{22} The International Growth Centre noted in January 2018, “Kabul has been undergoing rapid urbanisation for the last three decades. Population growth in the city is outpacing the city’s capacity to provide necessary infrastructure, services and jobs to citizens, resulting in the emergence of widespread informal settlements that house an estimated 70% of the city’s population.”\textsuperscript{23}

Against a background of general concerns about rising poverty levels in Afghanistan, with the proportion of the population living below the national poverty line reportedly having increased from 34 per cent in 2007-2008 to 55 per cent in 2016-2017,\textsuperscript{24} the Asia Foundation’s 2017 Survey of the Afghan People found that perceptions of a worsening financial situation was most common in the Central/Kabul region, at 43.9 per cent.\textsuperscript{25} In January 2017 it was reported that 55 per cent of households in Kabul informal settlements were severely food insecure.\textsuperscript{26}

OCHA’s 2018 Humanitarian Needs Overview ranks Kabul among the 10 provinces (out of a total of 34 provinces) that are “the most conflict-affected”.\textsuperscript{27} In addition, the Humanitarian Needs Overview notes that “needs are particularly pronounced in large urban centres, including Kabul and Jalalabad City, where both IDP and returnee populations have congregated in search of income and livelihoods opportunities as well as access to basic and essential services. Humanitarian needs in these two provinces comprise 42 percent of all those relating to internal displacement and cross-border influxes,”\textsuperscript{28}

Against the background of the considerations relating to the relevance and reasonableness analysis for Kabul as a proposed area of IFA/IRA, and taking into account the overall situation of conflict and human rights violations, as well as the adverse impact this has on the broader socio-economic context, UNHCR considers that an IFA/IRA is generally not available in Kabul.

4. 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 Defence and Security Forces (ANDSF), 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.
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 Defence and Security Forces (ANDSF) supported by the international military forces against a number of anti-government elements (AGEs).\(^9\) According to the UN Secretary-General, Afghanistan continues to face formidable security, political and economic challenges.\(^30\) The overall security situation has reportedly continued to deteriorate,\(^31\) in what has been described as an “eroding stalemate.”\(^32\)

I. Developments Related to the Conflict in Afghanistan

The ANDSF have reportedly proved generally adept in defending provincial capitals and major urban centres, but have ceded significant ground to the Taliban in rural areas. However, the ANDSF were reported to be affected by unsustainably high attrition rates and a declining morale.\(^33\)

As of 31 January 2018, the Taliban was reported to control or contest 43.7 per cent of all districts in Afghanistan.\(^34\) The Taliban have intensified their attacks in Kabul and other major urban areas, and have demonstrated a growing focus on attacking Afghan security forces, causing high numbers of casualties.\(^35\) Throughout 2017 the Taliban launched multiple large-scale operations aimed at capturing district administration centres, and were able to overran and temporally hold several such centres.\(^36\) At the same time the Taliban reportedly consolidated their control over mostly rural territory, enabling them to undertake more frequent attacks in the north of Afghanistan in particular.\(^37\)


\(^34\) Security Council Report, March 2018 Monthly Forecast, 28 February 2018, http://www.securitycouncilreport.org/monthly-forecast/2018–03/afghanistan-24.php. “The overall security situation has deteriorated over the past few years, as the Taliban have been able to influence and, to some extent, control ever larger parts of the country. […] The situation has been described as an eroding stalemate in which the Taliban have increased the territory they are able to contest and, in some areas, have begun to consolidate their hold.” UNSG, Special Report on the Strategic Review of the United Nations Assistance Mission in Afghanistan, 10 August 2017, A/72/312–S/2017/696, http://www.refworld.org/docid/599301c49.html, para. 14.


The UN Secretary-General (UNSG) reported in February 2018 that little progress has been made towards peace negotiations. The effectiveness of the High Peace Council (HPC) in its reconciliation efforts with the Taliban has reportedly been limited, amidst sustained security threats and targeted attacks by AGES. On 6 December 2017, the HPC announced that the Afghan Government was willing to allow the Taliban to open a political office in Kabul in order to start peace negotiations. On 28 February 2018, President Ghani reportedly invited the Taliban to join direct, formal peace talks, without preconditions and recognizing the role of the Taliban in Afghan politics. However, on 25 April 2018 the Taliban reportedly launched its annual spring offensive called “Operation al-Khandaq” in an apparent rejection of the peace process.

While a number of women are members of the HPC, women remain reportedly excluded from the peace talks, despite repeated calls for participation from women’s rights activists.

On 7 June 2018 President Ghani announced a unilateral and temporary ceasefire with the Taliban from 12-19 June 2018, coinciding with the end of Ramadan. While the Taliban responded by announcing a three-day ceasefire with the ANDSF, the Taliban reportedly launched an attack in south-eastern Ghazni province on 12 June. Notwithstanding the attack, on 16 June 2018 President Ghani extended the unilateral ceasefire by 10 days, while stating that the Afghan Government was ready for a three-day ceasefire with the ANDSF. The Taliban reportedly launched an attack in south-eastern Ghazni province on 12 June.

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comprehensive negotiations with the Taliban.\(^47\) However, the Taliban refused to extend its ceasefire;\(^48\) on 20 June it reportedly killed 30 members of the Afghan security forces.\(^49\)

On 15 July 2018, reports of the willingness of the United States to engage in direct negotiations with the Taliban emerged, with negotiations reportedly underway.\(^50\) Simultaneously, President Ghani reiterated his commitment to peace talks with the Taliban.\(^51\)

Islamic State\(^52\) has reportedly remained resilient despite intensified international and Afghan military operations; its continued engagement in clashes against both the Afghan Government and the Taliban reportedly “suggesting that the group has expanded its geographical reach and begun to consolidate its presence outside the eastern part of the country.”\(^53\) Islamic State reportedly conducted attacks against military and foreign military targets and the civilian population, including in particular religious sites, leaders and worshippers, Shi’ites, journalists and media organizations, as well as attacks suggesting targeting of the international community.\(^54\) The sectarian nature of these attacks has been said to mark “an ominous development in Afghanistan’s armed conflict.”\(^55\)

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\(^{52}\) In different sources and at different times the militant group has been variously referred to as Islamic State in Iraq and the Levant-Khorasan Province (ISIL-KP), or ISKP (Islamic State Khorasan Province), or Daesh (a loose acronym of al-Dawla al-Islamiya al-Iraq al-Sham, the Arabic for Islamic State of Iraq and the Levant), or simply ISIS (Islamic State in Iraq and Syria), or ISIL (Islamic State in Iraq and the Levant), or Islamic State. This document generally uses Islamic State. It should be noted that UNAMA in recent reports uses the term Daesh/ISIL-KP, and in addition recognizes a category of “self-identified Daesh/ISIL-KP fighters” to refer to situations where AGEs identify or claim to be ‘Daesh’ but where there is no factual information supporting a formal link to Daesh/ISIL-KP in Nangarhar province or the broader Islamic State organization. UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, http://www.refworld.org/docid/5a54a614.html, p. 4. See also, "AAN, Battle for Faryab: Fighting Intensifies on One of Afghanistan’s Major Frontlines", 12 March 2018, https://www.afghanistan-analysts.org/battle-for-faryab-fighting-intensifies-on-one-of-afghanistans-major-frontlines; UNSG, "Special Report on the Strategic Review of the United Nations Assistance Mission in Afghanistan, 10 August 2017, A/72/312-S/2017/696, http://www.refworld.org/docid/599301c49.html, para. 17.


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Pro-government armed groups are also reported to undermine the government’s authority in their areas of influence and are associated with human rights violations.

In September 2016, the Afghan government signed a peace deal with Hezb-e Islami-ye Gulbuddin (HIG), which reportedly included a commitment by HIG to cease its military activities and fully respect the laws of Afghanistan.

On 1 January 2015, the International Security Assistance Force (ISAF) ended its combat mission and ANDSF assumed full responsibility for the security situation in the country. A significantly reduced international military presence remained under the NATO Resolute Support Mission (RSM), a non-combat mission with a focus on training, advising and assisting the ANDSF. In addition, the United States maintained a separate and complementary counterterrorism mission in the country.

2. Political and Economic Developments

The National Unity Government (NUG) reportedly continues to be hampered by ethnic divisions, tensions related to political patronage and internal disagreements over key strategic issues. Concerns over the deteriorating security situation are reported to undermine the population’s trust in the Government.

Following the repeated postponement of parliamentary elections that had originally been scheduled for 2015, the Government announced in April 2018 that parliamentary and district council elections will be held in 2018.

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 the 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, though in some cases, armed groups receive direct/indirect support of the host Government or other States. This term includes, but is not limited to, the following groups: ‘national uprising movements’, local militias (ethnically, clan or otherwise based), and civil defence forces and paramilitary groups (when such groups are clearly not under State control).”

According to analysts, HIG representatives have made public allegations that the Afghan government is not upholding its side of the agreement. As of October 2017, the Afghan government armed groups as defined by UNAMA do not include the 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, though in some cases, armed groups receive direct/indirect support of the host Government or other States. This term includes, but is not limited to, the following groups: ‘national uprising movements’, local militias (ethnically, clan or otherwise based), and civil defence forces and paramilitary groups (when such groups are clearly not under State control).”


be held on 20 October 2018,64 with presidential elections scheduled for 2019.65 In September 2016 a new electoral law was passed, and a new Independent Election Commission (IEC) inaugurated in November 2016.66 According to this law, the IEC are required to establish polling centres across geographical locations in a balanced manner,67 including in areas controlled by AGEs.68 UNAMA expressed concerns regarding the growing insecurity and escalating election-related violence targeting civilians and civilian sites at this early stage in the election process, a trend that reportedly mirrors the pattern of violence surrounding the presidential election period in 2014.69

Afghan government statistics indicate that the economic situation has deteriorated since 2013-2014, against a background of high levels of insecurity and an unsustainably high population growth.70 While overall economic growth is estimated to have increased slightly in 2017 compared to 2016, growth in the agricultural sector, which employs over 60 percent of the Afghan workforce, has reportedly been constrained by poor weather conditions.71 The proportion of the population living below the national poverty line has reportedly increased from 38.3 per cent in 2011-2012 to 55 per cent in 2016-2017.72 The economy is reportedly largely comprised of informal and illicit activity, including the opium trade, which in turn is reported to generate further instability.73 According to the Afghan Living Conditions


68 “Officials said that even provincial capitals were struggling to open all voter registration centers. ‘There are 55 voter registration centers in Kunduz city and the villages that belong to the center, and 20 of them are closed because those villages are under Taliban control,’ said Gen. Abdul Hamid Hamidi, the police chief of Kunduz Province.” The New York Times, ‘So Many Bodies’: Bomber Kills Dozens Signing Up to Vote in Kabul, 22 April 2018, https://www.nytimes.com/2018/04/22/world/asia/suicide-bomber-afghanistan-elections.html.


Survey 2016-2017, the unemployment rate increased to 24 per cent, from 22 per cent in 2013-2014, noting that only 13 per cent of the Afghan population can be considered to have “decent employment” (i.e. people who are neither underemployed nor in jobs characterized by job insecurity or poor working conditions).  

According to a nation-wide survey conducted in June 2017, 58.1 per cent of respondents reported that their employment opportunities had worsened in the preceding year. Similarly, 33.5 per cent of respondents reported that their household financial situation had worsened, while 20.3 per cent of respondents reported an improvement. 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 underperforming judicial system, high crime levels, widespread human rights violations, and a general climate of impunity.  

There are also concerns that the ongoing violence and deteriorating economic situation are fuelling increases in mental health problems and drug use. 

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

The security situation in Afghanistan remains volatile, with civilians continuing to bear the brunt of the conflict. A continued deterioration of the security situation and an intensification of the armed conflict


“Of the total employed population, 20 percent are under-employed (in need of more work). Moreover, 80 percent of all jobs are classified as vulnerable employment, characterised by job insecurity and poor working conditions, and 67 percent of jobs in non-agricultural employment is informal employment. [...] Job opportunities for young people are particularly scarce, with the youth unemployment rate [persons between 15-24] standing as high as 31 percent. Again, unemployment levels of young females far surpass that of their male peers.” The proportion of youth not in “employment, education or training” is estimated at 42 per cent for both sexes combined, but is especially high for women. Central Statistics Organization, Afghanistan Living Conditions Survey 2016-2017: Highlights Report, 2018, http://cso.gov.af/Content/files/Surveys/ALCS/ALCS%202016%20Main%20Report%20-%20English%20%20201712022211.pdf, p. 5.  


See Section II.C.

in Afghanistan have been observed in the years following the withdrawal of the international military forces in 2014. The Taliban is reported to have continued its offensive to gain increased control over a larger number of districts, while Islamic State is reported to be increasingly demonstrating their ability to expand their geographical reach, further destabilizing the security situation.

The conflict continues to affect all parts of the country. Since the Government’s decision to defend population centres and strategic rural areas, fighting between AGEs and the Afghan government has intensified. AGEs are reported to have engaged in an increasing number of attacks deliberately targeting civilians, particularly suicide improvised explosive devices (IED) and complex attacks. AGEs continue to carry out large-scale attacks in Kabul and other cities, and to consolidate their control across rural areas. Concerns have been expressed about the ANDSFs’ capability and effectiveness in ensuring security and stability across Afghanistan.


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 began 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 has increased every year between 2009 and 2017, apart from a four per cent decrease in 2012 compared to 2011 and a nine per cent decrease in 2017 compared to 2016. Despite the small decrease in 2017, the year saw a high level of civilian casualties, with a total of 10,453 (3,438 deaths and 7,015 injured). High levels of civilian casualties continued in the first half of 2018, with UNAMA documenting 5,122 civilian casualties between 1 January and 30 June 2018, including 1,692 deaths (the highest number since tracking began in 2009) and 3,430 civilians who were injured. In 2017, UNAMA documented the highest number of civilian casualties from combined IED tactics (suicide IEDs and non-suicide IEDs) since 2009. The use of combined IED tactics by AGEs, particularly “indiscriminate and unlawful use of IEDs such as suicide bombs and pressure-plate devices in civilian populated areas”, accounted for 4,151 civilian casualties, 40 per cent of all civilian casualties in 2017. The use of IEDs by AGEs remained the leading cause of civilian casualties in the first six months of 2018, when the combined use of suicide and non-suicide IEDs caused nearly half (45 per cent) of all civilian casualties.

Continuing a trend first documented by UNAMA in 2017, the majority of IED casualties in the first half of 2018 were caused by suicide and complex attacks, which caused “record high civilian casualties”

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92 Ibid.
93 Ibid.
Ground engagements were the second leading cause of civilian casualties in the first six months of 2018 (360 deaths and 1,134 injured), followed by targeted and deliberate killings, aerial operations, and explosive remnants of war. Similarly, ground engagements were the second leading cause of civilian casualties in 2017, with 3,484 civilian casualties (823 deaths and 2,661 injured), or 33 per cent of all civilian casualties; the majority of civilian casualties reportedly occurred in fighting between pro-government forces and AGEs. Ground fighting continued to be the leading cause of harm to women and children.

From 1 January to 30 June 2018, UNAMA attributed 67 per cent of all civilian casualties to AGEs: 3,413 civilian casualties (1,127 deaths and 2,286 injured), with 42 per cent attributed to Taliban, 18 per cent to Islamic State, and seven per cent to unidentified AGEs. In 2017, UNAMA attributed 65 per cent of all civilian casualties to AGEs: 6,768 civilian casualties (2,303 deaths and 4,465 injured), a three per cent overall decrease compared to 2016. The Taliban was held responsible for 42 per cent of the total number of casualties in 2017, Islamic State for 10 per cent (the number of civilian casualties attributed to Islamic State increased by 11 per cent compared to 2016), and “undetermined and other [AGEs]” for 13 per cent of casualties.

In the first half of 2018, UNAMA documented “a disturbing increase” in the number of civilian casualties from suicide and complex attacks by AGEs, with more than half attributed to Islamic State. In the first half of 2018 suicide and complex attacks by AGEs caused 1,413 civilian casualties (427 deaths and 986 injured), an increase of 22 per cent in civilian casualties compared to the same period in 2017. Civilian casualties from attacks by AGEs deliberately targeting civilians also increased by

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94 Ibid. "According to UNAMA’s definition, a complex attack includes the following elements: two or more attackers, two or more types of weapons, and one of the weapons is a suicide IED – i.e. body-borne suicide IED or vehicle-borne suicide IED." UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, http://www.refworld.org/docid/5a584a614.html, p. 1.
95 In 2017, civilian casualties from suicide and complex attacks comprised 22 per cent of all civilian casualties, and the second leading cause of any single tactic or incident type, after ground engagements. UNAMA documents 57 suicide and complex attacks that caused 2,295 civilian casualties (605 deaths and 1,690 injured). […] This represents […] the highest number of civilian casualties from such attacks in a single year since UNAMA began documenting civilian casualties in 2009.” UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, http://www.refworld.org/docid/5a584a614.html, p. 28; see also ibid., pp. 1, 28-30. See also, PRI, Violence in Kabul Is so Extreme, Citizens Are Carrying Around ‘In Case I Die’ Notes, 31 January 2018 https://www.pri.org/stories/2018-01-31/violence-kabul-so-extreme-citizens-are-carrying-around-case-i-die-notes.
98 The armed conflict caused 544 women casualties (157 deaths and 387 injured) during the first six months of 2018, with almost half from ground engagements. Women increasingly lost their lives as a result of suicide and complex attacks, and also continued to suffer from targeted killings and aerial operations. While overall women casualties decreased by 15 per cent compared to the same period in 2017, women casualties remain of grave concern.” UNAMA, Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018, 15 July 2018, http://www.refworld.org/docid/5b5047137.html, pp. 2-3. “In 2017, women casualties continued at levels comparable to 2016: contrary to the overall decrease in civilian casualties, total women casualties increased by less than one per cent, and women deaths increased by five per cent. Ground engagements remained the leading cause of harm to women, despite UNAMA documenting a decrease of 11 per cent in women casualties from ground fighting. The next leading cause, suicide and complex attacks, caused more than double the number of women casualties in 2017 than in 2016.” UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, http://www.refworld.org/docid/5a584a614.html, p. 3. “Ground engagements continued to severely impact women and children, who together comprised 59 per cent of all ground engagement civilian casualties, and 70 per cent of those caused by the use of indirect fire from weapons such as mortars, rockets, and grenades. Ground engagements caused 51 per cent of all women civilian casualties and 45 per cent of all child casualties.” Ibid., p. 20.
28 per cent compared with the first half of 2017, “mainly due to sharp increases in civilian casualties from attacks against civilian government administration and election-related incidents.”

AGEs also continued conducting attacks in other public places, including places of worship, voting registration centres, crowded markets, mosques, civilian government offices, social gatherings such as weddings and funerals, gatherings of tribal elders, religious leaders and worshippers, in violation of international humanitarian law. In 2017, 37 attacks against places and people of worship resulted in 499 civilian casualties (202 deaths and 297 injured), which marked a 32 per cent increase in overall civilian casualties from such attacks compared to 2016 (double the number of deaths, and three times as many attacks). UNAMA has also expressed concern regarding election-related violence in 2018, with AGEs targeting civilians and civilian sites.

In the first six months of 2018, UNAMA attributed 1,047 civilian casualties (20 per cent of all civilian casualties) to pro-government forces, approximately the same as during the corresponding period in 2017. In 2017, pro-government forces were responsible for 2,108 civilian casualties, or 20 per cent of the total number (745 deaths and 1,363 injured); this represented a 23 per cent decrease compared to 2016. More than half of the civilian casualties caused by pro-government forces occurred during ground fighting with AGEs.

Ibid., pp. 4-5.


UNAMA, Afghanistan: 63 Dead in Attacks on Voter Registration Centres, 22 April 2018, http://www.refworld.org/docid/5afa8e04d4.html, p. 27. “Since 1 January 2016, attacks directed against mosques, shrines and other places of worship caused 737 civilian casualties (242 killed, 495 injured), the vast majority Shi’a Muslims worshippers killed or injured by suicide attacks conducted by Anti-Government Elements, particularly ISKP. […] Between 1 January 2009 and 31 December 2015, UNAMA documented five incidents against Shi’a Muslims, although the perpetrators and motives behind most incidents were not clearly determined and there were no clear public claims of responsibility. […] Since 1 January 2016, UNAMA documented 12 incidents targeting Shi’a Muslim worshippers at places of worship, resulting in 689 civilian casualties (230 deaths and 459 injuries), raising grave concerns regarding the right to freedom of religion or belief and the protection of religious minorities. ISKP publicly claimed eight of the 12 attacks through the Islamic State-affiliated Al Amaq news agency. Four of the 12 incidents took place in 2016 and eight in the first 10 months of 2017.” UNAMA, Protection of Civilians in Afghanistan: Attacks Against Places of Worship, Religious Leaders and Worshippers, 7 November 2017, http://www.refworld.org/docid/5afa8e04d4.html, pp. 1-2.

A change in US strategy in Afghanistan resulted in a significant increase in air operations in 2017, inflicting heavy civilian casualties. In 2017, aerial operations by both international military forces and the Afghan Air Force caused 631 civilian casualties (295 deaths and 336 injured), an 18 per cent increase in deaths compared to 2016. This trend continued in the first half of 2018, with UNAMA documenting 353 civilian casualties (149 deaths and 204 injured) from aerial attacks, a 52 per cent increase from the same period in 2017. Women and children continued to comprise more than half of all aerial attack civilian casualties; the number of child casualties from these attacks increased by 64 per cent compared to the first half of 2017.

Casualties from mines, explosive remnants of war and victim-activated explosive devices averaged 170 per month in 2017, which was an increase from 2016’s monthly average of 162 casualties. It is estimated that 3,227 minefields, 315 battlefields and 38 contaminated firing ranges remain, affecting 1,423 communities.

Incidents of cross-border shelling increased significantly in 2017, continuing to impact areas in the eastern region of Afghanistan in particular. In 2017, 29 incidents of cross-border shelling were recorded, causing 71 civilian casualties (23 deaths and 48 injuries), three times the number of incidents and more than four times the number of civilian casualties compared to 2016.

2. Security Incidents

In 2017 UNAMA recorded a total of 23,744 security incidents, the highest number recorded to date (albeit only marginally higher compared to the number of recorded incidents in 2016). The highest number of incidents in 2017 corresponded to armed clashes (14,998), followed by incidents relating to the use of IEDs, while air strikes continued at high levels (960 air strikes in 2017, or a 67.6 per cent increase compared to 2016). The highest number of incidents occurred in the eastern region, followed by the southern region, with the two regions accounting for 55 per cent of all security incidents.

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115 Ibid.


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.119

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.120 In areas where pro-government armed groups exercise (partial) control, such groups are reported to commit human rights violations with impunity.121 Equally, in areas controlled by AGEs there are reportedly widespread human rights violations, including through the imposition of parallel justice structures.122 Additionally, human rights violations are reportedly also committed by both State and non-State agents outside the areas of their respective control.123 Severe human rights violations are reported to be particularly widespread in contested areas in which fighting is ongoing.124

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.125 Government officials, security forces, detention centre authorities, and police have reportedly used torture or cruel, inhuman or degrading treatment or punishment (see below).126

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Impunity for human rights violations committed by each of these State actors is reported to have remained widespread.127

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).128 Detainees reportedly lack access to remedial mechanisms and meaningful access to defence counsel.129 Abuse and torture of detainees were also reported to occur in unofficial detention facilities operated by security forces which are inaccessible to independent observers.130 Public statistics on the number of conflict-related detainees held outside the regular prison system are not available.131 In June 2017, the UN Committee Against Torture expressed its deep concern about the general culture of impunity, with perpetrators of war crimes and gross human rights violations, including torture, still holding or having been nominated for official positions, including in government.132 The Committee expressed its concern that this in turn contributes to creating widespread acceptance and legitimisation of torture in Afghan society.133

The prison system run by the Central Prisons Directorate reportedly suffers from severe overcrowding and poor hygienic conditions.134 Arbitrary and illegal detention reportedly remain widespread.135 Law enforcement agencies reportedly use torture in order to coerce confessions from detainees, particularly conflict-related detainees.136 There are reports of female prisoners being subjected to sexual abuse and bullying.137

Concerns remain about human rights violations committed by ALP members against the civilian population.138 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. In 2017, UNAMA documented 114 civilian casualties involving ALP officers, including 27 deaths and 87 injuries (compared to 25 deaths and 40 injuries in 2016). The most common violations attributed to ALP were reported to include targeted and deliberate killings of civilians, severe beatings, property destruction, threats, intimidation, and harassment.

UNAMA continued to document incidents involving security forces that negatively impacted on access to 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.

UNAMA also noted its concern about conflict-related incidents attributed to Afghan security forces in which hospitals, clinics, and health personnel were targeted. At the end of 2017, search operations in health facilities, attributed to Afghan security forces, caused civilian casualties and led to arrests and harassment of health care staff, damage to medical equipment, and blockage of health supplies.

State actors are reported to limit the right to freedom of expression, and reportedly use violence and intimidation against journalists and media organizations.

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 2017, UNAMA


141 Ibid., pp. 49-50.


documented 92 civilian casualties (26 deaths and 66 injured) by such groups, compared to 185 casualties (52 deaths and 133 injured) documented in 2016.\textsuperscript{147} The majority of these deaths and injuries in 2017 were reportedly the result of ground engagements, followed by the targeted killings of civilians.\textsuperscript{148} UNAMA notes that the existence of pro-government armed groups has no basis in law.\textsuperscript{149} 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.\textsuperscript{150} Impunity for human rights violations committed by pro-government armed groups reportedly remains widespread.\textsuperscript{151}

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, freedom of religion, political participation, as well as access to education and health care and the right to an effective remedy. In 2017, UNAMA documented 6,768 civilian casualties (2,303 deaths and 4,465 injured) caused by AGEs, with 4,385 incidents (1,574 deaths and 2,811 injuries) publically claimed by or attributed to the Taliban and 1,000 incidents (399 deaths and 601 injuries) publically claimed by or attributed to Islamic State.\textsuperscript{26}

AGEs are reported to take advantage of the absence of governmental justice mechanisms or services to enforce their own parallel “judicial” structures, primarily in, but not limited to, areas under their control.\textsuperscript{153} UNAMA notes that “[a]ll parallel justice structure punishments by non-state armed groups are illegal under the laws of Afghanistan, constitute criminal acts, and may amount to war crimes.”\textsuperscript{154} In 2017, UNAMA documented 23 incidents of parallel justice structure punishments causing 33 civilian casualties (21 deaths and 12 injured), a 34 per cent reduction compared to 2016.\textsuperscript{155} Parallel justice structure punishments include public executions by stoning and shooting, beating and lashing, and

\begin{itemize}
\item Ibid., p. 52.
\item “Pro-Government armed groups continued to carry out human rights abuses with impunity. Throughout 2017, allegations of the persistent failure of the Government to hold pro-Government armed group members responsible for abuses perpetrated against civilians continued. [...] In many instances, such impunity is due to their relationship with political and security power-holders, allowing armed groups to take advantage of the fragile security environment, abuse the local population, and place civilians in the areas they operate at risk of harm.” UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, \url{http://www.refworld.org/docid/5a854a614.html}, p. 52.
\item A further 1,346 incidents (346 deaths and 1,046 injuries) were attributed to AGEs, but where there was no public claim of responsibility or it was not possible to attribute the incident to a specific group. UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, \url{http://www.refworld.org/docid/5a854a614.html}, p. 26. “This marked a 12 per cent decrease in civilian casualties attributed to Taliban compared to 2016. However, under-reporting from Taliban-controlled areas is likely due to lack of access and the consequent inability for UNAMA to attribute some Taliban-perpetrated attacks resulting in civilian casualties to unidentified Anti-Government Elements.” Ibid., p. 27.
\item UNAMA notes that “these cases are likely underreported given limited access to areas controlled by AGEs.” Ibid., p. 36.
\end{itemize}
amputation.\textsuperscript{156} AGEs are also reportedly imposing illegal taxes in areas where they attempt to impose parallel systems of governance.\textsuperscript{157}

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 violence and 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).\textsuperscript{158} The Taliban and Islamic State have reportedly used threats, intimidation and violent attacks against media companies and journalists that are perceived to engage in critical reporting.\textsuperscript{159} Consequently, journalists reportedly self-censor due to fears for their safety (see Section III.A.2).\textsuperscript{160}

AGEs also reportedly place limitations on the right to political participation. Since voter registration commenced on 14 April 2018,\textsuperscript{161} AGEs have reportedly attacked voter registration sites and tazkira (national identity card) distribution centres, including by means of targeted killings, abductions, threats, intimidation and harassment of election-related personnel and security forces.\textsuperscript{162} AGEs have reportedly warned Afghans not to register for the upcoming elections and have allegedly also fined citizens and/or confiscated the tazkiras (national identity cards) of those who have registered.\textsuperscript{163} Between 14 April 2018 and 10 May 2018, there were 23 election-related security incidents verified by UNAMA, resulting in 271 casualties (86 deaths and 185 injured).\textsuperscript{164}

AGEs are also reported to limit the right to freedom of movement through illegal checkpoints and the use of IEDs.\textsuperscript{165} While there was a reduction in civilian casualties caused by non-suicide IEDs and targeted killings in 2017 compared to 2016, UNAMA documented an increase in civilian casualties

\begin{itemize}
  \item \textsuperscript{158} UNAMA, \textit{Annual Report on the Protection of Civilians in Armed Conflict 2017}, February 2018, http://www.refworld.org/docid/5a584614.html, p. 39; see further the sources quoted in Section III.A.1.g.
  \item \textsuperscript{164} 75 per cent of these incidents reportedly occurred at schools or mosques used for election purposes. UNAMA, \textit{Protection of Civilians in Armed Conflict: Election-Related Attacks and Abuses During the Initial Voter Registration Period}, 10 May 2018, https://unama.unmissions.org/sites/default/files/protection_of_civilians_-special_report-_election-related_attacks_and_abuses_may_2018_english.pdf.
  \item \textsuperscript{165} In UNAMA, for database recording purposes, the category of targeted killings also includes some cases of killings where the victim was briefly in the perpetrator’s custody at the time of the killing but the custody did not amount to an abduction, i.e. the person identified to be killed is stopped by armed individuals, their identity is confirmed, and then the attackers kill the person, commonly at illegal checkpoints.” UNAMA, \textit{Annual Report on the Protection of Civilians in Armed Conflict 2017}, February 2018, http://www.refworld.org/docid/5a584614.html, p. 64, footnote 307; see also ibid., pp. 33-34.
\end{itemize}
from complex\(^{166}\) and suicide attacks.\(^{167}\) (605 deaths and 1,690 injured; a 17 percent increase from 2016); the number of civilian casualties from targeted and deliberate killings reportedly remained similar to that of 2016.\(^{168}\) Civilian casualties caused by suicide and complex attacks attributed to the Taliban decreased by 22 per cent compared to 2016, while those resulting from such attacks claimed by Islamic State increased by 18 per cent.\(^{169}\) 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.\(^{170}\) Suicide and complex attacks reportedly continued to disproportionately affect civilians in Kabul city; for 2017 UNAMA reported a 17 per cent increase in civilian casualties in Kabul caused by complex and suicide attacks as compared to 2016.\(^{171}\) In 2017, for the first time UNAMA reported suicide and complex attacks by Islamic State outside of Nangarhar or Kabul, in Herat province.\(^{172}\)

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.\(^{173}\) However, there have been reports of both the Taliban and Islamic State using schools and madrassas as places for the indoctrination and recruitment of children for use in combat and in combat support functions.\(^{174}\) The Taliban and Islamic State have also been reported to interfere in or attempt to control the curriculum for adherence to criteria approved by them.\(^{175}\)

Incidents of conflict-related violence directly impacting access to education continue to be reported in all regions of the country.\(^{176}\) The vast majority of reported incidents in 2017 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.\(^{177}\) In July 2018, UNAMA expressed its concern regarding the emerging trend of targeting of schools and education officials by AGEs in response to operations by pro-government forces.\(^{178}\) Schools were reportedly also occupied and used for military purposes,

166 “According to UNAMA’s definition, a complex attack includes the following elements: two or more attackers, two or more types of weapons, and one of the weapons is a suicide IED – i.e. body-borne suicide IED or vehicle-borne suicide IED.” UNAMA, Afghanistan: Protection of Civilians in Armed Conflict: Annual Report 2017, February 2018, http://www.refworld.org/docid/5a854614.html, p. 1, footnote 5.
168 Ibid., pp. 26, 28.
169 Ibid., p. 28.
170 Ibid., pp. 28-33.
171 A 17 per cent increase in civilian casualties caused by suicide and complex attacks was recorded in 2017 as compared to 2016, which marks the highest number of civilian casualties recorded by UNAMA since 2009 when the mission began its systematic documentation of civilian casualties. Ibid., p. 29.
172 Ibid., pp. 1-2, 29.
compromising their protected status under international humanitarian law and depriving children of access to education.\textsuperscript{179} Moreover, many schools are reported to remain closed in Afghanistan due to the prevailing local security conditions.\textsuperscript{180}

AGEs are similarly reported to restrict access to health care.\textsuperscript{181} In 2017, UNAMA documented 75 incidents (31 deaths and 34 injured) targeting hospitals and health personnel by AGEs, compared to 120 incidents in 2016 (10 deaths and 13 injured).\textsuperscript{182} In addition, AGEs are reported to have imposed bans on polio vaccination campaigns in certain parts of the country, while vaccinators are unable to access other parts due to insecurity.\textsuperscript{183}

The right to freedom of religion has reportedly come increasingly under attack from AGEs, including attacks against places of worship, religious leaders and worshippers; AGEs also threaten and attack individuals and communities who are perceived to contravene AGEs’ interpretation of Islamic principles, norms and values.\textsuperscript{184}

2. The Ability and Willingness 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.\textsuperscript{185}

The capability of the Government to protect human rights is undermined 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. The UN Committee Against Torture expressed concern at the lack of adequate measures taken by the Government to protect human rights defenders and journalists from reprisals for their work.

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. Afghan citizens reportedly have to pay bribes to access public services, such as to the provincial governor’s office, the municipal governor’s office, and the customs office. 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.

In some areas, local communities are reported to resort to parallel judicial structures, such as local councils or elders, or courts run by the Taliban to settle civil disputes. 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. 196

D. Humanitarian Situation

The ongoing conflict in Afghanistan continues to exact a heavy toll on the humanitarian situation in the country. 197 As a result of the general rise in insecurity, 198 including a marked rise in security incidents affecting humanitarian workers, 199 humanitarian access to affected populations remains limited. 200 By the end of 2017, out of a total population of approximately 34.5 million people, 14 million lived in the 120 highest conflict-affected districts. 201 The limited presence of humanitarian actors in conflict-affected areas in particular inhibits access to life-saving assistance for Afghanistan’s most vulnerable people. 202

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. 203 Similarly, the protracted conflict, poor governance and weak or corrupt institutions are reported to have led to a situation where disaster preparedness, risk reduction and emergency response mechanisms are weak or absent. 204 As a result, natural disasters, including floods, mudslides, earthquakes, droughts and severe winter weather, are a further threat to people whose levels of resilience have already been worn down. 205 Accordingly, in addition to the 3.3 million Afghans who were identified in late 2017 as having acute humanitarian needs in 2018, a further 8.7 million Afghans were identified with chronic needs requiring long-term systemic actions. 206 The humanitarian situation in Afghanistan has been further aggravated by a severe drought, which is reported to be particularly


199 “Constraints on humanitarian access continued, with a total of 39 incidents affecting United Nations and aid workers from 15 December to 31 January. In 2017, a total of 388 incidents were reported, compared with 200 in 2016. The higher number can be attributed partly to the protracted nature of the conflict in certain areas of the country as well as to improved reporting. In 2017, 21 aid workers were killed, 33 injured and 149 abducted. In December [2017], 19 incidents against health workers or health facilities were recorded, bringing the total to 143 such incidents for the entire year. Incidents against health workers and facilities represented 38 per cent of all recorded incidents against humanitarian workers in 2017.” UN General Assembly, The Situation in Afghanistan and its Implications for International Peace and Security, 27 February 2018, A/72/768–S/2018/165, http://www.refworld.org/docid/5ad73b254.html, para. 44. See also, for example, The Guardian, Isis Claims Attack on the Save the Children Office in Afghanistan, 24 January 2018, https://www.theguardian.com/world/2018/jan/24/explosion-attack-save-the-children-office-jalalabad-afghanistan.


affecting northern and western regions of the country.²⁰⁷

Humanitarian indicators are critically low in Afghanistan. Over 1.6 million children reported to suffer from acute malnutrition, while infant mortality rates are amongst the highest in the world at 70 per 1,000 births.²⁰⁸ According to Afghanistan’s Central Statistics Organisation, the proportion of the population who are reported to live below the national poverty line increased to 55 per cent in 2016-17, from 33.7 per cent in 2007-2008 and 38.3 per cent in 2011-2012.²⁰⁹ 1.9 million Afghans are reported to be severely food insecure.²¹⁰ An estimated 45 per cent of the population do not have access to potable water.²¹¹ Afghanistan remains the poorest country in the region, ranking 169 out of 188 countries in the 2016 UN Human Development Index.²¹²

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.²¹³ It is reported that 4.5 million people have no access to essential primary health care services.²¹⁴

E. Conflict-Induced Displacement

Conflict and insecurity continue to be major drivers of internal displacement in Afghanistan, affecting all areas of the country.²¹⁵ By the end of 2017 more than 1.8 million Afghans were estimated to live as

²¹⁵ “31 of 34 provinces produced IDPs in 2016, and all 34 provinces hosted verified IDP populations.” Protection Cluster Afghanistan, Afghanistan, April 2017, https://reliefweb.int/sites/reliefweb.int/files/resources/2017_04_protection_cluster_factsheet_en.pdf. According to the UN Secretary-General, “Internal displacement has affected 30 of the 34 provinces, with Baghlan and Kunduz in the north, Nangarhar in the east and Uruzgan and Kandahar in the south experiencing the highest levels of displacement. While there was an overall reduction in the number of people displaced compared with the same period in 2016 [mid-June to mid-August], the deteriorating security situation has left many displaced communities in an increasingly precarious situation, with no immediate prospect of returning to their areas of origin.” UN General Assembly, The Situation in Afghanistan and its Implications for International Peace and Security, 15 September 2017, A/72/392–S/2017/763, http://www.refworld.org/docid/59c3a9f64.html, para. 38. “The World Bank and UNHCR published a policy brief in 2016 that described an increase in secondary displacement among returnees in Afghanistan. It highlighted a two-fold increase in the incidence of internal displacement among returnees since 2013, when compared with return flows in 2002. As the pace of repatriations increases while the country struggles with simultaneous security and economic crises, the report warns of the risks of displacement upon return. The brief prompted the focus of this report for this study reported experiencing repeated displacement. Of the returnee-IDPs interviewed, 72 per cent of their household members had been displaced twice and 27 per cent displaced three times. Our [research] revealed that returnees and IDPs share the same vulnerabilities, and as such responses should be cohesive and cover all subgroups of the country’s displaced population.”
internally displaced persons (IDPs) as a result of conflict or violence.²¹⁶ It was estimated that some 474,000 people were newly displaced in 2017, a reduction from an estimated 653,000 in 2016, but an increase from the displacement levels reported in 2015 (about 335,000 persons).²¹⁷ Between 1 January and 20 May 2018, an estimated 114,995 people have reportedly been newly displaced.²¹⁸ Precise figures for the total number of IDPs in the country are difficult to obtain: official figures for the total number of IDPs probably under-represent the actual scale of displacement in Afghanistan, as they likely exclude some IDPs dispersed in urban areas, as well as those displaced in rural and conflict-affected locations in areas inaccessible to humanitarian actors.²¹⁹ By the end of 2017, over 50 percent of people displaced in Afghanistan were reported to have been displaced twice or more, compared to just seven percent five years previously.²²⁰

A National Policy on Internally Displaced Persons (IDPs), launched in February 2014, 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.²²¹ However, capacity issues on the part of the government reportedly continue to pose challenges to the implementation of the Policy.²²² IDPs are reported to remain among the most vulnerable groups in Afghanistan,²²³ many – especially in conflict-affected rural areas – are beyond the

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²¹⁷ UNHCR, Global Report 2017, http://reporting.unhcr.org/sites/default/files/g2017/pdf/G2017_English_Full_lowres.pdf, p. 97. It should be noted that even this estimate is probably an underestimate, for example because displaced people living in areas that are inaccessible to humanitarian organizations due to security concerns are not included. Also, IOM, Displacement Survey Shows 3.5 Million Internally Displaced, Returnees from Abroad in 15 Afghan Provinces, 8 May 2018, http://afghanistan.unon.int/press-releases/displacement-survey-shows-3-5-million-internally-displaced-returnees-abroad-15-afghan.

²¹⁸ IDMC, Global Internal Displacement Database: Afghanistan, 31 December 2017, http://www.internal-displacement.org/countries/afghanistan. “This figure consists of the newly displaced population due to conflict between 1 January 2017 and 31 December 2017 […] Our estimate is based on the number of displaced households whose petitions to the government for registration and assistance have been accepted and validated, as published by OCHA, multiplied by Afghanistan’s AHHS. […] The numbers are not verified until a screening or household-level assessment procedure has been completed, which causes delays in obtaining verified figures. Community members often do not register the number of displaced families, and sometimes come forth for late registrations if there is a backlog. Community members also tend to report the number of families rather than individuals. As for the stock figure, shrinking humanitarian space creates a reporting bias reflected in the availability of the data, and OCHA does not track IDPs after the emergency phase, or six months after their displacement begins.” IDMC, Afghanistan: Global Report on Internal Displacement (GRID 2018), Conflict Displacement Figures Analysis, 2018, http://www.internal-displacement.org/sites/default/files/2018-05/GRID%202018%20-%20Figure%20Analysis%20-%20AFGHANISTAN.pdf. See also, OCHA, Afghanistan: Conflict Induced Displacements in 2017, 31 December 2017, https://data.humdata.org/dataset/afghanistan-conflict-induced-displacements-in-2017.


²²⁰ “Our 2017 figure is lower than the previous year’s but we were unable to identify any significant methodological change to account for the decrease, which may have been caused, at least in part, by access restrictions in some parts of the country.” IDMC, Afghanistan: Global Report on Internal Displacement (GRID 2018), Conflict Displacement Figures Analysis, 2018, http://www.internal-displacement.org/sites/default/files/2018-05/GRID%202018%20-%20Figure%20Analysis%20-%20AFGHANISTAN.html, p. 5. See also, NRC/IDMC and Samuel Hall, Escaping War: Where to Next?, January 2018, http://www.refworld.org/docid/5ac7874f4.html, pp. 13-14. “In 2017, 93 percent of displaced Afghans fled their homes due to conflict – a 17 percent increase compared to 2012.” OCHA, Afghanistan: 2018 Humanitarian Needs Overview, 1 December 2017, http://www.refworld.org/docid/5b0678957.html, pp. 10-11.


²²³ “IDPs’ vulnerable economic situation exposes them to a number of protection risks. These include short-term concerns such as access to food, water, housing and healthcare; and long-term concerns such as access to education, legal remedies and livelihood opportunities, which have the potential to trap households in protracted cycles of poverty and vulnerability.” NRC/IDMC and Samuel Hall, Escaping War: Where to Next?, January 2018, http://www.refworld.org/docid/5ac7874f4.html, p. 30. See also, World Bank and Islamic Republic of Afghanistan Ministry of Economy, Afghanistan Poverty Status Update: Progress at Risk, 2 May 2017, http://documents.worldbank.org/curated/en/667181497949172292/pdf/114741-WP-v1-P159553-PUBLIC.pdf, p. 18.
reach of humanitarian organizations. Among IDPs, women, children, elderly persons and persons with disabilities are reported to be especially vulnerable.

As part of a wider trend of continuing rapid urbanization in Afghanistan, 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 2016-2017, 72.4 per cent of the urban population in Afghanistan live in slums, informal settlements or inadequate housing households. Poverty among urban households is reported to be widespread and the economic situation of urban households is reported to have deteriorated significantly in the past years.


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 a adequate standard of living and limited access to water and sanitation.\textsuperscript{231} 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 eviction and secondary displacement.\textsuperscript{232} Land grabbing, including of land allocated for returning refugees or IDPs, reportedly represents an additional obstacle.\textsuperscript{233}

\begin{itemize}
\item[\textsuperscript{231}] One-third of respondents (33.5\%) reported that the financial well-being of their household had declined compared to last year, while 20.3\% report improvement, and 46.0\% report no change. By comparison, in 2012, almost half of respondents (49.8\%) reported improvement compared to the previous year, and only 6.9\% reported being worse off.” The Asia Foundation, Afghanistan in 2017: A Survey of the Afghan People, November 2017, https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf, pp. 66-67. See also, WFP, FAO, Food Security Cluster, Seasonal Food Security Assessment: Afghanistan 2017, 3 December 2017, https://reliefweb.int/sites/reliefweb.int/files/resources/post20harvest20fasa201720report20by20fas.pdf.
\item[\textsuperscript{232}] 63 per cent of IDPs surveyed by NRC/IDMC and Samuel Hall rated their housing conditions as either poor or very poor, with varying levels depending on the region. The same research found that “IDPs’ inability to afford decent housing, particularly in urban areas, leads them to reside in substandard shelter solutions in informal settlements and as slum dwellers in order to be closer to services and jobs.” NRC/IDMC and Samuel Hall, Escaping War: Where to Next?, January 2018, http://www.refworld.org/docid/5ac787ff46.html, pp. 25 and 53. See also, The Johanniter, Afghanistan: “Need for Food and Wood” in Settlements of Kabul, 12 December 2017, http://www.johanniter.de/63-79/johanniter-unfall-hilfe/start/news/afghanistan-need-for-food-and-wood-in-settlements-of-kabul/; Multi-Center Needs Assessment, Afghanistan: Shelter and WASH in Informal Settlements, November 2017, https://reliefweb.int/sites/reliefweb.int/files/resources/reach_afr_report_multi-cluster_needs_assessment_wash_and_esnfi_november_2017_0.pdf, pp. 21-25. “The food security situation was found to be severe across the two provinces, with 68% of households being severely food insecure, and especially in Nangarhar where 70% of households were considered severely food insecure, and only 9% were food secure. In Kabul, 55% were found to be severely insecure – an increase of seven percentage points since November 2015. However, in Kabul, food secure households had risen very slightly by 0.8 percentage points, possibly indicating greater inequality within the settlements.” REACH, Informal Settlement Food Security Assessment: Afghanistan, January 2017, http://fsccluster.org/sites/default/files/documents/reach_afr_report_informal_settlement_food_security_assessment_january_2017.pdf, pp. 3-4.
\end{itemize}
Pakistan and Iran continue to host the vast majority (an estimated 90 per cent) of the global Afghan refugee population, totalling an estimated 2.35 million people.234 In 2017, over 620,000 Afghans returned from Iran and Pakistan, following more than 1 million returnees in 2016.235

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 quadrupartite 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.236 The latter is particularly important in light of the difficulty for many returnees to reintegrate into their home communities.237 Returnees reportedly experience severe difficulties in rebuilding their lives in Afghanistan.238 They are reportedly highly vulnerable with poor access to livelihood, food, and shelter.239 Obstacles to return for both IDPs and returning refugees

234 An estimated 1.4 million Afghan refugees are in Pakistan, and an estimated 950,000 Afghan refugees are in Iran. UNHCR, Global Report 2017, http://reporting.unhcr.org/sites/default/files/ez/2017/pdf/GR2017_English_Full_lowres.pdf, p. 97. In addition, an estimated 2.3-3 million Afghans are reportedly living in Pakistan and Iran. There are an estimated 800,000 to 1 million undocumented Afghans in Pakistan and according to the Government of Iran there is 1.5 to 2 million undocumented Afghans in the Islamic Republic of Iran. ‘Undocumented’ in Pakistan refers to Afghans who do not hold a Proof of Registration card. In Iran ‘undocumented’ refers to Afghans who reside irregularly in the country (i.e. without Amayesh cards or valid visa; the designation as ‘undocumented’ does not refer to the possession of civil documentation in Afghanistan such as Tazkera and/or passports). UNHCR, IOM, Returns to Afghanistan in 2017, 28 February 2018, https://www.iom.int/sites/default/files/press_release/file/joint_returnee_report_iom_unhcr_final.pdf, p. 4.


238 “The top five challenges for returnees are food security, shelter, land, livelihoods and access to services.” UNHCR, IOM, Returns to Afghanistan in 2017, 28 February 2018, https://www.iom.int/sites/default/files/press_release/file/joint_returnee_report_iom_unhcr_final.pdf, p. 6. “In 2017, 27% of refugee returnees reported skipping a meal in the last week. This trend is much more pronounced amongst female respondents (53%) than male respondents (28%); 31% of refugee returnees reported that they are unable to access healthcare. This trend is again more pronounced amongst female respondents (34%) than male respondents (31%).” Ibid, p. 7. “Housing may vary by region, but 63 per cent of all respondents rated their housing conditions as either poor or very poor, and 27 per cent as average. Only 10 per cent rated them as good or very good. The figures for those who consider that they live in poor or very poor conditions are similar for IDPs and returnee-IDPs, at 65 and 60 per cent respectively. Returnee-IDPs are more likely to live in permanent structures, but 60 per cent said they did not have electricity in their homes.” Ibid., p. 5. See also, IDMC, The Invisible Majority: Going “Home” to Displacement, Afghanistan’s Returnees-IDPs, December 2017, http://www.internal-displacement.org/sites/default/files/inline-files/20171214-idmc-afghanistan-case-study.pdf, pp. 5-7.
include on-going insecurity in their areas of origin; loss of livelihoods and assets; lack of access to
health care and education; and difficulties in reclaiming land and property. 240

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, despite the efforts of the
government and the international community, returnees continue to face multi-faceted difficulties to
their reintegration. More generally, voluntary repatriation of refugees and forced return of former
asylum-seekers whose applications were rejected 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.

Among all asylum-seekers who applied for asylum in 22 countries in Europe, North America, Oceania
and Asia between January and April 2018, asylum-seekers from Afghanistan were the largest group
with over 30,000 claims. 241 Globally, in the first half of 2017 Afghans lodged some 52,400 claims for
asylum, a significant decrease from the same period in 2016 (124,000). 242 In 2017, Afghans were the
top country of origin lodging claims for asylum with UNHCR, registering a total of 149,824 individual
Afghan asylum claims. 243

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 individuals falling in one or more of the risk profiles outlined in this Section
may be in need of international refugee protection, depending on the individual circumstances of the
case. However, the profiles listed here are not necessarily exhaustive; they are based on information
available to UNHCR at the time of writing. 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.

240 IFRC, Refugees Returning to a Bleak Welcome in Afghanistan, 7 May 2018, https://media.ifrc.org/ifrc/2018/05/07/refugees-returning-bleak-
welcome-afghanistan/. “Across all of the surveyed households, 70 per cent of family members do not have any form of documentation, which
makes it difficult for them to access assistance and services.” IDMC and Samuel Hall, The Invisible Majority: Going “Home” to Displacement,
Afghanistan’s Returnee-IDPs, December 2017, http://www.internal-displacement.org/sites/default/files/inline-files/20171214-idmc-
afghanistan-case-study.pdf, p. 7; see generally ibid., pp. 5-7. See also, NRC/IDMC and Samuel Hall, Escaping War: Where to Next?, January
Migration Platform, Migration from Afghanistan to Europe, October 2017, http://mixedmigrationplatform.org/wp-
Afghanistan: Situation of Young Male Westernised Returnees to Kabul, August 2017, https://asyllos.eu/wp-
afghan-refugees.

241 UNHCR, New Asylum Applications Lodged in Selected Countries in Europe, North America, Oceania and Asia, May 2018,

pp. 17-18.

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 conflict-related 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 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, whether they are assessed 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. Certain claims by asylum-seekers from Afghanistan may require examination for possible exclusion from refugee status (see Section III.D).

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246 See also, UNHCR, Guidelines on International Protection No. 12, 2 December 2016, HCR/GIP/16/12, http://www.refworld.org/docid/583595ff4.html. See also Section II.B of these Guidelines.
The status of recognized refugees should be reviewed only if there are indications, in an individual case, that there are grounds for:

(i) 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. 247

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. 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, pro-Government armed groups, Afghan civil society and the international community in Afghanistan, including the international military forces and international humanitarian and development actors. 248 The (perceived) association with any of these actors may arise for example through current or former employment or family ties. 249 Civilians who have been targeted include district and provincial governors, judicial and prosecution staff, former and off-duty police officers, tribal elders, religious scholars and leaders, women in the public sphere, teachers and other civilian government workers, civilians perceived to oppose AGE values, human rights activists, and humanitarian and development aid workers. 250

Between 1 January and 31 December 2017, UNAMA attributed 570 targeted killings to AGEs, which caused 1,032 civilian casualties (650 deaths and 382 injured) and accounted for 10 per cent of all civilian casualties during the year. 251 The number of such incidents perpetrated by AGEs increased from 483 in 2016 to 570 in 2017, and the number of civilians killed in such incidents increased by 13 per cent. 252


248 UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, http://www.refworld.org/docid/5a854a614.html, pp. 37-38. “The Taliban leadership has expressly declared its policy of attacking civilians publicly in official documents issued by the Taliban leadership such as the Layha and in fatwas; in public statements by Taliban officials or spokespersons who claimed that particular civilians were the primary object of an attack; and in public lists of civilians to be killed or captured”.

249 The (perceived) association with any of these actors may arise for example through current or former employment or family ties. 249 Civilians who have been targeted include district and provincial governors, judicial and prosecution staff, former and off-duty police officers, tribal elders, religious scholars and leaders, women in the public sphere, teachers and other civilian government workers, civilians perceived to oppose AGE values, human rights activists, and humanitarian and development aid workers. 250


251 UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, http://www.refworld.org/docid/5a854a614.html, p. 35; UNAMA, Protection of Civilians in Armed Conflict: Attacks Against Places of Worship, Religious Leaders and Worshippers, 7 November 2017, http://www.refworld.org/docid/5a0a00b34.html; UNAMA, Quarterly Report on the Protection of Civilians in Armed Conflict: 1 January to 30 September 2017, 12 October 2017, http://www.refworld.org/docid/596e685e4.html, pp. 12, 44-46, 49. “The Taliban have been targeting a wide range of what they consider ‘misbehaving’ people: a) Political enemies; leaders and key members of parties and groups hostile to the Taliban […]; b) Government officials and employees of western and other ‘hostile’ governments – any civilian working for the government or for western diplomatic representations or agencies; c) Members of the Afghan security forces of any ranks; d) Individual believed to be spying or informing the authorities on the Taliban; e) Violators of Shari’a (as interpreted by the Taliban) and of Taliban rules; f) Collaborators of the Afghan government – potentially anybody helping the government in any way; g) Collaborators of foreign military forces – potentially anybody helping the foreign forces in any way; h) Contractors working for the Afghan government; i) Contractors working for foreign countries, opposed to the Taliban; j) Interpreters working for hostile foreign countries; k) Individuals of any category selected by the Taliban as useful or necessary to their war effort, and who have refused to collaborate.” Landinfo, Afghanistan: Taliban’s Intelligence and the Intimidation Campaign, 23 August 2017, http://www.refworld.org/docid/5a86ff140.html, p. 11.


Ibid., pp. 33-34.
In January 2018, the Taliban launched three separate attacks in Kabul, which killed over 150 civilians and injured over 300.253 In a public statement issued on 28 January 2018 while referring to one of these attacks, on the Ministry of Interior, the Taliban stated that “that target was the enemy and the true brunt was also borne by the workers of this Ministry”.254

On 25 April 2018, the Taliban announced the launch of their spring offensive, the ‘Al Khandaq Jihadi Operations’.255 As in previous years, the announcement stated that the offensive would target “the foreign occupying forces and their internal backers”.256 Despite a stated intention by the Taliban to pay special attention “to protecting the lives and properties of the civilian people”,257 there are continued reports of the Taliban and other AGEs specifically targeting civilians and objects protected under international humanitarian law.258

Apart from targeted killings, AGEs are also reported to use threats, intimidation and abductions to intimidate communities and individuals and thus extend their influence and control, targeting those who challenge their authority and ideas.259

a) Government Officials and Civil Servants

In 2017 UNAMA documented a continued pattern of attacks targeting civilian government workers, as well as civilian government offices and other buildings, particularly by the Taliban.260 Overall, in 2017 the number of claimed attacks against civilian government workers increased, “in line with Taliban’s policy of targeting Government entities.”261 Similarly, Islamic State targeted individual civilians affiliated with the government as well as those they believed provided “intelligence to the government”.262 AGEs have targeted politicians and government officials at the local, provincial and


256 Ibid.

257 The announcement of the 2018 spring offensive stated that “all Mujahidin should be sympathetic towards the Muslim masses and should be harsh towards the enemy. Therefore special attention should be paid to protecting the lives and properties of the civilian people and all precautionary measures should be taken while attacking a target.” Ibid.


262 Ibid., p. 39.
national levels of government, including Members of Parliament, members of the HPC, and provincial and district governors and council members.

Government-appointed judges and prosecutors have also been particularly targeted, with UNAMA reporting four such attacks by the Taliban between 1 January and 31 December 2017. AGEs have reportedly also targeted health workers and health facilities, forcing clinics to “close down temporarily, often in an attempt to monopolize trauma care for their combatants.” In 2017, UNAMA documented 75 incidents by AGEs targeting and/or impacting healthcare and healthcare workers, causing 65 civilian casualties (31 deaths and 34 injured).

Teachers, school guards and officials of the Department of Education have also been widely targeted, as have students, and in particular girls.


b) Civilian police personnel (including members of the ANP and ALP)\(^{271}\) and former ANDSF members

Afghan security forces, particularly the Afghan National Police (ANP), continue to be the object of targeted campaigns.\(^{272}\) Afghan Local Police (ALP) members are also widely targeted.\(^{273}\) As ALP members are often stationed in more volatile areas, estimates suggest that their casualty rate is considerably higher than that of other ANDSF members.\(^{274}\) Both ALP and ANP officers have been targeted both on duty and off-duty.\(^{275}\) AGEs are also reported to target officers of other police forces in Afghanistan,\(^{276}\) as well as former members of the ANDSF.\(^{277}\)

As noted in Section II.C.1.c, since voter registration commenced on 14 April 2018, AGEs have reportedly targeted election-related personnel, including election workers and Afghan National Police officers, including by means of targeted killings, abductions, threats, intimidation and harassment.\(^{278}\)

\(^{271}\) According to UNAMA, “civilian police personnel who are not directly participating in hostilities and are not involved in counter-insurgency operations” are considered civilians. UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, http://www.refworld.org/docid/5a854a614.html, p. 56.


\[^{274}\] “[W]hen the ALP and similar locally-raised forces first emerged, the Taliban took a particularly harsh approach towards them, with campaigns aimed at killing both local policemen and the elders who backed them. The casualty numbers bear this out, with more ALP killed proportionally than ANA soldiers, at a ratio of 5:7-8, according to an estimate by [the head of the ALP Staff Directorate, Colonel Ali Shah] Ahmadzai. He reported that, each month, 60 to 100 ALP policemen were killed and 400 to 600 wounded. The Taliban also used propaganda to cast the ALP as weak, immoral and isolated, hashish smokers (charis) and the “bastard children of Petraeus”. AAN, Update on the Afghan Local Police: Making Sure They Are Armed, Trained, Paid and Exist, 5 July 2017, https://www.afghanistan-analysis.org/update-on-the-afghan-local-police-making-sure-they-are-armed-trained-paid-and-exist. The Government of Afghanistan established the ALP, or community police, in 2010 to protect villages and districts around the country where army and police have limited presence. Xinhua, 5 Police Killed, 2 Injured in Militants’ Attack in N. Afghanistan, 11 January 2018, http://www.xinhuanet.com/english/2018-01/11/c_136688053.htm.


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

AGEs are widely reported to target civilians who are suspected of collaborating with, or “spying for” pro-government forces, including the ANDSF.²⁷⁹

**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 interpreters or in other civilian capacities.²⁸⁰ There are also reports of AGEs targeting former employees of the international forces and the government.²⁸¹

**e) Humanitarian Workers and Development Workers**

AGEs are reported to target workers who are employed by international or Afghan humanitarian organizations, including Afghan nationals working for UN organizations, employees of international development agencies, and employees of national and international non-governmental organizations.

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²⁸⁰ [Sputnik News](http://www.sputniknews.com/middleeast/201710151058255631)
²⁸¹ [Al Jazeera](https://www.aljazeera.com/news/2016/05/congress-actively-targeting…-Afghan-interpreters)


Women human rights defenders continued to face threats and intimidation by both state and non-state actors across Afghanistan. Most cases were not reported to police because of lack of trust in the security agencies, which consistently failed to investigate and address these threats.
g) 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.\(^286\)

Attacks by AGEs against religious leaders have reportedly increased.\(^287\) Overall, in 2016 and 2017, UNAMA reported a consistent pattern of killings, abductions, threats and intimidation of religious figures by AGEs, stemming from the religious leaders’ “ability to change public attitude through their messages, or their perceived support of the Government.”\(^288\) Additionally, since 2016, several incidents of AGEs killing religious scholars who had “publicly challenged the legality of [AGEs’] quasi-government functions and [who had] raised concern about military operations and violence” have been reported.\(^289\) The Taliban has publically sought to justify the killing of religious figures by describing the victims as Government spies who had attempted to “revise Islamic rules for the benefit of the Government”.\(^290\)

h) 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.\(^291\) There are reports of pervasive targeting of women in the public sphere, including female parliamentarians, provincial council members, civil servants, journalists, lawyers, police officers, teachers, human rights activists

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and women working for international organizations. They have been targeted by AGEs, local traditional and religious power-holders, community members, and government authorities. Women who seek to engage in public life are often perceived as transgressing social norms, condemned as “immoral” and targeted for threats and intimidation, harassment, or violence, including killings.

Law enforcement agencies have reportedly failed to combat impunity for harassment and attacks against women in the public sphere.

i) Individuals perceived as “Westernized”

There are reports of individuals who returned from Western countries having been threatened, tortured or killed by AGEs on the grounds that they were perceived to have adopted values associated with these countries, or they had become “foreigners” or that they were spies for or supported a Western country.

Returnees are reportedly often treated with suspicion by the local community as well as by State government officials, provincial councils, civil servants, journalists, lawyers, police officers, teachers, human rights activists and women who seek to engage in public life, as well as women employed in non-traditional sectors such as policing and security, limiting their ability to participate in these areas due to fear of reprisal.” UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2016, February 2017, http://www.refworld.org/docid/58bd20104.html, p. 17.


[“]People returned to the country [Afghanistan] live in constant fear of being killed or injured in attacks. Others risk persecution for their beliefs, their sexuality, or even looking western.” EU Observer, Afghan Migrant Returns Unlawful, Says Charity, 5 October 2017, https://eueosobserver.com/migration/139290. See also Section III.A.6.
officials, leading to discrimination and isolation.\textsuperscript{299} 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.

\textit{j) Other Civilians Perceived as Supporting the Government or the International Community}

AGEs are reported to abduct\textsuperscript{299} and kill\textsuperscript{300} civilians deliberately to punish them for supporting or being perceived to support the government, with the killings intended to serve as a warning to others.\textsuperscript{301} AGEs are also reported to use different mechanisms to warn civilians against supporting the government, including text messages, local radio broadcasts, social media and “night letters” (\textit{shab nameha}).\textsuperscript{302} In locations where AGEs have been unable to win public support, they are reported to harass and intimidate other civilians perceived as supporting the government.\textsuperscript{303}

\textsuperscript{299} The Swedish Network of Refugee Support Groups reports that returnees from western countries are a small group, marginalized in comparison to the vast amount of Afghans who have arrived from neighbouring countries, mainly Pakistan. They are generally not accepted, and are seen as fraudulent or failures. After several years in the West, they stand out through their appearance and clothing. Swedish Network of Refugee Support Groups (FARR), Utvisning Till Afghanistan Trots Nya Larm – Men Många Räddades, 9 October 2017, http://farr.se/en/aktuellt-a-presse/notisser/1495-gruppputvisning-till-afghanistan-trots-nya-larm, The Danish Refugee Council reports that suspicion of returnees from Europe or “the west” more generally is greater the longer the returnee has stayed outside Afghanistan and the further away the returnee has been. Furthermore, young returnee boys and men are at particular risk of recruitment by extreme groups or criminal networks as a result of their high visibility in rural areas, lack of social networks and income, and lack of refugee Council. Tilbagevenden til Afghanistan, October 2017, https://flytning.dk/media/3886281/tilbagevenden-til-afghanistan-2017.pdf, p. 16. “State authorities perceive young male returnees as a security threat as the lack of education or job opportunities mean that they can easily turn to drug trafficking or are considered soft targets for recruitment by armed non-state actors.” Asyllos, Afghanistan: Situation of Young Male Westernised Returnees to Kabul, August 2017, https://usaha.es/wp-content/uploads/2017/06/AFG2017.05.Afghanistan-Situation-of-young-male-Westernised-returnees-to-Kabul.pdf, p. 18. “In terms of westernized lifestyle and religious issues, they [returnees] aren’t perceived very well. It has been very easy to recognize a person if someone has been to Europe from the way of style, haircut and clothes.” Ibid. “There are times they are excluded from the society.” Ibid. “For someone who has been in Europe for 5 or 6 years and he has been away from religious issues, […] it is very difficult to reintegrate into the family and society.” There have been case that returnees were marginalized by the family because they are too westernized and they can create problems for their brother, their sister and parents, so they tell them don’t come to the area and stay away from us.” Ibid., pp. 37-38. “There is a clear rejection of those who have changed when abroad […] Society fears returnees as they are perceived as intoxicated by western values; some of the youngest ones even picked up an accent when speaking Dari or Pashto, and targeted killings against civilians seen as sympathetic to the government. Civilians are also kidnapped and subject to extortion largely by AOQs.” CIVIC, Saving Ourselves: Security Transition and Impact on Civilian Protection in Afghanistan, 21 November 2016, https://civilsinsconflict.org/wp-content/uploads/2017/09/Afghanistan_CivilianProtection Interactive_FINAL.pdf, p. 11.

\textsuperscript{300} “Anti-Government Elements kidnapped civilians based on suspicions that they had connections to or worked for the Government […] Throughout 2017, UNAMA continued to record the abduction of civilians by Anti-Government Elements, documenting 255 incidents involving the abduction of 1,085 civilians and resulting in 177 of those who died or were injured.” Ibid. “While Anti-Government Elements released many abductees after payment of ransom or intervention by elders, they also killed some – especially those deemed spies. Of the 33 civilian abductions claimed by Talibans, they executed three. […] The 76 civilians killed during abduction incidents in 2017 nearly all died as a result of intentional killings with only a handful of deaths occurring during escape attempts.” UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, http://www.refworld.org/docid/5a5846414.html, p. 34; see also ibid., p. 35.

\textsuperscript{301} “While Anti-Government Elements released many abductees after payment of ransom or intervention by elders, they also killed some – especially those deemed spies. Of the 33 civilian abductions claimed by Talibans, they executed three. […] The 76 civilians killed during abduction incidents in 2017 nearly all died as a result of intentional killings with only a handful of deaths occurring during escape attempts.” UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, http://www.refworld.org/docid/5a5846414.html, p. 34; see also ibid., p. 35. “Islamic State of Khorasan (IS-K) and a resurgent Taliban […] use suicide attacks, IEDs, and targeted killings against civilians seen as sympathetic to the government. Civilians are also kidnapped and subject to extortion largely by AOQs.” CIVIC, Saving Ourselves: Security Transition and Impact on Civilian Protection in Afghanistan, 21 November 2016, https://civilsinsconflict.org/wp-content/uploads/2017/09/Afghanistan_CivilianProtection Interactive_FINAL.pdf, p. 11.

local communities, and to mete out punishments against the local population for supporting or for being perceived as supportive of the Government or rival AGEs.\textsuperscript{303} Civilians accused of “spying 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.\textsuperscript{304}

\textbf{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.\textsuperscript{305} In particular, relatives, including women and children, of government officials and members of the ANDSF have been subjected to harassment, kidnappings, violence, and killings.\textsuperscript{306}

\begin{itemize}
\item[a)] government officials and civil servants;
\item[b)] members of the ANP and ALP and former members of the ANDSF;
\item[c)] civilians associated with or perceived as supportive of the ANDSF / pro-government forces;
\item[d)] civilians associated with or perceived as supportive of the international military forces;
\item[e)] humanitarian workers and development workers;
\item[f)] human rights activists;
\item[g)] other civilians perceived as supporting the government or the international community;
\end{itemize}

\textbf{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 basis of a well-founded fear of persecution at the hands of non-State actors for reasons of their (imputed) political opinion or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution. Such persons include:


\textsuperscript{304} For example, in 2016 UNAMA documented 41 incidents of punishments imposed on civilians by AGE parallel justice structures, resulting in 50 civilian casualties (38 deaths and 12 injured). These punishments included the deliberate killing and/or injuring of a person suspected of the crime of “collaboration” or spying for the Government. UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2016, February 2017, http://www.refworld.org/docid/58bd20104.html, p. 69.


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. 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. Despite a Presidential decree of 31 January 2017 which was reportedly introduced to improve implementation of the laws related to mass media, concerns remain about threats to the rights to freedom of expression and access to information. The 2009 Mass Media Law includes a broadly-worded provision prohibiting the publication of matters contrary to the principles of Islam or offensive to other religions and sects.

The defamation provision of the Media Law is reportedly sometimes used as a pretext to suppress criticism of government officials, with politicians, security officials, and others in positions of power reportedly arresting, threatening, or harassing journalists because of their coverage, in particular those who reported critically on the government and powerful local figures. The government formed a new

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310 “[T]here are broad legal restrictions on content that is deemed ‘contrary to the principles of Islam and offensive to other religions and sects.’ […] [T]he legal framework’s ambiguity has led to muddled implementation. Five media laws have been approved since 2002, and journalists lack clarity on how different provisions are meant to be applied. Article 130 of the constitution vaguely stipulates that courts and Islamic jurists can rule on cases ‘in a way that attains justice in the best manner,’ creating leeway for discriminatory or contradictory rulings.” Freedom House, Freedom of the Press 2016: Afghanistan, 18 October 2016, http://www.refworld.org/docid/582ac6e313.html. See also, US Department of State, 2014 Report on International Religious Freedom: Afghanistan, 14 October 2015, http://www.refworld.org/docid/562105e015.html. An unofficial translation of the 2009 Mass Media Law is on file with UNHCR.

Media Complaints and Violations Investigations Commission under amendments to the Media Law adopted in January 2015; powerful individuals, mostly government officials, have reportedly used the commission as a tool to intimidate and silence journalists. 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 reportedly revert to self-censorship due to concerns for their safety. Violence against journalists is reported to be a serious concern, with incidents of violence reportedly on the rise, and with State authorities reportedly responsible for the majority of incidents of violence and intimidation against journalists in 2017. Women journalists are reportedly at a particular risk of harassment and threats. Many female journalists have been directly

512 Human Rights Watch reported that in 2016 the “Media Violations Investigations Commission, which the government had dissolved in 2015 in response to demands by media watchdogs, was reinstated” but “powerful individuals, mostly government officials, have used the commission as a tool to intimidate and silence journalists.” HRW, World Report 2017: Afghanistan, 12 January 2017, http://www.refworld.org/docid/587b58611.html. “The new commission is supposed to review all cases involving media and journalists before possible referral to prosecutors or the courts, but this procedure was not always observed. In November, the Attorney General’s Office directly summoned the chief editor of the popular newspaper Hasht e Subh (8 AM Daily) for questioning about its coverage, driving objections from civil society groups.” Freedom House, Freedom of the Press 2016: Afghanistan, 18 October 2016, http://www.refworld.org/docid/582ace6313.html.


515 “2017 was the bloodiest year for journalists and media workers in Afghanistan’s history. In 2017, not only violence against journalists increased significantly but the number of journalists killed and targeted attacks against media also increased unprecedentedly. In 2017, there were a total of 169 cases of violence and threats against journalists. Of these, there were 20 cases of killing of journalists and media workers. From among 169 incidents, 12 have been inflicted against female journalists, which makes up 7% of the incidents. The figures of 2017 shows a 65% increase compared to the number of incidents of violence inflicted against journalists and media workers in 2016. In 2016, AJSC recorded a total number of 101 cases. The incidences of killing of journalists has also increased by 54%, as the total number of murders AJSC recorded in 2016 was 13.” AJSC, Six-month Report, Jul-Dec 2017, January 2018, http://ajsc.africa/wp-content/uploads/2018/01/Six-Month-Report-July-Dec-2017-AJSC-English.pdf, p. 2. Nai Supporting Open Media reported that 21 journalists and media staff were killed in 2017, while 41 others injured. 167 violence cases were registered with Nai in 2017. “This is the biggest number of violence cases against journalists and media since 2001.” Nai Supporting Open Media in Afghanistan, Media Watch Annual Report 2017, December 2017, http://www.naisupportopenmedia.org/2017/annual-report-2017.pdf, pp. 2. See also, Freedom House, Freedom of the Press 2017: Afghanistan, 1 November 2017, http://www.refworld.org/docid/596e603a.html; Freedom House, Freedom in the World 2017: Afghanistan, 2 June 2017, http://www.refworld.org/docid/59364d413.html; and Freedom House, Freedom of the Press 2016: Afghanistan, 18 October 2016, http://www.refworld.org/docid/582ace6313.html.


517 “Women in the media are particularly frequent victims, in part because they have public profiles, and often use social media with their real identities. That often attracts men who hurl sexual abuse at them with abandon – often not even bothering to disguise their names. The abuse frequently includes sexually explicit photographs.” The New York Times, Harassment All Around, Afghan Women Weigh Risks of Speaking Out, 10 December 2017, www.nytimes.com/2017/12/10/world/asia/afghan-metro-women-harassment.html. “Those who report abuse – from simple harassment to severe beatings and rape – risk retribution and often more violence, sometimes including murder, for speaking out.” UNAMA, Afghan Women Reporters, Seizing on Global Trends, Empower Voices Against Abuse and Violence, 25 November 2017, https://www.unama.org/afghan-women-reporters-seizing-global-trends-empower-voices-against-violence. “The findings of the Female Journalists Support Center in Afghanistan indicate that in recent years, particularly in the past two years, the presence of women journalists in media outlets has been decreasing day by day in the country. This is more tangible in provinces. The spreading out of war and an increase in the level of insecurity are the main reasons behind the reduction. Female journalists are more prone than male journalists to insecurity both in their work place as well as outside of their work”, Center for The Protection of Women Journalists in Afghanistan, The Continuation of Insecurity Is the Main Cause of Decline in the Number of Women Journalists in Afghanistan, 20 November 2017, www.cpwaj.org/report/2017/11/20/the-continuation-of-insecurity-is-the-main-cause-of-decline-in-the-number-of-women-journalists-in-


afghanistan/.
targeted,forcing them to quit their jobs or indirectly pressured to suspend their activities, or even to flee the country. The perpetrators of violence against journalists are reported to frequently rely on intimidation, threats, beatings, kidnappings, extortion, and targeted killings.

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 with non-state actors reportedly responsible for the majority of killings of journalists in 2017. The Taliban has reportedly targeted regional and private media in a number of attacks, including threats, beatings, kidnappings, extortion, and targeted killings.

There was reportedly an increase in attacks by the Islamic State, which claimed responsibility for several attacks on media outlets in 2017. In April 2018, nine journalists were killed in a double
coordinated suicide attack by Islamic State in Kabul; the second bomber was reportedly disguised as a journalist.  

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 basis of a well-founded fear of persecution at the hands of non-State actors for reasons of their (imputed) political opinion or religious views, or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution. 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. 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.

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. 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 to carry out suicide attacks and be used 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 re-connaissance.


b) Forced and Underage Recruitment by Pro-Government Forces

Despite the government’s efforts to combat underage recruitment, the recruitment of children for military purposes by the ANDSF, particularly the ANP and ALP, and by pro-government militias, reportedly continues.\(^332\) In January 2011 the UN and the Government signed an action plan for the prevention of underage recruitment.\(^333\) In July 2014 the Government endorsed a road map towards compliance with the action plan.\(^334\) 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 ANDSF.\(^335\) The new Penal Code which entered into force on 15 February 2018, contains provisions prohibiting and criminalizing the recruitment and use of children by armed forces.\(^336\) However, despite the Government's efforts to eradicate underage recruitment, challenges are reported to remain, including non-standardised recruitment processes, ineffective age verification procedures and a lack of accountability for underage recruitment.\(^337\)

In August 2017, the UN Secretary-General noted that while advances to strengthen age assessment processes in ANDSF recruitment centres were realized, the lack of


corresponding procedures for ALP recruitment, as well as the continued reliance on pro-government militias for which no recruitment oversight mechanisms are evident, remained a cause for concern. Pro-government armed groups have also been reported to force families to send young men to join the fight against the Taliban and other AGEs.\(^{338}\)

\(c\) 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 basis of a well-founded fear of persecution at the hands of State or non-State actors for reasons of their membership of a particular social group or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution where the actors of persecution are AGEs.

Depending on the specific circumstances of the case, 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 basis of a well-founded fear of persecution for reasons of their membership of a particular social group or other relevant grounds.

Men of fighting age and children who resist forced recruitment by either State or non-State actors may also be in need of international refugee protection basis of a well-founded fear of persecution for reasons 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.\(^{340}\) 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.\(^{341}\)

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.\(^{342}\) The use of torture is criminalized in the Penal

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\(^{338}\) According to B. Osman, analyst with the AAN, due to the “absence of a strong religious ideology in the recruitment rhetoric in pro-government militias and because the aim of these militias often serves the political fortunes of the local strongman, commanders will more easily resort to coercive strategies of recruitment. In […] not-so-rare cases, [pro-government militias] have used very direct force”. B. Osman, analyst with the AAN, as quoted in EASO, Country of Origin Information Report, Afghanistan: Recruitment By Armed Groups, September 2016, [http://www.refworld.org/docid/57e145c44.html](http://www.refworld.org/docid/57e145c44.html), p. 37. See also HRW, Afghanistan: Proposed Militia a Threat to Civilians, 15 September 2017, [https://www.hrw.org/news/2017/09/15/afghanistan](https://www.hrw.org/news/2017/09/15/afghanistan).


\(^{341}\) The Paris Principles: “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](http://www.refworld.org/docid/465198442.html), paras 3.6 and 3.7.

\(^{342}\) Articles 27 and 29 of the Constitution of Afghanistan, 3 January 2004, [http://www.refworld.org/docid/404d8a594.html](http://www.refworld.org/docid/404d8a594.html). Afghanistan has ratified the Convention Against Torture (CAT). On 17 April 2018 it acceded to the Optional Protocol, which establishes a system of independent monitoring visits to detention centres. See [http://indicators.ohchr.org/](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).
while harsh punishment against children is prohibited in the Juvenile Code. Additionally, in January 2018 the upper house of the National Assembly approved the consolidated text of a new anti-torture law.

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 (including the Afghan National Border Police, ANBP), ANA and ALP. In 2017 UNAMA reported that the use of torture was “systematic or regular and prevalent” in NDS facilities in five provinces, with sufficiently credible and reliable reports of torture in NDS custody recorded in 17 other provincial and national NDS facilities. UNAMA also documented a “systematic use of torture and ill-treatment” in ANP or ANBP detention facilities in Kandahar and Nangarhar provinces, as well as “reports of violations in 20 other provinces, with particular concerns over the treatment of detainees by the ANP in Farah and Herat provinces.”

Among the detainees who were found to have been subjected to torture were children.

Afghanistan, Penal Code, as published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Articles 450 and 451.


“...the custody of ANDSF. UNAMA, as published in the Official Gazette No. 846, 23 March 2005, paragraph 23.

UNAMA found indications of the regular and prevalent use of torture by NDS in Herat, Nangarhar, and in NDS facilities. “Systemic Torture” in ANP custody since UNAMA began its systematic monitoring of conflict treatment by ANP in Kandahar, where “an unprecedented 91 per cent” of those interviewed gave credible accounts of being subjected to torture or other forms of ill-treatment under international law. This indicates a worrisome return to the systematic use of torture and ill-treatment by NDS Kandahar, which was last documented by UNAMA in 2011-2012.” Ibid. Similarly, in June 2017 the UN Committee Against Torture expressed deep concern especially regarding the situation in Kandahar province following numerous reports on “(a) the worrisome number of detainees of the National Directorate of Security and the national police who have allegedly experienced torture or ill-treatment, including suffocation, crushing of the testicles, water forcibly pumped into the stomach and electric shocks; and (b) the allegations that the national police have been responsible for incommunicado detention, enforced disappearances, mass arbitrary detention and extrajudicial killings, during counter-insurgency operations.” UNAMA Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, http://www.refworld.org/docid/596f4f754.html, para. 9. See also, HRW, Afghanistan’s Entrenched Systemic Torture, 19 April 2017, https://www.hrw.org/news/2017/04/19/afghanistans-entrenched-systemic-torture.

The high levels of torture and ill-treatment by NDS in Kandahar and Farah suggest the systematic use of torture and ill-treatment in these facilities. UNAMA found indications of the regular and prevalent use of torture by NDS in Herat, Nangarhar, and in NDS 241 (Counter Terrorism Department) in Kabul.” UNAMA, Treatment of Conflict-Related Detainees, April 2017, p. 24. According to UNAMA, especially the “treatment of detainees by NDS in Kandahar remains a major concern. UNAMA found that 60 per cent of those interviewed who were detained at the NDS provincial facility in Kandahar gave credible and reliable accounts of having experienced torture or other forms of ill-treatment prohibited under international law. This indicates a worrisome return to the systematic use of torture and ill-treatment by NDS Kandahar, which was last documented by UNAMA in 2011-2012.” Ibid.

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“...the custody of ANDSF. UNAMA, as published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Articles 450 and 451.


UNAMA, Treatment of Conflict-Related Detainees, April 2017, p. 9. Of the 172 detainees in ANP custody interviewed by UNAMA between 1 January 2015 and 31 December 2016, 77 (45 per cent) gave credible accounts of being subjected to torture or other forms of ill-treatment. This represents a 14 per cent increase compared to the previous observation period and is the highest level of reported torture and ill-treatment in ANP custody since UNAMA began its systematic monitoring of conflict-related detainees in 2010. UNAMA documented the highest levels of torture and other forms of ill-treatment by ANP in Kandahar, where “an unprecedented 91 per cent” of those interviewed gave credible accounts of being subjected to torture or ill-treatment. UNAMA, Treatment of Conflict-Related Detainees, April 2017, p. 31.

Overall, of the 85 underage detainees interviewed by UNAMA between 1 January 2015 and 31 December 2016, 38 (45 per cent) gave credible accounts of being subjected to torture or ill treatment whilst in the custody of ANDSF. UNAMA, Treatment of Conflict-Related Detainees, April 2017, pp. 6-7, 9, 24. In June 2017 the UN Committee Against Torture stated that it was “deeply concerned by the numerous allegations that at least 160 children in Parwan are detained with and under the same regime as adult detainees […] the Committee is further concerned by reports that minors associated with armed groups involved in insurgent movements are being punished instead of rehabilitated.” UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, http://www.refworld.org/docid/596f4f754.html, para. 17. In December 2016, 167 boys were detained on national security charges, including for alleged association with armed groups. UNSG, Children and Armed Conflict, 24 August 2017, A/72/361-S/2017/821, http://www.refworld.org/docid/59db4a194.htm, para 23.
UNAMA also reported incidents of extrajudicial killings and enforced disappearances of detainees held by the ANP and ALP.\(^{352}\) Torture is reportedly used by the NDS, ANP and ALP as a means of obtaining confessions, with criminal courts reportedly routinely allowing these to be used as evidence.\(^{353}\) Despite the efforts by the NDS to improve internal oversight mechanisms, “a pervasive culture of impunity” reportedly persisted.\(^{354}\)

Concerns also continue to be raised about arbitrary detention.\(^{355}\) In addition, amendments to the Criminal Procedure Code introduced in 2015 “allow security personnel to hold suspects accused of terrorist crimes and crimes against internal and external security for up to 70 days without requiring those suspects to be brought before a judge”, leaving suspects more vulnerable to ill-treatment.\(^{356}\) 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.\(^{357}\) ALP and ANDSF officers as well as members of pro-government armed groups also reportedly use threats, intimidation and physical violence against civilians suspected of supporting AGEs,\(^{358}\) while in some instances such civilians have reportedly been killed,\(^{359}\) including family members of AGE recruits.\(^{360}\)

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353 In June 2017, the UN Committee Against Torture expressed concern regarding the “numerous reports […] that beatings, electric shocks, suspensions, threats, sexual abuse, and other forms of mental and physical abuse are widely and increasingly practised on detainees in custody in facilities run by the National Directorate of Security, the Afghan National Police and the Afghan Local Police primarily to extract confessions or information to be used in criminal proceedings.” CAT, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, http://www.refworld.org/docid/596f4f754.html, para. 9. “In the majority of cases, the detainees interviewed for this report stated that the torture was inflicted in order to force them to confess, and that the torture and ill-treatment stopped once they had signed or thumb-printed a confession. Many of those interviewed stated that they did not understand or could not read what was written on the ‘confession’ and almost all stated that they had no access to a lawyer before they signed the confession.” UNAMA, Treatment of Conflict-Related Detainees, April 2017, p. 6; see also ibid., p. 46.

354 UNAMA, Treatment of Conflict-Related Detainees, April 2017, p. 8; see also ibid., p. 12. In June 2017 the UN Committee Against Torture stated that it remained “gravely concerned about the general climate and culture of impunity in Afghanistan, as evidenced by the large number of cases of alleged human rights violations involving senior State officials.” Furthermore, the Committee expressed concern over “numerous and credible allegations that complaints of torture and ill-treatment are dismissed due to the absence of documentation of physical signs of torture, possibly because no medical examination was conducted or was conducted too late to document them.” UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, http://www.refworld.org/docid/596f4f754.html, para. 7, 11.


358 In 2017 UNAMA documented 13 incidents of threat, intimidation, and harassment by ALP officers, causing the injury of 12 civilians, including severe beating of civilians, burning of homes, and harassment of staff and patients at medical facilities. On 4 October 2017, in Ali Abad district, Kunduz province, ALP officers blocked the movement of approximately 100 village residents to the district centre and bazaar, preventing them from attending work and selling their goods in the bazaar after accusing the residents of supporting AGEs, reportedly due to the ethnicity of the residents. UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, http://www.refworld.org/docid/5a854a66a.html, p. 50. Additionally, in 2017 in Sar Pal city. ALP burnt down at least four homes of civilians they believed related to AGEs and tortured one man by beating him to the extent requiring hospitalization in retaliation for the AGE abduction of five sons of an ALP commander. UNAMA, Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict, 2017, July 2017, http://www.refworld.org/docid/596e0b5e4.html, p. 59. For example, in 2017 UNAMA reported that a 60-year-old man suspected of supporting the Taliban was shot dead by ANP officers, following his arrest in Shah Wali Kot district, Kandahar province. Additionally, civilian victims reportedly mistaken for AGE members by ANDSF accounted for 38 civilian casualties in 2017, including 23 civilians killed and 15 injured during 26 incidents. UNAMA also recorded an incident of ALP opening fire on residents of Darzab district, Jawzjan province on 18 July 2017 after accusing the residents of providing food, water and shelter to Islamic State fighters, injuring a woman and two men. UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, http://www.refworld.org/docid/5a854a66a.html, pp. 48-49.

In areas where armed groups affiliated to Islamic State are present, civilians suspected of supporting the Taliban have reportedly been threatened and killed by such groups.\textsuperscript{361}

In light of the foregoing, UNHCR considers that civilians suspected of supporting AGEs may be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of the State for reasons of (imputed) political opinion or other relevant Convention 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.\textsuperscript{362} 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.\textsuperscript{363} 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.\textsuperscript{364}

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.”\textsuperscript{365} However, the Constitution also declares that Islam is the official religion of the State\textsuperscript{366} and that “[n]o law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan.”\textsuperscript{367} 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.\textsuperscript{368} Afghan jurists and government officials have been criticized for giving precedence to Islamic law over Afghanistan’s obligations under international human rights law,\textsuperscript{369} in situations where

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\textsuperscript{363} 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/4b2f4f6d2.html, paras 58-64.

\textsuperscript{364} 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, paras 3.6 and 3.7.


\textsuperscript{366} Ibid.

\textsuperscript{367} Ibid. Article 149 of the Constitution places restrictions on any future amendments of the Constitution and provides, among other restrictions, “[t]he principles of adherence to the tenets of the Holy religion of Islam as well as Islamic Republicanism shall not be amended.”

\textsuperscript{368} Ibid., Article 130. The Hanafi school of Islamic jurisprudence is one of four schools of Sunni Islamic jurisprudence. The Office of Fatwa and Accounts within the Supreme Court interprets Hanafi jurisprudence when a judge needs assistance in understanding its application. US Department of State, 2014 Report on International Religious Freedom: Afghanistan, 14 October 2015, http://www.refworld.org/docid/562105e015.html. Matters of family law concerning members of the Shi‘ite minority in Afghanistan are governed by the Shi‘ite Personal Status Law, which was adopted pursuant to Article 131 of the Constitution of Afghanistan: Shi‘ite Personal Status Law, March 2009, http://www.refworld.org/docid/4a24ed5b2.html.

\textsuperscript{369} 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 Afghanistan has joined, and the Universal Declaration of Human Rights shall be respected.” Constitution of Afghanistan, 3 January 2004, http://www.refworld.org/docid/404d8a594.html.
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.\textsuperscript{370}

\textit{a) Minority Religious Groups}

Non-Muslim minority groups, particularly Christian, Hindu, and Sikh groups, continue to suffer discrimination under the law.\textsuperscript{371} 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.\textsuperscript{372}

The 2017 Penal Code addresses “crimes of insulting religions”, making it an offence to intentionally insult a religion or disrupt its rites or destroy its permitted places of worship or any symbols respectable to followers of a religion.\textsuperscript{373} It is also a crime to attack a follower of any religion who lawfully performs religious rituals through public means, or to insult or distort beliefs or provisions of Islam.\textsuperscript{374} In addition, it is a crime to incite discrimination on the grounds of religion.\textsuperscript{375}

Nevertheless, non-Muslim minority groups are reported to continue to suffer societal harassment and in some cases violence.\textsuperscript{376} Members of religious minorities such as Baha’is and Christians reportedly avoid stating their beliefs publicly or gathering openly to worship, out of fear of discrimination, ill-
treatment, arbitrary detention, or death. Non-Muslim women reportedly feel compelled to wear a burqa or other face veils to increase their security in public and to decrease societal pressures.

In the period between 1 January 2016 and 7 November 2017, UNAMA “documented 51 incidents of: attacks against places of worship and persons exercising their right to religious worship, observance, and practice and targeted killings, abductions, and intimidation of religious scholars and religious leaders, mainly by AGEs. These incidents resulted in 850 civilian casualties (273 persons killed and 577 injured), nearly double the number of civilian casualties recorded in such attacks during the entire previous seven-year period from 2009 to 2015.” In 2016 and 2017, religious leaders were reportedly consistently and increasingly targeted for killings, abductions, threats and intimidation, mainly by AGEs. Religious scholars have reportedly also been targeted on a number of occasions by AGEs, while pro-government forces have reportedly targeted imams of mosques perceived as supporters of AGEs.

Analysts have expressed concern that certain provisions included in a new draft law on freedom of assembly will in particular restrict religious minorities’ rights; the draft law reportedly designates as unlawful protests, “gatherings, strikes, demonstrations and sit-ins on the basis of ethnic, religious and regional demands.”

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 were infidels. Baha’is are reported to have lived a covert existence since the ruling.

Christians

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377 “Members of the Christian community, who often had converted to Christianity while in other countries, said they continued to worship alone or in small congregations in private homes out of fear of societal discrimination and persecution.”


380 “UNAMA began systematic documentation of civilian casualties as a result of armed conflict in Afghanistan in 2009. From 1 January 2009 to 31 December 2015, UNAMA recorded a total of 475 civilian casualties (164 killed and 311 injured) from attacks against people and places of worship.”


382 Religious leaders are reportedly targeted by AGEs because of their ability to influence public attitudes or because of their perceived support of the government. UNAMA, Protection of Civilians in Armed Conflict: Attacks Against Places of Worship, Religious Leaders and Worshippers, 7 November 2017, http://www.refworld.org/docid/5a0b0b534.html, p. 2; for additional examples of specific incidents see ibid., pp. 2-3. “UNAMA also notes concern with the use of abduction of religious leaders and scholars by Anti-Government Elements, particularly Taliban, as a tactic of intimidation, warning or method to coerce support.” Ibid., p. 2. “UNAMA documented a disturbing increase in attacks against places of worship, religious leaders and worshippers, recording 499 civilian casualties (202 deaths and 297 injured) during 38 attacks in 2017. This amounted to three times as many attacks as in 2016, double the number of deaths and 30 per cent more total civilian casualties.”


386 US Department of State, 2016 Report on International Religious Freedom: Afghanistan, 15 August 2017, http://www.refworld.org/docid/59b7d8f4a.html. “As in the previous two years [2014 and 2015], there were no reports of prosecutions for blasphemy or apostasy during the year, including of Bahais who, although labeled infidels, were not considered to be converts and as such not charged with either crime. One individual convicted of blasphemy in 2013 remained in prison serving a 20-year sentence.”

387 See also, for example, Baha’i Awareness, Fatwa of Ulama Council of Afghanistan, August 2011, http://www.bahaiawareness.com/fatwas.afghanistan.html.

Societal attitudes towards Christians reportedly remained openly hostile, and Christians are effectively forced to conceal their faith.\textsuperscript{385} There are no public churches left in Afghanistan, and Christians worship alone or in small congregations in private homes.\textsuperscript{386} In 2013 four Members of Parliament reportedly called for the execution of converts to Christianity.\textsuperscript{387}

**Shi’ites**

According to Shi’ite representatives, the number of Shi’ites holding government positions is not proportional to Shi’ites’ overall representation in the population.\textsuperscript{388} While some sources report that overt discrimination by Sunnis against the Shi’ite community has decreased,\textsuperscript{389} other sources report that such discrimination continues in certain localities.\textsuperscript{390} AGEs reportedly viewed Shi’ites as “infidels”, “apostates” or “half-Muslims”.\textsuperscript{391} Moreover, violent attacks by AGEs targeting the Shi’ite population have reportedly increased significantly since 2016.\textsuperscript{392} Attacks by AGEs are reported to have included disappearances and abductions, targeted killings, targeting of Shi’ites at places of worship or villages, as well as complex and suicide attacks.\textsuperscript{393} It should be noted that in Afghanistan ethnicity and religion

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\textsuperscript{387} 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.” US Department of State, 2014 Report on International Religious Freedom: Afghanistan, 14 October 2015, http://www.refworld.org/docid/5621f0e13.html.


are often inextricably linked, especially in the case of the Hazaras, who are predominantly Shi'ites.394 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.395

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.396 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.397 On 1 July 2018, a suicide bombing in Jalalabad claimed by Islamic State reportedly killed 19 people and injured 20 others; 17 of the individuals killed were Sikhs and Hindus.398 High-ranking government officials are reported to have told Sikhs that they were “not from Afghanistan”, that they were “Indians”, and that they “did not belong here.”399 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 access to justice, political participation and government jobs.400 They reportedly continue to face societal discrimination and intimidation.401 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 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. Sikhs and Hindus have reportedly been victims of illegal occupation and seizure of their land. Members of the Sikh and Hindu communities reportedly refrain from pursuing restitution through the courts, for fear of retaliation. There is reportedly only one government school remaining for Sikh children, and many of the private schools for Sikhs are reported to have closed; as there is not a separate school for Hindus, some Hindu children are reportedly sent to Sikh schools. Hindu and Sikh children attending government schools in Kabul are reported to be subjected to harassment and bullying by other students.

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.

b) Conversion from Islam

Conversion from Islam is considered apostasy; under the courts’ interpretation of Islamic law it is punishable by death. 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


403 US Department of State, 2016 Report on International Religious Freedom: Afghanistan, 15 August 2017, http://www.refworld.org/docid/59b7d8f4a.html; Reuters, Afghanistan’s Dwindling Sikh, Hindu Communities Feel New Abuses, 22 June 2016, http://www.reuters.com/article/us-afghanistan-minority-idUSKCN0Z82SL; APPRO, Afghanistan Rights Monitor: Baseline Report, April 2016, https://www.baag.org.uk/sites/www.baag.org.uk/files/resources/attachments/2016%2005%2020-%20ARM%20Baseline%20Assessment.pdf, p. 55. In a country guidance judgment, the UK Upper Tribunal held that, at the local level, the police may not be able to provide protection even if there is a willingness to do so. United Kingdom Upper Tribunal (Immigration and Asylum Chamber), TG and others (Afghan Sikhs persecuted) Afghanistan CG, [2015] UKUT 00595 (IAC), 3 November 2015, http://www.refworld.org/pdfid/56d1c3fd4.html. See also the evidence provided by Dr. Giustozzi to the Tribunal, quoted in the judgment at para. 39. “On 5 February 2017, information obtained by the British Embassy, from Senator Anarkali Hunaryar, stated as regards to District 21 [an area annexed to Kabul Municipality which has not yet been developed but which has been provided for Hindus and Sikhs for the purposes of building residential units and a cremation ground] that ‘[T]he Majority of the people from the Hindu/Sikh community weren’t in favour of residing in the area far away from the main city citing security issues. The land is allotted to the community and they may think of developing it in the future although the municipality was ready to work with them on the development of the area.’” United Kingdom: Home Office, Country Policy and Information Note: Afghanistan: Hindus and Sikhs, 7 February 2017, Version 3.0, http://www.refworld.org/pdfid/589f78314.html, para. 7.6.3, citing British Embassy letter, 5 February 2017, Annex A.

404 “According to the Sikh and Hindu Council, there had been 64 gurdwaras (Sikh temples) and mandus (Hindu temples) across the country, but residents of Kandahar, Ghazni, Paktia, and other provinces had seized approximately 30 sites in previous years. Fourteen of those remaining continued to be active, including two sites belonging to the Hindu community.” US Department of State, 2016 Report on International Religious Freedom: Afghanistan, 15 August 2017, http://www.refworld.org/docid/59b7d8f4a.html; Al Jazeera, The Decline of Afghanistan’s Hindu and Sikh Communities, 1 January 2017, https://www.aljazeera.com/indepth/features/2016/12/decline-afghanistan-hindu-sikh-communities-161225082540860.html.


citizens over age 18 or female citizens over age 16 of sound mind who convert from Islam and who do not recant their conversions within three days risk the invalidation of their marriage, and deprivation of all property and possessions. They may also face rejection from their families and community members, and loss of employment.\textsuperscript{410} Individuals who have converted from Islam reportedly fear for their physical safety.\textsuperscript{411}

Proselytizing to try to convert individuals from Islam to another religion is also reportedly illegal according to Hanafi jurisprudence and subject to the same punishment as apostasy.\textsuperscript{412} Public opinion is reportedly hostile towards individuals and organizations that proselytize.\textsuperscript{413} Lawyers who assist defendants accused of apostasy may reportedly themselves be charged with apostasy and may be at risk of death threats;\textsuperscript{414} accused individuals reportedly usually do not have access to a defence attorney or other procedural safeguards.\textsuperscript{415}

c) Other Acts Contravening Sharia Law

In addition to the provisions in the 2017 Penal Code that criminalize the acts of insulting or distorting of Islamic religious beliefs, Afghanistan’s courts also rely on Islamic law in relation to blasphemy.\textsuperscript{416} 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; there is reportedly no clear process for recanting under Sharia law.\textsuperscript{417}

Furthermore, persons accused of committing crimes against Sharia law, such as apostasy, blasphemy, having consensual same-sex relations, or adultery (\textit{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.\textsuperscript{418}


\textsuperscript{415} “Assuming or defending any right to criticize, abandon or renounce Islam is considered a taboo even by many people who adhere to broadly democratic values.” International Humanist and Ethical Union, The Freedom of Thought Report: Afghanistan, 1 November 2016, http://freethoughtreport.com/countries/asia-southern-asia/afghanistan/.

\textsuperscript{416} EASO, Individuals Targeted under Societal and Legal Norms, December 2017, https://www.refworld.org/docid/55a38ce314.html, p. 25, citing an email from Dr. Neamatollah Nojumi received by EASO on 22 September 2017 and comments from his review of this EASO report.

\textsuperscript{417} This can include anti-Islamic writings or speech, although the Constitution protects freedom of expression and the press. The Mass Media Law of 2009 (Chapter 8, Article 31) prohibits the publication of matters contrary to the principles of Islam and offensive to other religions and sects. Freedom House, Freedom of the Press 2015: Afghanistan, 4 September 2015, http://www.refworld.org/docid/550012636.html. An unofficial translation of the 2009 Mass Media Law is on file with UNHCR.

\textsuperscript{418} “Blasphemy, which may include anti-Islamic writings or speech, is a capital crime according to the Hanafi school of jurisprudence applicable in the courts. Similar to apostates, blasphemes have three days to recant or face death, although there is no clear process for recanting under sharia. Some hadiths (sayings or traditions of the Prophet Muhammad that serve as a source of religious law or guidance) address the issue, suggesting discussion and negotiation with an apostate to encourage the apostate to recant.” US Department of State, 2016 Report on International Religious Freedom: Afghanistan, 15 August 2017, http://www.refworld.org/docid/59b7d8f4a.html. See also, The Guardian, Afghan Newspaper’s ‘Blasphemy’ Causes Protests after Rebuking Isis and Islam, 24 October 2014, http://www.theguardian.com/world/2014/oct/24/afghanistan-express-article-isis-taliban-islam-blasphemy.

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 depending on the individual circumstances of the case be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of State or non-State actors for reasons of religion or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution where the actors of persecution are non-State actors.  

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.420

In areas where the Taliban are trying to win the hearts and minds of the local population, the Taliban have reportedly softened their stance.421 However, once areas are under its effective control, the Taliban are reported to enforce a strict interpretation of Islamic principles, norms and values.422 There are reports of officers of the Taliban’s Ministry for the Promotion of Virtue and the Prevention of Vice patrolling

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420 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/409089794.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/4af6a82d.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.KSA, Verwaltungsgericht (VG) Kassel, judgment of 27 July 2010, http://www.asyl.net/fileadmin/user_upload/dokumente/18127.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.

421 For analysis of the situation of religious leaders who are at risk from AGES, see Section III.A.6.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. The Taliban has publicly sought to justify the killing of religious figures by describing the victims as Government spies who had attempted to “revise Islamic rules for the benefit of the Government”. UNAMA, Protection of Civilians in Armed Conflict: Attacks against Places of Worship, Religious Leaders and Worshippers, 7 November 2017, http://www.refworld.org/docid/596605e54.html. In May 2017, AGES abducted a 14-year-old boy in Durah Suf-e-Payin district, Samangan province after he was seen in a video of a wedding posted on social media dancing in a manner that the AGES deemed ‘immoral’.

422 UNAMA, Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017, July 2017, p. 43. In 2016, the Taliban and other insurgent groups continued to threaten religious leaders with death for preaching messages contrary to the Taliban’s interpretation of Islam or its political agenda. The Taliban also continued to warn mullahs not to perform funeral prayers for government security officials. Between June and September 2016 in the Rodat and Momand Dara districts of Nangarhar, the Taliban reportedly killed a number of clerics, including two imams. As a result, according to the director of madrassas at the MOHRA, imams stated they feared performing funeral rites for ANDSF and other government employees. The Taliban also continued to monitor the social habits of local populations in areas under their control and imposed punishments on residents according to their interpretation of Islamic law. Insurgents claiming affiliation with Islamic State continued to engage in similar activities, US Department of State, 2016 Report on International Religious Freedom: Afghanistan, 15 August 2017, http://www.refworld.org/docid/5967d86a.html.


423 According to media reports, Taliban has strengthened its control of the Badakhshan province and have “imposed harsh rules in the two districts [of Wardaj and Yagnjan] in the name of implementing the Islamic Shi’i’a law […] After capturing the region, they first collected a 65

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the streets, and people are reportedly detained for shaving their beards or for using tobacco. 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; women and men who violate the rules have reportedly been punished by public lashings or have even been killed. In areas controlled by groups affiliated with Islamic State, a puritanical way of life is reportedly enforced with strict decrees and punitive actions. Strict rules, including dress codes, and reduced freedom of movement have been reportedly applied to women.

Based on the evidence presented above, UNHCR considers that persons perceived as contravening the AGEs’ interpretation of Islamic principles, norms and values may, depending on the individual circumstances of the case, be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of non-State actors for reasons of religion, imputed political opinion, or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution.

7. Women with Certain Profiles or in Specific Circumstances

Since 2001, the Government has taken a number of steps to improve the situation of women in the country, including the adoption of measures to increase women’s political participation and the freedom of movement have been reportedly applied to women.
establishment of a Ministry for Women’s Affairs. However, the incorporation of international standards for the protection of women’s rights into national legislation has run into recurrent difficulties. The Law on Elimination of Violence against Women (EVAW law) was approved by presidential decree in 2009, but continued to be opposed by conservative Members of Parliament and other conservative activists.

The revised Penal Code of Afghanistan, which was adopted by presidential decree on 4 March 2017, initially incorporated all the provisions of the EVAW law, and strengthened the definition of rape. However, in response to opposition from conservatives, in August 2017 President Ghani ordered the Ministry of Justice to remove the EVAW chapter from the new Penal Code. While the new Penal Code entered into force in February 2018, a presidential decree dated 3 March 2018 clarified that the 2009 EVAW law continued to remain in force as a stand-alone law.


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. MoWA, MoWA History, undated, http://mowa.gov.af/en/page/1331/1332/mowa-history. For more information on the mandate and activities of the Ministry, see http://mowa.gov.af/en/. All of the 34 provinces have a Department of Women’s Affairs (DoWA) which reports to the MoWA. Women can present their complaints to the local DoWA or to the Department of Huqooq, which operates under the Ministry of Justice. Additionally, in 2018 the DoWAs in four provinces (Badakhshan, Balkh, Samangan and Takhar) offered the services of Gender Focal Points offering legal advice to women. The provinces of Kunduz, Sar-e-Pol and Jawzjan are expected to roll out similar schemes in the future. See German Cooperation with Afghanistan, About 100 Gender Focal Points in Afghan Provinces: Facilitating Women’s Access to Justice, 20 April 2018, http://www.germancooporation-afghanistan.de/en/news/about-100-gender-focal-points-afghan-provinces-facilitating-women%E2%80%99s-access-justice; 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. 14.


The 2018 Penal Code originally included a specific chapter on the elimination of violence against women. This chapter incorporated the provisions criminalising the majority of the 22 acts set out in Article 5 of the EVAW Law, but also included new provisions prohibiting both the detention of women on charges of ‘running away’ and the practice of ‘exchange marriage’ or baldal (when freezing families or clans exchange brides in settlement of disputes). UNAMA, Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women, May 2018, http://www.refworld.org/docid/5b1a749f4.html, p. 16.

HRW, World Report 2018: Afghanistan, 18 January 2018, http://www.refworld.org/docid/5a6f1eec4.html. “The final version of the 2018 Penal Code did not include any reference to criminal offences of violence against women (with the exception of rape), and required a later amendment to the Code in order to make EVAW Law crimes enforceable. This amendment was necessary since Articles 7 and 8 of the 2018 Penal Code explicitly prohibit the enforcement of any punishment not provided for in the Penal Code itself.” UNAMA, Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women, May 2018, http://www.refworld.org/docid/5b1a749f4.html, p. 17.

Overall, improvements in the situation of women and girls have reportedly remained marginal.436 According to the Asia Foundation “limited access to education and health care, restrictions on freedom of movement, unjust punishment for ‘crimes of morality’, unequal participation in government, forced marriage, and violence” remain major challenges for women and girls in Afghanistan.437 Rates of depression due to domestic violence and other human rights violations are reportedly on the rise among Afghan women,438 with women reportedly committing 80 per cent of suicides in Afghanistan, while other women resort to self-immolations.439

The AHRC noted that violence against women remains a “widespread, common and undeniable reality”440 with women in insecure provinces as well as in the rural areas of Afghanistan especially
vulnerable to violence and abuse. Impunity in relation to such violence is reportedly common. Sexual harassment and deep-rooted discrimination against women is reported to remain endemic.

Women are said to continue to face serious challenges to the full enjoyment of their economic, social and cultural rights. Despite advances, poverty, illiteracy, and poor health care reportedly continue to affect women disproportionately.

Observers have noted that the implementation of legislation to protect women’s rights remains slow, including in particular the implementation of the EVAW law. The law 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 penalties for

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441 “Burning/setting on fire, sexual harassment, murder, honor killing, forced prostitution, trafficking, forced addiction, sexual assault, forced pregnancy, buying and selling women under the pretext of marriage, forced abortion, husbands’ polygamy, mutilations, beating and battering, deprivation of freedom of choosing spouse, denial of the right to education, prevention from working outside the home, denial of relative visits, prevention of political and civic activities, deprivation of the right to heritage, the deprivation of the right to private properties, forced engagement, non-provision of alimony, non-payment of Mahria, forced labor, insulting, humiliating, and negating relationship are the most important challenges for women in the villages and rural areas of the country, which have been registered and addressed as a result of continuous monitoring of the AHRC over the past three years.” AHRC, Human Situation of Women and Girls Living in the Villages of Afghanistan, 11 March 2018, http://www.refworld.org/docid/5b4313694.html, p. 18.


443 According to IWPR, 56 per cent of Afghan women do not hold identity cards and are consequently denied access to a wide range of services, including access to basic facilities from medical care, education and banking to employment and voting. According to IWPR the most common reason for the lack of IDs is the denial of permission to apply for ID card by the woman’s family. IWPR, Afghan Women Denied Identity Cards, 27 March 2017, https://iwpr.net/global-voices/afghan-women-denied-identity-cards. See also, AHRC, Press Release on Violence against Women: The Causes, Grounds, and Situation of Violence Against Women in Afghanistan, 25 November 2017, p. 4; Foreign Policy, Afghanistan Ranks Among the Worst Places in Asia for Girls to Get an Education, 17 October 2017, http://foreignpolicy.com/2017/10/17/afghanistan-ranks-worst-places-girls-to-get-an-education-africa/.

444 “Burning/setting on fire, sexual harassment, murder, honor killing, forced prostitution, trafficking, forced addiction, sexual assault, forced pregnancy, buying and selling women under the pretext of marriage, forced abortion, husbands’ polygamy, mutilations, beating and battering, deprivation of freedom of choosing spouse, denial of the right to education, prevention from working outside the home, denial of relative visits, prevention of political and civic activities, deprivation of the right to heritage, the deprivation of the right to private properties, forced engagement, non-provision of alimony, non-payment of Mahria, forced labor, insulting, humiliating, and negating relationship are the most important challenges for women in the villages and rural areas of the country, which have been registered and addressed as a result of continuous monitoring of the AHRC over the past three years.” AHRC, Human Situation of Women and Girls Living in the Villages of Afghanistan, 11 March 2018, http://www.refworld.org/docid/5b4313694.html, p. 18.

445 According to IWPR, 56 per cent of Afghan women do not hold identity cards and are consequently denied access to a wide range of services, including access to basic facilities from medical care, education and banking to employment and voting. According to IWPR the most common reason for the lack of IDs is the denial of permission to apply for ID card by the woman’s family. IWPR, Afghan Women Denied Identity Cards, 27 March 2017, https://iwpr.net/global-voices/afghan-women-denied-identity-cards. See also, AHRC, Press Release on Violence against Women: The Causes, Grounds, and Situation of Violence Against Women in Afghanistan, 25 November 2017, p. 4; Foreign Policy, Afghanistan Ranks Among the Worst Places in Asia for Girls to Get an Education, 17 October 2017, http://foreignpolicy.com/2017/10/17/afghanistan-ranks-worst-places-girls-to-get-an-education-africa/.
for perpetrators. The committee remains deeply concerned by the high prevalence of violence against women in the State party, in particular domestic violence, rape, battery, laceration, crimes committed in the name of so-called ‘honour’ and cases of stoning. It is concerned that the [EVAW] Law is not equally implemented in all provinces and that very few cases from rural or remote areas have been registered, those cases being frequently mediated through traditional dispute resolution mechanisms or undeclared by victims owing to familial and social pressure.”


Between 2015-2017 UNAMA documented and monitored 237 cases of violence against women reported to EVAW Law institutions in 22 provinces. The majority of these cases were referred to the traditional dispute resolution mechanisms, in violation of the EVAW Law. “UNAMA found that traditional dispute resolution mechanisms in all provinces of Afghanistan resolved criminal offences of violence against women, including murder, ‘honour killings’ and the five serious offences set out in Articles 17-21 of the EVAW law following direct referrals by families, referrals by EVAW Law institutions, and in some cases through subsequent participation of those EVAW institutions […] Such mechanisms operate in an unofficial and unregulated capacity, their decisions in criminal cases are unlawful, and as such, are not subject to any Government oversight or scrutiny.” UNAMA, Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women, May 2018, http://www.refworld.org/docid/5b1a74a64.html, p. 27; see also HRW, Afghanistan Government Ignoring Violence Against Women, 30 May 2018, https://www.hrw.org/news/2018/05/30/afghanistan-government-ignoring-violence-against-women.

As far as informal justice was concerned, the delegation noted that, unfortunately, some civil society and non-governmental organizations, with a particular focus on women’s rights, were providing legal advice and alternative dispute resolution mechanisms, including mediation and reconciliation as ‘honour’ and cases of stoning. It is concerning that these mechanisms are operated by powerful male fundamentalists who defend religious decrees in all parts of Afghanistan.”


“UNAMA documented two different types of mediation procedures carried out by traditional dispute resolution mechanisms in relation to violence against women. Traditional mediators – in particular jirgas convened by Anti-Government Elements – resolved wider community or family conflicts, through decisions that often resulted in acts of violence against women […] Traditional mediators […] also mediated criminal offences of violence against women such as beating by spouses, harassment, causing isolation and more […] UNAMA emphasises that both types of procedures and decisions by traditional dispute resolution mechanisms – whether the mediation of criminal offences of violence against women or the mediation of wider disputes resulting in decisions which inflict abuse or violence to women – are unlawful and constitute human rights abuses. […] UNAMA documented several instances where EVAW institutions collaborated with mediators in traditional dispute resolution mechanisms to pressurise survivors into accepting mediation and mediation decisions.”


Irrelevant cases have been recorded of authorized violence against women, such as public lashings and executions ordered by local alemas and jirgas (informal community courts and local councils) attended and chaired by powerful male fundamentalists who defend religious decrees in all parts of Afghanistan.”

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 continue to impose severe restrictions on women’s fundamental rights, including freedom of movement, political participation, access to healthcare and access to education. 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, with the parallel justice structures operated by AGEs in areas under their control reportedly routinely violating women’s rights.

a) Sexual and Gender-Based Violence

Sexual and gender-based violence against women in Afghanistan remains widespread: the number of reported cases is on the rise, but the actual number of cases is thought to be far higher than the reported cases.

In March 2018, the AIHRC named violence against women as “one of the most

“Securing women’s rights still remain a challenge. This is particularly the case in the areas controlled under the [armed opposition groups] AOGs, where women are more restricted from accessing education, work, and other social activities.” Asia Foundation, Life under Armed Opposition Groups in Afghanistan, 15 November 2017, https://asiafoundation.org/2017/11/15/life-armed-opposition-groups-afghanistan.

“In Taliban-controlled areas, women are prohibited from working, attending school, or leaving their homes unless accompanied by a close male relative, and are forced to wear the burqa […] women often are denied access to medical attention due to the lack of female doctors.” USCRBF, Annual Report 2017 (Tier 2 Countries): Afghanistan, 26 April 2017, http://www.refworld.org/docid/590724429.html. See also, Relief International and OCHA, GBV Sector Assessment Results Report, December 2017, http://www.refworld.org/docid/5a8f15364.html, p. 4; IWPR, Girls Denied Education in Afghan Province, 24 November 2017, ARR 581, http://www.refworld.org/docid/5a8f1bf784.html.


serious human rights challenges in Afghanistan.” 460 Such violence includes “honour killings”, 461 abductions, rapes, sexual harassment, forced abortions and domestic violence. 462

As sexual acts committed outside marriage are widely seen in Afghanistan society to dishonour families, victims of rape outside marriage are at risk of ostracism, forced abortions, imprisonment, or even death. 463 Societal fears and taboo of stigmatization and reprisals, including at the hands of their own community and family members, have been found to deter survivors from reporting sexual and gender-based violence. 464

The new Penal Code of Afghanistan, which entered into force in February 2018, criminalizes non-consensual “virginity tests”. 465 However, despite the criminalization, the practice of “virginity testing” women who are accused of adultery or who are victims of sexual crimes, including victims of rape and sexual assault, reportedly remains prevalent in Afghanistan. 466 The practice has been described as


UNAMA documented 280 cases of murder and “honour killings” of women from January 2016 to December 2017. Of these, 50 cases resulted in the conviction and imprisonment of the perpetrator, representing 18 per cent of the cases documented. As in previous years, the vast majority of murder and “honour killing” cases involving women did not reach prosecution and the perpetrators are still at large. UNAMA found that in more than one third of cases documented over the two-year period, the police did not forward the cases to prosecutors. UNAMA’s interviews with traditional mediators suggest informal mediators resolved some of these cases.” UNAMA, Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women, May 2018, http://www.refworld.org/docid/5b1a749f4.html, pp. 1, 52.


A 2017 report by Relief International and OCHA on gender-based violence (GBV) found that in many cases when women report such violence, the victims’ testimonies are not believed, which contributes to victims’ reluctance to report incidents of GBV. Relief International and OCHA, GBV Sector Assessment Results Report, December 2017, http://www.refworld.org/docid/5ab18563b.html, pp. 6-8. The report also found that in some cases “not only the victims [of GBV] have to bear the shame and social consequences of sexual violence […] but sometimes they are forced to marry their aggressor, which can be started a life of violation and abuse”. Ibid., p. 7.


While noting the delegation’s statement that the practice of virginity tests is part of the local culture and has no legal ground, the Committee remains deeply concerned that the conduct of such a practice is routinely required by police officers and prosecutors for women fleeing domestic violence and consequently subjected to a range of moral crimes, such as adultery.” UN Committee on the Elimination of All Forms of Discrimination Against Women, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, http://www.refworld.org/docid/596f4f754.html. “In the
“sexual assault and torture”. The new Penal Code also criminalizes zina (sexual intercourse between an unmarried couple). Article 636 of the new Penal Code also contains a “clearer and more comprehensive definition of rape, which does not proceed from zina”. Men responsible for domestic violence or forced marriages reportedly almost always enjoy impunity. 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.


Art. 644 of the new Penal Code criminalizes zina, making it punishable with “maximum imprisonment of more than two years” if the perpetrator is married and “up to two years” if the perpetrator is unmarried. Afghanistan, Penal Code, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR).


“The risk of incrimination for zina seems to serve as a strong deterrent against reporting a case of rape, especially in the absence of family support. It is rare for women to independently approach authorities with a claim, perhaps with the exception of instances where a rape has led to pregnancy.” T. Wimpelmann, Adultery, Rape, and Escaping the House: The Protection and Policing of Female Sexuality in Afghanistan, CMI Working Paper Number 9, December 2017, https://www.cmi.no/publications/file/6404-adultery-rape-and-escaping-the-house.pdf, p. 12. “A culture of impunity had thus effectively encouraged sexual abuse and other forms of violence [...] nearly 600 instances of so-called honour killings had been registered with the [Afghan Independent Human Rights] Commission over the last five years. Most perpetrators had either evaded justice or received a lenient sentence at trial [...] the real figure was likely to be much higher, because of the culture of shame surrounding such cases.” IWPR, Afghanistan’s Domestic Violence Loophole, 16 January 2017, https://iwpr.net/global-voices/afghanistans-domestic-violence-loophole; United States Department of State, 2016 Country Reports on Human Rights Practices - Afghanistan, 3 March 2017, http://www.refworld.org/docid/58ec8c7a.html; AIHRC, Elimination of Violence against Women 1394 (2015), 30 November 2015, http://iwpr.net/global-voices/afghanistans-domestic-violence-loophole; 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/55818b3c.html, p. 29. See also for example NYT, Rebellling against Abuse, Afghan Women See Signs of Change, 27 May 2014, http://www.nytimes.com/2014/05/28/world/asia/rebelling-against-abuse-afghan-women-see-signs-of-change.html. As also noted in Section III.A.8 on “Women and men perceived as contravening social mores”, the authorities in some instances seek to justify the detention of women as a “protective measure” against further abuse or retaliation by family members.

Women who are economically dependent on the violent family members, never report the abuse. Few Afghan women who do seek help avoid going to the formal court system and prefer more traditional ways of solving the conflict, which outcomes in most cases end for the man’s benefit.” Associazione Diritti e Frontiere, Under Warlords’ ‘Solidarity Party of Afghanistan’ Celebrates International Women’s Day, 15 May 2018, https://www.a-dif.org/2018/05/15/under-warlords-rule-solidarity-party-of-afghanistan-celebrates-international-womens-day/.


AIHRC, Situation of Women Employed in Defense and Security Sectors, 9 December 2017, http://www.refworld.org/docid/5af76ed54.html, p. 12. “Across Afghanistan, the police role is perceived as bringing shame to an individual and her family. Often families forbid a wife or daughter from participating. Policewomen reported not wearing their uniforms to and from work in fear of harassment. For some, the role has been a death sentence such as the six policewomen murdered in Eastern Afghanistan in March 2012.” E-International Relations, The Role of Policewomen in Ending Gender Violence in Afghanistan, 3 August 2017, http://www.e-ir.info/2017/08/03/the-role-of-policewomen-in-ending-gender-violence-in-afghanistan.
themselves at risk of sexual harassment and assault in the workplace, including rape by male colleagues.\textsuperscript{473} They are also reported to be at risk of violent attacks by AGEs.\textsuperscript{474}

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{475}

\textit{b) Harmful Traditional Practices}

Harmful traditional practices continue to be pervasive in Afghanistan,\textsuperscript{476} occurring in varying degrees in both rural and urban communities throughout the country, and among all ethnic groups.\textsuperscript{477} Rooted in discriminatory views about the role and position of women in Afghan society, harmful traditional practices disproportionately affect women and girls. Such practices include various forms of forced


``Corruption and the misuse of authority means the people who murder or rape women and have connections to a [militia] commander, a lawyer or a judge are not punished [...] They know that they are free from punishment and so feel free to murder and rape with impunity.``


``A staggering 87% of Afghan women experience violence, mostly at the hands of the family members and people who claim to love them the most. This violence includes: linked to early and forced marriages – including baadal (the exchange of girls for dispute resolution) and baadal (exchange marriages); so-called honor crimes; rapes and killings of women; sexual harassment in the workplace and in public spaces; and self-immolation and self-harm linked to experiences of violence." Kabul Times, \textit{Woman, Who Has No Peace}, 4 December 2017, \url{http://thekabultimes.gov.af/index.php/opinions/social/15661-woman-who-has-no-peace.html}.

\textsuperscript{475} 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, \url{http://www.refworld.org/docid/4a24ed5b2.html}. While the law was welcomed by some prominent Shi'ites and Shi'ite groups for officially recognizing Sh'i'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 CEDAW, \textit{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, \url{http://www.refworld.org/docid/4c1732dc2.html}. The UN 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, \textit{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/34/62, 11 January 2010, \url{http://www.refworld.org/docid/4bc2ec8d62.html}, paras 4 and 21-23.
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; 481

(ii) baad, 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; 482

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478 “Forced marriage of adult women […] occurs with some frequency in Afghanistan.” HRW, “I Won’t Be a Doctor, and One Day You’ll Be Sick”: Girls’ Access to Education in Afghanistan, 17 October 2017, http://www.refworld.org/docid/59e5af3e4.html, p. 52. The Asia Foundation found in its 2017 survey that 11.8 per cent of respondents identified forced marriages/dowry as the most serious problem facing women in Afghanistan. Asia Foundation, Afghanistan in 2017: A Survey of the Afghan People, 2017, https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf, p. 6. See also, Newsweek, Rape, Underage Sex, Forced Marriage, Abuse. That’s the Plicht of too Many Afghan Girls, 29 December 2017, http://www.newsweek.com/rape-underage-sex-forced-marriage-thats-plight-too-many-ghan-girls-758341; New York Times, Brought Together by Pain, 3 Girls Forced into Marriage Have New Dreams, 6 October 2017, https://www.nytimes.com/2017/10/06/world/asia/afghanistan-child-brides-marriage.html; Pajhwok Afghan News, Forced and Early Marriages: A Form of Trafficking in Persons, 29 March 2017, https://www.pajhwok.com/en/2017/03/29/forced-and-early-marriages-form-trafficking-person-a, Pajhwok Afghan News, Forced Marriage: A Cultural Dimension Of Human-trafficking, 1 March 2017, https://www.pajhwok.com/en/2017/03/01/forced-marriage-cultural-dimension-human-trafficking; Tahir Justice Center, Forced Marriage Overseas: Afghanistan, undated, http://preventforcedmarriage.org/forced-marriage-overseas-afghanistan/. 479 According to UNICEF statistics, 9 per cent of Afghan children are married by the age of 15 and 35 per cent by the age of 18. UNICEF, Child Marriage Database, November 2017, https://data.unicef.org/wp-content/uploads/2015/12/child-marriage-database_Nov-2017.xlsx. “Under Afghan law, the minimum age of marriage for girls is 16, or 15 with the permission of the girl’s father or a judge, while boys must wait until they reach 19. The law’s different requirements for girls and boys violates international standards of male and female equality. In practice, the law is rarely enforced, so even earlier marriages are likely.” HRW, “I Won’t Be a Doctor, and One Day You’ll Be Sick”: Girls’ Access to Education in Afghanistan, 17 October 2017, http://www.refworld.org/docid/59e5af3e4.html, p. 52. According to Save the Children, “up to 80% of all marriages were forced marriages on girls”. Additionally, “most of child marriages are arranged by the parents. Marriages subsequent to an exchange are the second type of marriage for money.” The forth type is marriages as a result of the influence and power of the husband followed by giving the girls into baad and the marrying girls to pay family debts.” Save the Children, Knowledge, Attitudes and Practices on Violence and Harmful Practices Against Children in Afghanistan: A Baseline Study, August 2017, http://www.refworld.org/docid/5a5dd34a4.html, p. 9. “Forced child marriage, where a minor has not genuinely given his/her free and informed consent to enter the marriage and has been coerced into accepting the union, is a prevalent phenomenon in Afghanistan. In most cases, young Afghan girls are married off to much older men, ‘in exchange’ for money to the girls’ family. […] TIP High Commission official confirmed that forced marriages have increased in Helmand […] Civil society leader Khudai-i-Noor Khanzada said they also have received many such complaints of forced marriages”. Pajhwok Afghan News, 1 March 2017, https://www.pajhwok.com/en/2017/03/01/forced-marriage-cultural-dimension-human-trafficking, The Afghan Analysts Network reports that “although article 70 of the civil law specifies the minimum age for marriage is 18 years of age for men and 15 for women, under the age of 15 make up three per cent of all married women according to Afghanistan’s periodic report under the Convention on the Elimination of All Forms of Discrimination against Women. Article 28 of the law on the Elimination of Violence against Women states that those who force girls to marry under the age of 15 should be imprisoned for at least two years and the same article states that the marriage of an underage girl can be cancelled at the request of the girl. However, the implementation of these laws is difficult given Afghanistan’s traditional society. This is particularly true when the economies of entire families depend on underage marriages.” AAN, The Bride Price: The Afghan Tradition of Paying for Wives, 25 October 2016, https://www.afghanistan-analytics.org/the-bride-price-the-afghan-tradition-of-paying-for-wives/. The Afghan Children’s Code, 2005 fails to condemn forced marriage. UNICEF, Children of Child-Marriage in Afghanistan: A Situation Analysis 2014, November 2014, http://www.unicef.org/afghanistan/SitAn_Long_Report_small_size.pdf, p. 39. “In Afghanistan, women and girls are considered to embody family honor, and they often pay the price if they are perceived to have offended custom, tradition, or honor. Female rape victims in Afghanistan are deemed to have brought shame on their family and community and risk double victimization through honor killings. Similarly, women suspected of having sexual relations outside of marriage (zina) are widely perceived to bring shame on their families and also risk being the subject of an honor killing, either on the initiative of male family members or at the direction of local councils comprised of male elders.” CGRS, Breaking Barriers: Challenges to Implementing Laws on Violence against Women in Afghanistan and Tajikistan, April 2016, https://cgrs.ucr.edu/sites/default/files/Afghanistan_Tajikistan_Full%20Report_Revised%204-5-2016_FINAL_0.pdf, p. 14. "High bride prices can lead to debts for grooms and their families and early marriage to unsuitable men for the daughters of poor men; fathers of many daughters, however, may benefit from the practice. […] Bride price also drives child marriage in Afghanistan […] Getting a high bride price was a major reason given by parents for marrying their girls off young. Other economic factors also counted, including giving girls in lieu of debts and exchanging girls, so that neither family had to pay the bride price.” AAN, The Bride Price: The Afghan Tradition of Paying for Wives, 25 October 2016, https://www.afghanistan-analytics.org/the-bride-price-the-afghan-tradition-of-paying-for-wives/. See also IWPR, Afghanistan: Betrothed in the Womb, 22 March 2017, https://iwpr.net/global-voices/afghanistan-betrothed-womb, Opium-farming families are reported to sell their children to settle debts with opium traffickers. US Department of State, 2017 Trafficking in Persons Report: Afghanistan, 27 June 2017, http://www.refworld.org/docid/59e5c9b13.html "Children are given opium to keep them quiet, sent out to beg, turned over to orphanges or sold into marriage to pay for drugs.” Washington Post, Opium Use Booms in Afghanistan, Creating a ‘Silent Tsunami’ of Addicted Women, 19 June 2017, https://www.washingtonpost.com/world/asia_pacific/opium-use-booms-in-afghanistan-creating-a-silent-tsunami-of-addicted-women/2017/06/19/f6b162f-3985-11e7-a9b9-26ef015196fd_story.html. 480 “When families in some parts of Afghanistan fall out over serious matters, one way of avoiding an escalating blood feud is for the offending party to hand over a woman to the other side. Known as “baad”, the custom involves an arranged marriage between the woman and someone from the injured family […] Baad is an ancient tradition in Afghanistan, dating back to the days when no central legal authority existed, and conflicts were settled through the tribal system. […] When a man kills, rapes, or has sexual relations with someone other than his wife, a local council can step in to mediate. Lesser offenses can usually be settled by the exchange of money, perhaps a few sheep or a cow. But the standard penalty for a serious crime is for the offender’s family to part with a girl, who is given to the victim’s family. While face is saved, the woman, or often a young girl, finds herself forced into marriage, and her in-laws often take out lingering resentments on her. Campaigners say the practice is a major cause of domestic violence.” IWPR, Dope for Afghan Women: Baad, the Culture of End Feuds, 17 January 2017, https://iwpr.net/global-voices/hope-afghan-women-traded-end-feuds, “Baad, or the giving of a girl to another family to settle a dispute, is a
(iii) **baadal**, an agreement between two families on “exchanging” daughters through marriage, often with a view to minimize marriage costs; 483

(iv) the coercion of widows into marrying a man from their deceased husband’s family. 484

Economic insecurity and ongoing conflict, related displacement, loss of assets and the impoverishment of the family perpetuate the problem of child and forced marriages, with the practice often seen as the only means of survival for the girl and her family. 485

The EVAW law criminalizes several harmful traditional practices, including the buying and selling of women for marriage, offering women for dispute resolution under **baadal**, and child and forced marriages.

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 basis of a well-founded fear of persecution at the hands of State or non-State actors for reasons of their membership of a particular social group, their religion, their (imputed) political opinion, or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution where the actors of persecution are non-State actors.

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8. **Women and Men Who Are Perceived as Contravening Social Mores** 486

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

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484 * According to the *Pashtunwali* code if a man dies, his wife is part of the inheritance. “She [the widow] must be married to her brother-in-law, or her husband Turboor (cousin). Such a woman is called Kondo (widow).”* Austrian Country of Origin Information Department (Bundesamts für Fremdenwesen und Asyl), AfPak: Principals of the Tribal & Clan Structure, 5 April 2017, [https://cso.easo.europa.eu/administration/austria/PLib/ANALY_AfPak_tribal_and_clan_structure_2017_04_05.pdf](https://cso.easo.europa.eu/administration/austria/PLib/ANALY_AfPak_tribal_and_clan_structure_2017_04_05.pdf), p. 48. Widows who reject such marriages are likely to lose custody of their children, due to discriminatory provisions in the Afghan Civil Code on child custody. They may also be at risk of sexual and gender-based violence at the hands of the deceased husband’s male relatives. See UNAMA, Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2015, August 2015, [http://www.refworld.org/docid/55c1bdc4d.html](http://www.refworld.org/docid/55c1bdc4d.html), p. 18. Widows who run away from home to avoid the forced marriage or to keep their children may be prosecuted for “moral crimes” or could be at risk of “honour killings”; see also Section III.A.8.

485 * “Child marriages are usually aimed at strengthening ties with rival families and tribes, as part of deals or to settle debts and disputes. Poor families often end up selling daughters for large dowries from wealthy people and the husbands are usually much older. The decisions to sell off girls for marriage are made by men, and wives, mothers, sisters and the girls themselves having little or no say.”* UNFPA Afghanistan, *Child Marriage*, undated, [http://afghanistan.unfpa.org/node/15233](http://afghanistan.unfpa.org/node/15233). “Being out of school puts girls at heightened risk of child marriage. Afghan government data indicates that girls who did not study are three times as likely to marry before age 18 as girls who completed secondary education or higher. And that lack of access to education is a major driver of child marriage. […] Poverty both keeps many girls out of school and encourages child marriage.”* HRW, *If I Won’t Be a Doctor, and One Day You’ll Be Sick*: Girls’ Access to Education in Afghanistan, 17 October 2017, [http://www.refworld.org/docid/59e5af3e4.html](http://www.refworld.org/docid/59e5af3e4.html), pp. 53-54. “Child and forced marriage are outlawed but remain common in Afghanistan, particularly among poor families eager for dowries.” Reuters, *Invisible Taliban Child Brides, Widows Trapped as Sex Slaves*, 23 August 2017, [https://www.reuters.com/article/us-afghanistan-rights-women/invisible-taliban-child-brides-widows-trapped-as-sex-slaves-idUSKCN1B31PL](https://www.reuters.com/article/us-afghanistan-rights-women/invisible-taliban-child-brides-widows-trapped-as-sex-slaves-idUSKCN1B31PL).

486 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. For more information on the situation of women, see Section III.A.7.
marginallize them. 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. Such norms include strict dress code, as well as requirements that restrict women’s freedom of movement, such as the requirement to be accompanied by a male relative as chaperone when appearing in public. Women without male support and protection, including widows and divorced women, are at particular risk. They generally lack the means of survival, giving existing social norms imposing restrictions on women living alone, including limitations on their freedom of movement and on their ability to earn a living.


493 “In Afghanistan, women and those without male protection in particular are subjected to widespread harassment and discrimination. Widowed and single mothers are considered to be “like a pot with no lid” or to put in another way, morally loose.” IWUACU, Women of War - Behind the Frontlines in Afghanistan, 29 November 2017, https://iweareunpeace.org/blog/post/women-of-war-in-afghanistan. “Unfortunately, in Afghanistan, and even in Kabul, a woman without a man in the house is considered immoral or available […] Single mothers endure serious harassment, abuse and threats, usually coming from neighbors and shop owners.” TED Ideas, A Rare, Intimate Look at the Lives of Single Mothers in Afghanistan, 27 October 2017, https://ideas.ted.com/a-rare-intimate-look-at-the-lives-of-single-mothers-in-afghanistan. Women who are unaccompanied by a male relative are not commonly accepted by Afghan society, particularly women such as widows, who are reportedly seen as a “burden” or “immoral”. The Daily Mail, Afghanistan’s ‘Hill of Widows’ Live in a World Apart, 23 June 2017, http://www.dailymail.co.uk/wires/af/article-4631438/AFghanistan-hill-widows-live-world-apart.html.

Punishment 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, or “running away from home” (in situations of domestic violence). A significant proportion of the girls and women detained in the country have been charged with moral crimes not codified by law.

The jurisdiction is characterized by a lack of rule of law and it happens that persons are charged with moral crimes not codified by law. Migrationsverket (Swedish Migration Agency), Temarapport Afghanistan: Hedersproblematik och moralbrott, 19 January 2018, https://filos.migrationsverket.se/document?documentAttachmentId=45400, pp. 4-5. “Women can […] be imprisoned under the loose category of moral crimes, which encompasses actions such as running away from home, and face prison sentences of up to five years if convicted of adultery.” IWPR, Afghanistan’s Domestic Violence Loophole, 16 January 2017, http://www.refworld.org/docid/587e35c14.html. In June 2017, the UN Committee against Torture stated that it was “seriously concerned by the sentences still imposed by jirga courts and other forms of dispute resolution systems on the Afghan population, in particular on women, notably for so-called ‘moral crimes’, including the death sentence and corporal punishment, that amount to torture or cruel, inhuman or degrading treatment or punishment.” UN Committee Against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, http://www.refworld.org/docid/599ed1b13.html, para. 39. See also The Diplomat, The Women in Afghanistan’s Moral Prisons, 8 March 2017, https://thediplomat.com/2017/03/the-women-in-afghanistans-moral-prisons/.


“Women who seek help to escape violence often face indifference or criminal sanctions for committing moral crimes.” BerteIsensen Stiftung, BTT 2018, Country Report Afghanistan, 2018, https://www.btt.org/sites/default/files/2018-04/BTT_Report_Afghanistan_2018.pdf, p. 14. In June 2017 the UN Committee against Torture stated that it “remain[ed] deeply concerned that the conduct of [virginity testing] is routinely required by police officers and prosecutors for women fleeing domestic violence and consequently suspected of moral crimes, such as adultery.” UN Committee against Torture, Concluding Observations on the Second Periodic Report of Afghanistan, 12 June 2017, CAT/C/AFG/CO/2, http://www.refworld.org/docid/5964f754.html, para. 37. 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/40d48d954.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 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 offenses”, 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/50c72e0b2.html, p. 22. A copy of the Supreme Court decree (in Dari), dated 1 August 2010, is on record with UNHCR. UNAMA noted that 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 i
been charged with “moral crimes.” Female prisoners are reportedly often subjected to physical violence as well as and sexual harassment and abuse. Since accusations of adultery and other “moral crimes” may elicit violence or “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.

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505. “When protection is offered to women, it is under a patriarchal guise. We see that scores of women are kept in ‘protective’ detention, where they are detained in order to ensure their protection from threats, such as honour crimes, but also to ensure that they will testify against the perpetrator in court. Such detention has been reported as continuing for up to 14 years.” Penal Reform International, “The Majority of Women and Girls in Afghan Prisons Are Detained or Have Been Convicted of Violations of Customary or Shari’a Law, or ‘Moral Crimes.’” UNAMA, Treatment of Conflict-Related Detainees: Implementation of Afghanistan’s National Plan on the Elimination of Torture, April 2017, http://www.refworld.org/docid/59c71d5e4.html, p. 6, note 10. See also, Deutsche Welle, “The Disturbing Trend of Taliban Justice in Afghanistan,” 15 March 2017, http://www.dw.com/en/the-disturbing-trend-of-taliban-justice-in-afghanistan/a-37950678, para. 23.
In light of the foregoing, 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 basis of a well-founded fear of persecution at the hands of State or non-State actors for reasons of religion, their imputed political opinion, membership of a particular social group, or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution where the actors of persecution are non-State actors.

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. Persons with disabilities face discrimination and limitations in access to employment, education and to adequate health care.

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 basis of a well-founded fear of persecution at the hands of non-State actors for reasons of membership of a particular social group or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution.

506 The Kabul Times, Disabled People and Their Challenges in Afghanistan, 6 December 2017, http://thekabultimes.gov.af/index.php/opinions/social/15685-disabled-people-their-challenges-in-afghanistan.html. “Returnees suffering from mental health disorders can sometimes be abandoned by their families: shame is often associated with mental health troubles as disorders are thought to be the result of demons (djinn) that have taken over an individual. As a result, some families chase the family member suffering from mental health issues or lead him to be chained in front of a shrine. Others are left to beg in the streets. In such circumstances, returnees become extremely vulnerable, as not only do they suffer from mental health issues; they are also unable to provide for themselves. They then become prey for drug traffic, prostitution, human smugglers, warlords or the Taliban.” Dr. Anicée Van Engeland, written Expert Opinion, 11 June 2017, in Asyllos, COI Compilation - Afghanistan: Situation of Young Male ‘Westernised’ Returnees to Kabul, August 2017, https://asyllos.eu/wp-content/uploads/2017/08/AFG2017-05-Afghanistan-Situation-of-young-male-Westernised-returnees-to-Kabul1.pdf.

507 According to the Asia Foundation, persons with disabilities “face a severe social stigma. When you ask Afghans how they perceive those who are blind, for example, some will say they see them as an incomplete person or blindness a “punishment from God.” This stigma makes it challenging for them to overcome obstacles and contribute to their family’s welfare.” Asia Foundation, Overcoming Stigma Against Disabilities in Afghanistan, 2 November 2016, https://asiafoundation.org/2016/11/02/overcoming-stigma-disabilities-afghanistan/; “[A]ncient superstitions prevail, with many across Afghanistan still attributing mental illnesses to being possessed by demons. An afflicted person can be locked up in a cage or left chained at a shrine for days on end.” AP News, After Years of War, Afghans Wary to Talk of Mental Health, 18 August 2016, https://www.npr.org/2016/08/18/493351327/after-years-of-war-afghans-wary-to-talk-of-mental-health. See also, NPR, Afghanistan’s Lone Psychiatric Hospital Reveals Mental Health Crisis Fueled by War, 14 February 2018, https://www.npr.org/2018/02/14/585494599/afghanistans-lone-psychiatric-hospital-reveals-mental-health-crisis-fueled-by-wa; BBC World Service, Assignment: Madness of War, 11 February 2018, https://www.bbc.co.uk/programmes/w3csyyp2/.
10. Children with Certain Profiles or in Specific Circumstances 508

Children may fall within a number of the other risk profiles contained in these guidelines.509 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. 510

a) Bonded or Hazardous Child Labour

Under the Labour Law children younger than 14 are prohibited from working under any circumstance. Children of 15 years and older are permitted to engage in “light work”, but may not be employed in work activities likely to threaten their health or cause disability. 511 The 2017 Law to Combat Crimes of Trafficking in Persons and Smuggling of Migrants defines the offence of trafficking as possession of a child for the purpose of “exploitation”, which includes forced labour, begging and enslavement. 512 The 2017 Penal Code criminalizes the recruitment of children in hard physical, unhealthy or underground labour. 513

Despite such legislative protections, child labour reportedly remains widespread. 514 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. 515 the use of children in illicit activities including the drug trade, as well as the use of children in prostitution. 516 Children are reportedly also engaged in hazardous work


509 See in particular the profiles for men of fighting age and children in the context of under-age 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. How

510 In 2016 the President’s cabinet began drafting a Child Protection Act to address some of the worst forms of child labour. US Department of Labor, 2016 Findings on the Worst Forms of Child Labor: Afghanistan, 30 September 2017, http://www.refworld.org/docid/5a0d021c50.html, p. 4. See also Section III.A.11.


512 Save the Children, Knowledge, Attitudes and Practices on Violence and Harmful Practices Against Children in Afghanistan: A Baseline Study, August 2017, http://www.refworld.org/docid/5a5d6f84ad.html, pp. 3, 8. “[M]ore than 73 per cent of child workers had their first work experience between the ages of 5 and 11, according to our previous research. […] Reports suggests that child labour in Afghanistan increased by 50 per cent in a decade before 2009, with at least 60,000 working in Kabul alone. Given the rapid growth of the population in the capital since 2009, including internally displaced, the number is perhaps much higher today.” The National, Afghans Need to Stand up for the Rights of Street Working Children, 12 April 2017, https://www.thenuational.org/opinion/afghans-need-to-stand-up-for-the-rights-of-street-working-children-1-84117; In February 2014, the Ministry of Labor, Social Affairs, Martyrs and Disabled released a list of hazardous jobs and/or working conditions prohibited for children, such as mining, agricultural production, begging and garbage collection; work in blast furnaces, waste-processing plants, and large slaughterhouses; work with hospital waste; drug-related work, such as processing of narcotics; working for more than 4 hours in the carpet sector; security guard services; bonded labour and work related to war. US Department of Labor, 2014 Findings on the Worst Forms of Child Labor: Afghanistan, 30 September 2015, http://www.refworld.org/docid/560e3e180.html., p. 3.

513 For further analysis on the use of children in illicit activities, including the drug trade and child prostitution, see Section III.A.11.
likely to harm their health, safety or morals, such as working in coal mines or brick kilns. Many child labourers are reportedly victims of sexual assault, abuse and violence. Poor institutional capacity remains a serious impediment to effective enforcement of the Labour Law, including inadequate resources for inspections and the enforcement of sanctions for violations.

Street children are reportedly victims of sexual assault, abuse and general neglect. Some forms of domestic violence against children is reported to take place in the name of discipline. While most child victims of sexual abuse, particularly girls, are reportedly abused by family members, boys and girls were also reportedly to be at risk of sexual violence. The practice of corporal punishment is a common form of abuse. Many child labourers are reportedly victims of sexual assault, abuse and violence. Despite government action against the practice, young boys reportedly 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. Impunity for sexual crimes is reportedly remains a serious impediment to effective enforcement of the Labour Law, including inadequate resources for inspections and the enforcement of sanctions for violations.

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

Child abuse is reportedly widespread. Common forms of abuse include physical violence, sexual abuse, abandonment and general neglect. Some forms of domestic violence against children is reported to take place in the name of discipline. While most child victims of sexual abuse, particularly girls, are reportedly abused by family members, boys and girls were also reportedly to be at risk of sexual violence. The practice of corporal punishment is a common form of abuse. Many child labourers are reportedly victims of sexual assault, abuse and violence. Despite government action against the practice, young boys reportedly 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. Impunity for sexual crimes is reportedly remains a serious impediment to effective enforcement of the Labour Law, including inadequate resources for inspections and the enforcement of sanctions for violations.


According to an investigation by the Afghan Human Rights Research and Advocacy Organisation, between four and five children out of every ten child labourers working in districts in Balkh province had suffered abuse. IWPR, Afghan Child Labourers Exposed to Abuse, 5 December 2017, https://iwpr.net/global-voices/afghan-child-labourers-exposed-abuse.


For further analysis on the situation of girls subject to harmful traditional practices and sexual and gender-based violence, see Section III.A.7.


Article 612 of the 2017 Penal Code criminalizes the act of beating a child, as well as physically or mentally disciplining a child, and the mistreatment of a child. Afghanistan, Penal Code, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Article 612.


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. Some children who are prosecuted for “moral crimes” are reported to be survivors of abuse rather than perpetrators of crimes; having reported instances of sexual abuse, they are perceived to have brought shame on their family and to be in need of punishment.

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, with girls in rural areas most likely to be out of school. High levels of insecurity are a major factor in hampering access


SIGAR, Child Sexual Assault in Afghanistan: Implementation of the Leahy Laws and Reports of Assault by Afghan Security Forces, June 2017, https://www.sigar.mil/pdf/inspections/SIGAR%20-%20July%202017%20Inspection%20-%20Afghanistan%20-%20Children%20in%20Afghanistan.pdf, 11 March 2018, http://www.aihrc.org.af/media/files/Research%20Reports/summary%20report%20on%20harassment%20of%20women.pdf, pp. 5-6. IWPR quotes Saleh Mohammad Khalqi, Balkh's director of information and culture, as saying, “Due to the fact that that powerful people who break the law are not prosecuted and punished, and because of the inability of the judicial services to implement the law, pederasty and sex with young boys has increased in Afghanistan.” Balkh police chief Syed Kamal Sadat reportedly stated that “powerful local officials also had a record of supporting and defending such criminals, going as far as preventing police officers from arresting them and even sheltering suspects in their own homes. […] Even when perpetrators are brought to justice, their victims face a troubled future. There have been many cases in which the boys themselves have been prosecuted, and experts say that the psychological effects of abuse are long-lasting.” IWPR, Boys Sold for Sex in Afghan Province, 2 March 2017, http://www.refworld.org/docid/58bd641b4.html.


IWPR, Girls Denied Education in Afghan Province- Locals Complain that Minimal Resources and Poor Security Are Excluding Female Students, 24 November 2017, https://iwpr.net/global-voices/girls-denied-education-afghan-province. “Analysis by the World Bank shows wide variation from province to province in the ratio of girls versus boys attending school, with the proportion of students who are girls falling in some provinces, such as Kandahar and Pakta. These disparities are mirrored in literacy statistics. In Afghanistan, only 37 percent of adolescent girls are literate, compared to 66 percent of adolescent boys. Among adult women, 19 percent are literate compared to 49 percent of adult men.” HRW, “I Won’t Be a Doctor, and One Day You’ll Be Sick” - Girls’ Access to Education in Afghanistan, 17 October 2017, http://www.refworld.org/docid/59e5a53e4.html, p. 8; see also p. 40. “Harmful gender norms mean that, in many families, boys’ education is prioritized over girls’, or girls’ education is seen as wholly undesirable or acceptable only for a few years before puberty.” Ibid., p. 12. The World Bank analysis is based on the Afghanistan Living Conditions Survey 2013-2014, 2011-2012, and on the Risk and Vulnerability assessment 2007-2008. World Bank, Afghanistan Poverty Status Update, Progress at Risk, 14 February 2017, https://openknowledge.worldbank.org/handle/10986/26668, p. 29. UNICEF reported in 2015 that 42.7 per cent (equal to 4.2 million children) of primary school-age children were out of school. UNICEF also noted that in this age range, around 50 per cent more girls than boys were out of school. UNICEF, Educate All Girls and Boys in South Asia, August 2015, http://www.unicef.org/education/files/EducateAllGirlsandBoys-UNICEF-ROSA.pdf, pp. 6, 8.
to education, especially for girls. The reported use of schools for military purposes by both AGEs and pro-government forces poses further concerns.

AGEs are also reported to continue 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 and attack schools and to threaten and intimidate teachers. Threats of crime and abuses by criminal gangs, such as kidnappings, 533

533 IWPR, Girls Denied Education in Afghan Province: Locals Complain that Minimal Resources and Poor Security are Excluding Female Students, 24 November 2017, https://iwpr.net/global-voices/girls-denied-education-afghan-province; HRW, “I Won’t Be a Doctor, and One Day You’ll Be Sick” – Girls’ Access to Education in Afghanistan, 17 October 2017, http://www.refworld.org/docid/59e5af3e4.html, pp. 13, 17. “More than 400,000 children in Afghanistan – over 1,100 per day – are expected to drop out of school this year due to growing instability and a spike in forced returns from Pakistan. Save the Children analysis has shown. The stark projection comes on the first day of the new school year in Afghanistan, when almost a third of all children across the country – 3.7 million – are unable to go to school, leaving them at increased risk of child labor, recruitment by armed groups, trafficking, early marriage and other forms of exploitation.” Save the Children, More than 1,100 Afghan Children a Day Expected to Drop out of School in 2017, Putting Them at Risk of Exploitation, Save the Children Warns, 23 March 2017, https://www.savingchildren.org/site/apps/nlnet/content2.aspx?c=8KL1XMGHn4&b=9506655&t=1988181&notec=1. See also, IWPR, School Closures Hit Afghan Province: A Lack of Security in Districts Means that Boys and Girls Can Simply Not Learn, 27 February 2017, https://iwpr.net/global-voices/school-closures-hit-afghan-province


537 Halima Sadaf, a member of Jawzjan provincial council, said that the number of schools closed in the province is more than 70, adding the militant group would even behead those who try to study individually. He added that more than 30,000 students cannot attend schools due to
acids attacks and sexual harassment, reportedly cause parents to keep children, especially girls, at home.\textsuperscript{538} Other reported obstacles to girls’ education in particular include poverty, early and forced marriage, lack of family support, lack of female teachers, lack of sanitation facilities, lack of access to identity documents and long distances to the nearest school.\textsuperscript{539}

d) Abductions, Punishments and Reprisals by the ANDSF and AGEs

The ANDSF and AGEs are reported to abduct children for various purposes, including reprisals and punishment of the victim’s family members.\textsuperscript{540} Children are also reportedly abducted and/or killed on the basis of accusations of having assisted the opposing party.\textsuperscript{541}

e) Summary

Depending on the particular circumstances of the case, UNHCR considers that children falling in the following categories may be in need of international refugee protection:

a) Children from areas where either AGEs or elements of the ANSF use undercover recruitment;\textsuperscript{542}

b) Survivors and those at risk of harmful traditional practices, including child marriage and forced marriage;\textsuperscript{543}

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

d) 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;

e) School-age children, particularly girls;\textsuperscript{544}


\textsuperscript{540} “UNAMA documented 18 incidents involving the abduction of 42 children (40 boys and two girls) by Anti-Government-Elements. For instance, on 2 November [2017], in Bichirazh district, Farah province, Taliban abducted four boys, aged between four and 10 years, to force their fathers, both commanders of pro-government armed groups, to withdraw from the area and stop fighting. In addition, UNAMA attributed the abduction of their one boy, on 25 March, in Samangan province, to a pro-Government armed group.” UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, http://www.refworld.org/docid/5a554a614.html, pp. 12-13.


\textsuperscript{542} For further analysis on the issue of under-age recruitment, see Section III.A.3.

\textsuperscript{543} For further guidance 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, 22 December 2009,
f) 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 basis of a well-founded fear of persecution at the hands of State or non-State actors for reasons of their membership of a particular social group, their religion, their (imputed) political opinion, or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution where the actors of persecution are non-State actors.

Asylum claims made by children including any examination of exclusion considerations for former child soldiers, need to be assessed carefully and in accordance with the UNHCR Guidelines on child asylum claims.545

11. Survivors of Trafficking or Bonded Labour and Persons at Risk of Being Trafficked or of 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.546 Afghans who fall victim to trafficking are reportedly trafficked within Afghanistan and to the Middle East, Europe, and South Asia, with trafficking within Afghanistan reportedly more prevalent than transnational trafficking.547 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.548 Children may also be trafficked for the purposes of sexual exploitation and forced marriage.549 Children have also reportedly been trafficked for the purposes of being recruited, trained and used in military operations by the Taliban, including being trained as suicide bombers.550 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.551 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 January 2017 a new law on human trafficking was enacted, which criminalizes human trafficking and exploitation, smuggling of migrants and expressly criminalizes bacha bazi. The provisions of this law have been reinforced through incorporation of the offences of human trafficking and exploitation, including bacha bazi, and the smuggling of immigrants, into the revised Penal Code of 2017. The 2017 Penal Code also criminalizes the recruitment of children in hard physical, unhealthy and underground labour. In addition, the 2009 Law on Elimination of Violence against Women (EVAW law) criminalizes the selling, purchasing or facilitation of purchasing or selling of a woman for the purpose of marriage. However, as noted above, the criminal provisions of the EVAW law were not incorporated into the 2017 Penal Code.

Efforts to enforce the legal framework on trafficking have reportedly been hampered by a lack of awareness and understanding of trafficking among law enforcement and judicial officials; corruption and lack of political will to hold perpetrators accountable; and accusations against government employees of complicity in human trafficking.

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US Department of State, 2017 Trafficking in Persons Report: Afghanistan, 27 June 2017, http://www.refworld.org/docid/5959ed1b13.html; US Department of Labor, 2016 Findings on the Worst Forms of Child Labour: Afghanistan, 30 September 2017, http://www.refworld.org/docid/5af0215c0.html. “Child marriages are usually aimed at strengthening ties with rival families and tribes, as part of deals or to settle debts and disputes. Poor families often end up selling daughters for large dowries from wealthy people and the husbands are usually much older. The decisions are usually off girls for marriage are made by men, and wives, mothers, sisters and the girls themselves having little or no say.” UNFPA Afghanistan, Child Marriage, undated, http://afghanistan.unfpa.org/node/15233.


Afghanistan, Penal Code, published in the Official Gazette No. 1260, 15 May 2017, Articles 521-528. (English unofficial translation on record with UNHCR.)

Ibid., Article 613.


See Section III.A.7: “Women with Certain Profiles or in Specific Circumstances”.

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.”\(^563\)

| In light of the foregoing, UNHCR considers that people, especially women and children, in particular socio-economic circumstances that create vulnerabilities to trafficking or bonded labour, may be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of State or non-State actors for reasons of their membership of a particular social group or other relevant Convention grounds, depending on the individual circumstances of the case, combined with a general inability of the State to provide protection from such persecution where the actors of persecution are non-State actors. Individuals falling into the risk profile include survivors of trafficking or bonded labour who may be in a position of heightened vulnerability to being re-trafficked or being re-subjected to bonded labour.\(^564\)

In addition, UNHCR considers that individuals who have already fallen victim to trafficking may be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of the State for reasons of their membership of a particular social group or other relevant Convention grounds, depending on the individual circumstances of the case.

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

Consensual same-sex sexual acts are illegal in Afghanistan and are punishable by imprisonment of up to two years under the new Afghan Penal Code.\(^565\) Under Sharia law, the maximum sentence for same-sex relations is the death penalty,\(^566\) but no death sentences for same-sex relations are reported to have been passed by the judiciary since the fall of the Taliban.\(^567\)

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\(^{566}\) Under Sharia, or Islamic law, the punishment for sex outside marriage could be a death sentence. Because the evidentiary requirements of this law are difficult to meet, this punishment hasn’t been applied by Afghan courts since 2001.” HRW, Afghan LGBT Asylum Seekers in UK among Most Vulnerable, 26 February 2017, https://www.hrw.org/news/2017/02/26/afghan-lgbt-asylum-seekers-uk-among-most-vulnerable.
Social taboos around homosexuality remain strong.658 Reportedly, gay men and boys, and those perceived to be gay, have limited access to health services and are being dismissed from their jobs because of their sexual orientation.659 Individuals of diverse sexual orientations and gender identities (SOGI) are reported to face discrimination and violence, including at the hands of the authorities, family and community members, as well as AGEs.650 Overall, “homophobic views and violence against LGBT groups in Afghanistan are pervasive”.651 The police reportedly fail to provide protection to individuals of diverse SOGI; instead there are reports of police officers subjecting individuals of diverse SOGI to harassment, violence (including rape), and arrest and detention on the basis of their real or perceived sexual orientation.652 Organizations devoted to protecting the freedom of individuals of diverse SOGI reportedly remain underground as they cannot be legally registered.653

Given the pervading social taboos related to same-sex relations, there is little information available on the treatment of individuals of diverse SOGI in Afghanistan. What little information there is pertains to gay men; the situation of lesbians and of bisexual individuals is largely undocumented. Similarly, little

658 “Homosexuality is a taboo topic in Afghanistan, a socially and religiously conservative country. Many consider homosexuality un-Islamic and immoral, and gay men can be imprisoned by the state or killed by their family members in so-called honor killings”. RFE/RL, ‘Fake Life’: Being Gay in Afghanistan, 12 December 2017, https://www.rferl.org/a/afghanistan-beeng-gay-fake-life/28731934.html. “The Director of the [SOGI] organization, […] stated that: ‘Killing of homosexuals is common in Afghanistan and is increasing day by day’, he further stated that he has heard of cases from reliable sources that ‘men are being lured into dating and are being killed’. However, you never hear about it because it is highly taboo.” Open Democracy, ‘I Am Not Safe’: On the Run as a Gay Man in Afghanistan, 3 March 2017, https://www.opendemocracy.net/5050/ritu-mahendru/i-am-not-safe-on-run-as-gay-man-in-afghanistan. “[Homosexual acts are utterly taboo in Afghan society, as well as being labelled under both Sharia and Afghan law. Homosexuality is generally categorised as a form of deviance and associated with prostitution and pedophilia.” IWPR, Boys Sold for Sex in Afghanistan, 2 March 2017, https://iwpr.net/global-voices/boys-sold-sex-afghan-province. See also, BBC, Afghanistan LGBT Community Living under Threat of Death, 7 October 2016, http://www.bbc.com/news/world/asia-36884732.


652 “[T]here have been frequent credible reports that individuals perceived to be homosexual (almost exclusively males) have continuing difficulties with the police, including harassment and/or arrest (usually on spurious charges) […] LGBTI individuals face a high risk of official arrest and/or detention on the basis of their real or perceived sexual orientation. There are credible reports that individuals perceived to be homosexual (almost exclusively males) have continued to be dismissed from their jobs, disowned by their families, restricted from accessing health services, being robbed, pressed for sexual favours, or raped because of suspicions that they are homosexual.” Australian Government: Department of Foreign Affairs and Trade, Country Information Report: Afghanistan, 18 September 2017, http://dfat.gov.au/about-us/publications/Documents/country-information-report-afghanistan.pdf, p. 22. “Despite the fact that so far no organisation among NGOs is openly and publicly providing support to LGBT community, if persons belong to this community, particularly women, contact organisations working on women’s health and protection, they receive such services. Often the sexual orientation and identity of the person is kept confidential within the organisation to protect both the person as well as the organisation from public reactions.” Independent Chief Inspector of Borders and Immigration, Inspection of Country of Origin Information - November 2016 Report, February 2017, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/70763/322223k/index-of-country-of-origin-information-november-2016.pdf, p. 31. See also, Open Democracy, ‘I Am Not Safe’: On the Run as a Gay Man in Afghanistan, 3 March 2017, https://www.opendemocracy.net/5050/ritu-mahendru/i-am-not-safe-on-run-as-gay-man-in-afghanistan.
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 SOGI.

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 the basis of a well-founded fear of persecution at the hands of State or non-State actors for reasons of their membership of a particular social group, 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 Convention 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 of a variety of historical population movements, both forced and voluntary, some members of ethnic groups now


575 See for example, Court of Justice of the European Union, X, Y, Z v Minister voor Immigratie en Asiel, C-199/12 to C-201/12, 7 November 2013, http://www.refworld.org/docid/5279494b4.html.

576 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/12/01, http://www.refworld.org/docid/50348af2.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/547d9434d.html. 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 homogeneous, 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 zanun, 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 in the quote above, no population census has been conducted in the country since the partial census 1979, which itself was not completed due to the Soviet invasion. Based on an extrapolation of the data from the 1979 census, the current population of Afghanistan is estimated at 34.1 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, Asia Foundation, Afghanistan in 2017: A Survey of the Afghan People, November 2017, https://asiafoundation.org/wp-content/uploads/2017/11/2017-AfghanSurvey_report.pdf, p. 200; Swedish Committee for Afghanistan, The Afghan Population, 22 August 2016, https://swedishcommittee.org/afghanistan/population; Civil-Military Fusion Centre, Afghanistan Ethnic Groups: A Brief Investigation, August 2011, http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation. 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, 13 December 2017, https://fas.org/spp/crs/row/RL30588.pdf, p. 74, 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, Pachai, Nuristani, Aymaq, Arab, Qirghiz, Gujar, Brahui and other tribes.” Constitution of Afghanistan, 3 January 2004, http://www.refworld.org/docid/404d8b594.html, Article 4.
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-groupings 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 fifth 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 groups at risk in Afghanistan.

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578 As an example, Abdur Rahman Khan (who ruled Afghanistan between 1880 and 1901) transported troublesome Pashtuns of the Durrani and Ghilzai tribes to Uzbek- and Tajik-populated areas in the north, where their dispersion amongst non-Pashtun groups made them dependent on Rahman’s central government. Rahman also enrolled tens of thousands of Pashtun warriors in a Muslim jihad against Shi'ite Hazaras in the Hazarajat and against animist tribes in Kafiristan (today’s Nuristan). The Pashtun warriors were rewarded with plunder and land grants in the regions they conquered. A second wave of Pashtun migration into settled Tajik, Uzbek and Hazara areas followed in the second quarter of the 20th century, when the government transported thousands of landless Pashtun Ghilzai families to the north, depriving the northern minorities of valuable agricultural and pastoral land that they had occupied for centuries. See, for example, Peter Tomsen, The Wars of Afghanistan, New York: Public Affairs, 2011, pp. 42, 53, 80.

579 An example are the Pashtuns in northern Afghanistan, the descendants of Pashtuns who were relocated by the government in the nineteenth and twentieth centuries to areas traditionally settled by Uzbeks and Tajiks. Following the fall of the Taliban in 2001, large numbers of Pashtuns from northern Afghanistan, who constitute an ethnic minority there, were forcibly displaced due to ethnic violence directed against them due to their (perceived) association with the Taliban regime. For some of the displaced reclaiming land and property has remained a challenge.

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583 Ethnic divisions in Afghanistan remain strong. The Peoples under Threat Index compiled by Minority Rights Group International lists Afghanistan as the fifth 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 groups at risk in Afghanistan.
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 and healthcare in areas where they were in the minority.

a) Kuchis

Nomadic people, or Kuchis as they are commonly known in Afghanistan, form a marginalized group. While the majority of Kuchis are ethnic Pashtuns, the Kuchis are “a social rather than ethnic grouping, although they have some of the characteristics of a distinct ethnic group”. 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, which has reportedly led to increased tensions between the of particular provinces.” Congressional Research Service, Afghanistan: Politics, Elections, and Government Performance, 12 January 2015, http://www.fas.org/spp/crs/row/RS21922.pdf, p. 2.


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Kuchis and other ethnic groups.\(^{901}\) The socio-economic conditions for settled Kuchis are reported to be even worse than for nomadic Kuchis.\(^{902}\) 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).\(^{903}\) However, Kuchis are reported to remain “disadvantaged in terms of access to education, health or livelihood opportunities”.\(^{904}\)

b) Hazaras

Hazaras are reported to face continuing societal discrimination, as well as to be targeted for extortion through illegal taxation, forced recruitment and forced labour, physical abuse, and detention.\(^{905}\) Hazaras, who are predominantly Shi‘ites, have historically been marginalized and discriminated against by the Sunni majority population.\(^{906}\) While they were reported to have made significant economic and political

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901 In the absence of a government programme to settle the Nomads (Kuchis) in specific areas, they either end up in the cities or grab whatever piece of land they find. Few nomads have the resources to buy land, so one of the options they have is to occupy pastureland where they can. [...] As a result of competition for the exploitation of pastureland, communities that never before objected to Kuchis accessing the pastures turned against them [...]. The total absence of policing in rural areas [...] results in relatively minor incidents escalating rapidly into violence.” AREU, Mapping Nomad-Farmer Conflict in Afghanistan, July 2017, <https://www.ecoi.net/af/file/1404589/1226_1500886126_1714e-mapping-nomad-farmer-conflict-in-afghanistan.pdf>, p. 8. “There have [...] been increasing ethnic tensions and incidents of violent clashes between Hazaras and nomadic Kuchis over access to land in recent years.” BBC, God Forgot Afghanistan?, 30 July 2016, <http://www.bbc.com/news/afghanistan/36025169>. See also Pajhwok Afghan News, Khost: Lakan Tribe Seeks End to Land Dispute with Kuchis, 31 July 2017, <https://www.pajhwok.com/en/2017/07/31/khost-lakan-tribe-seeks-end-to-land-dispute-with-kuchis>.


advances since the 2001 fall of the Taliban regime.\textsuperscript{597} In recent years there has reportedly been a significant increase in harassment, intimidation, kidnappings and killings at the hands of Taliban, Islamic State and other AGEs.\textsuperscript{598}

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

Among the most marginalized communities in Afghanistan are those of Jat ethnicity, which encompasses the Jogi, Chori Frosh, Gorbat and Mosuli communities.\textsuperscript{599} Social and 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.\textsuperscript{600} This in turn means that they are not issued with the national identity card, the razkira,


\textsuperscript{600} The total number of Jogi, Jat, Gorbat and Chori Frosh individuals is estimated to be around 30,000, mostly in the cities of Jalalabad (Jat), Mazar-e-Sharif (Jogi and Chori-Frosh), Kabul (Jogi and Jat), Kunduz (Jogi and Chori Frosh), and Herat (Gorbat); ILO, Afghanistan: Time to Move to Sustainable Jobs: Study on the State of Employment in Afghanistan, May 2012, http://www.refworld.org/docid/512c39f22.html. p. 39. Similarly to the Kuchis, these groups are abandoning their traditional lifestyle to move to urban areas. Samuel Hall Consulting, State of Afghan Cities 2015 – Vol. 1, September 2015, http://samueellahconsulting.com/wp-content/uploads/2015/09/State-of-Afghan-Cities-2015_Volume_1.pdf, p. 21. Afghanistan also has a small Kyrgyz community of about 1,500 individuals in northern Badakhshan province, who have expressed concerns about the very survival of their community in Afghanistan. By 2012, their efforts to be relocated to Kyrgyzstan were reported to have remained unsuccessful. EurasiaNet, Kyrgyz Community in Afghanistan Looking for a Way Out, 7 May 2012, http://www.eurasianet.org/node/65369. Jogi and Chori Frosh communities are also marginalized and related social and economic practices, including high levels of female labour participation rates, for which they are considered ‘outsiders’. This has contributed to their severe
as a result of which they are reported to have limited access to social services, government schools, employment and land ownership.\textsuperscript{601}

\textit{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 reported to be common in Afghanistan; they frequently turn violent.\textsuperscript{602} Land grabbing is reportedly widespread, often involving powerful actors with connections to the Government, as well as public officials.\textsuperscript{603} All land registration, distribution and dispute resolution mechanisms, whether formal or informal, are reported to be affected by corruption.\textsuperscript{604} To address the widespread corruption, a new Land Management Law was issued by presidential decree on 4 March 2017.\textsuperscript{605} Additionally, the new Penal Code, which came into force on 15 February 2018, criminalizes land usurpation.\textsuperscript{606}

\textit{Economic, Social, and Political Marginalization, a Situation Exacerbated by the Frequent Denial of Recognition of their Citizenship.} Minority Rights Group International, Afghans: Jogti and Chori Frosh, undated, \url{http://minorityrights.org/minorities/jogi-chori-frosh/}.


Conflicts about land ownership and land use rights often have historic roots and an ethnic dimension, in part as a result of population movements. 607 Afghans who seek to reclaim their land after returning home from displacement may be particularly vulnerable to land disputes with an ethnic dimension. 608

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. 609 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. 510

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, depending on the individual circumstances of the case, be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of State or non-State actors for reasons

607 “Growing demographic pressure is an obvious source of nomad-farmer conflict and is often mentioned by interviewees and confirmed by officials […] Another deep cause underpinning the rise in conflicts over pastureland is the expansion of urban and peri-urban settlements. This trend has, in some cases, pushed up the value of grassland previously used by the nomads, causing local villagers, returnees from Pakistan and powerbrokers to try and seize control over pastureland for the purpose of building on it or of selling it. It does not help that the authorities play little or no role in trying to channel urban expansion towards dry areas, as opposed to pastures and agricultural land.” AREU, Typologies of Nomad-Settler Conflict in Afghanistan, January 2018, https://areu.org.af/wp-content/uploads/2018/01/1801E-Typologies-of-nomad-settler-conflict-in-Afghanistan.pdf, p. 21. “Widespread poverty and a scarcity of productive land generate intense competition for access to and management of land and natural resources among people and communities, which often leads to intracommunal and intercommunal conflict. For example, disputes over access to pastoral land have been at the heart of interethnic tensions between the Shia Hazaras and the Sunn Kuchis for over a century, tensions that have frequently flared into violence.” The Asia Foundation, The State of Conflict and Violence in Asia: Afghanistan, 11 October 2017, https://asiafoundation.org/wp-content/uploads/2017/10/Afghanistan-StateofConflict&Violence.pdf, p. 17. The causes of some of the conflicts about land go back to the deliberate efforts in the 19th and early 20th century by Afghan rulers to relocate mostly Pashtun Afghans into areas not previously settled by Pashtuns, in an attempt to gain control over these parts of the country. See for example Landinfo, The Conflict between Hazaras and Kuchis in the Beshid Districts of Wardak Province, 6 June 2011, http://www.refworld.org/docid/5124c5142.html; Cooperation for Peace and Unity (CPAU), Fractured Relationships: Understanding Conflict between Nomadic and Settled Communities in Wardak’s Pastureland, October 2010, http://www.cpau.org.af/images/publications/CPAU%20Report%20%20Fractured%20Relationships.pdf.

608 “There are serious concerns about (potential) incidents related to disputes [between returnees and host communities] over land and property, which could escalate into violence. […] Access to land seems to be a particular concern when connecting the returnee with the land he once farmed. Successive waves of internal and external displacement have forced many to vacate land and housing. In some cases, their lands have been occupied by IDPs or other returnees and in other cases by local power brokers […] Displacement and other factors have eroded traditional means of conflict resolution, which could escalate into violence. […] Access to land seems to be a particular concern when connecting the returnee with the land he once farmed.” Oxfam, Returning to Fragility: Exploring the Link between Conflict and Returnees in Afghanistan, January 2018, https://www.oxfam.org/en/research/returning-fragility-exploring-link-between-conflict-and-returnees-afghanistan, p. 17. “Contestation and conflict over land is common and widespread in Afghanistan and significantly affects returnees. Successive waves of internal and external displacement have forced many to vacate land and housing. In some cases, their lands have been occupied by IDPs or other returnees and in other cases by local power brokers […] Displacement and other factors have eroded traditional means of conflict resolution, which could escalate into violence. […] Access to land seems to be a particular concern when connecting the returnee with the land he once farmed.” UISP, The Forced Return of Afghan Refugees and Implications for Stability, Peace Briefing 199, January 2016, https://www.usip.org/sites/default/files/PB199-The-Forced-Return-of-Afghan-Refugees-and-Implications-for-Stability.pdf, p. 3.


of their nationality or ethnicity/race, or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution where the actors of persecution are non-State actors. Relevant considerations to assess the well-foundedness of the fear of persecution 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, depending on the individual circumstances of the case, also be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of the State or non-State actors for reasons of their nationality or ethnicity/race, or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution where the actors of persecution are non-State actors. Relevant considerations to assess the well-foundedness of the fear of persecution include the question of whether the ethnic group 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.611 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 groups.612 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.613 Blood feuds may give rise to long cycles of retaliatory violence and revenge.614 Under Pashtunwali, in principle revenge must be taken against the offender,

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611 See UNHCR, UNHCR Position on Claims for Refugee Status under the 1951 Convention relating to the Status of Refugees Based on a Fear of Persecution Due to an Individual’s Membership of a Family or Clan Engaged in a Blood Feud, 17 March 2006, paras 5-6 and 16-20, http://www.refworld.org/docid/44201a574.html.
612 “Blood feud and private revenge taking also occurs but is less common among non-Pashtun groups.” Country of Origin Research and Information (CORI), Thematic Report Afghanistan: Blood Feuds, February 2014, http://www.refworld.org/docid/53199be0f.html. p. 4. See also Landinfo, Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution, 1 November 2011, http://www.refworld.org/docid/5124c6512.html, p. 9. The Landinfo report provides further analysis of the concepts of honour and revenge as central elements of Pashtunwali. The Landinfo report notes that while blood feuds are primarily a Pashtun tradition, blood feuds and private revenge also occur among non-Pashtun groups in Afghanistan, especially in areas where historically there has been a mix of Pashtun and other ethnic groups, and where common norms have taken root over time. Blood feuds are, however, less common among non-Pashtun groups, where there is a greater willingness to use the formal justice system for dispute settlement. Ibid., pp. 15-16. Blood feuds may also involve members of different ethnic groups. See for example Pajhwok Afghan News, 2 Dead as Hazara-Kuchi Feud Resurfaces in Wardak, 22 June 2015, https://www.pajhwok.com/en/2015/06/22/2-dead-hazara-kuchi-feud-resurfaces-wardak, concerning blood feuds between Kuchi and Hazara communities. See also, Refugee Appeal No. 76355, 5 November 2009, http://www.refworld.org/docid/4b3c8bb42.html, where the New Zealand Refugee Status Appeals Authority held that the appellant, a Tajik who was perceived to have violated the family honour of a Pashtun family, was at risk of persecution on the ground of a particular social group.
but under certain circumstances the offender’s brother or other patrilinage kin may become the target for revenge. In general, while revenge is not reported to be exacted against women and children,615 the practice of baad, a tribal form of dispute-settling in which the offending family offers a girl for marriage into the wronged family, is reportedly used to settle a blood feud especially in the rural areas.616 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.617 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.618

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 the basis of a well-founded fear of persecution at the hands of non-State actors for reasons of membership of a particular social group or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution.619 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. Business People, Other People of Means and Their Family Members

Afghans continue to be concerned about widespread corruption, racketeering and extortion.620 In many areas, the ALP are reported to demand payment of informal taxes and to use violence at police checkpoints against persons who have not paid.621 Pro-government armed groups are also reported to subject the civilian population to illegal taxation, and harass, threaten or even kill civilians who fail to


616 “When families in some parts of Afghanistan fall out over serious matters, one way of avoiding an escalating blood feud is for the offending party to hand over a woman to the other side. Known as “baad”, the custom involves an arranged marriage between the woman and someone from the injured family.” IWPR, Hope for Afghan Women Traded to End Feuds, 17 January 2017, https://iwpr.net/global-voices/hope-afghan-women-traded-end-feuds, “The ancient practice of baad, the forced marriage of a girl to an antagonized family to settle a feud, is still prevalent in rural Afghanistan. When a villager kills a member of a rival clan in a fight, the elders of the community forms a jirga, or council, to mediate the conflict and prevent further bloodshed. The jirga typically chooses a young woman from the perpetrator's family and orders her to marry a man from the victim's clan.” Gandhara, Rural Afghan Girls Continue to Fall Victim to ‘Baat’ Marriages, 29 July 2015, https://gandhara.rferl.org/a/afghanistan-baat-marraiges-rural-girls/27157104.html. See also CORI, Thematic Report Afghanistan: Blood Feuds, February 2014, http://www.refworld.org/docid/53199ef64.html, pp. 39. For further information see Section III.A.7 on “Women with Certain Profiles or in Specific Circumstances”.


618 “Punishment by a government court does not erase the obligation to take revenge: a victim’s family is expected to kill the murderer once he is released from prison unless there is a settlement to end the feud before that time.” CORI, Thematic Report Afghanistan: Blood Feuds, February 2014, http://www.refworld.org/docid/53199ef64.html, p. 39. See also Landinfo, Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution, 1 November 2011, http://www.refworld.org/docid/5124c6512.html, p. 9.


620 Afghanistan is ranked 177th out of 180 countries on Transparency International’s 2017 Corruption Index. Transparency International, Afghanistan, undated, https://www.transparency.org/country/AFGN. In the 2017 edition of the annual Survey of the Afghan People (for which 10,012 Afghans were interviewed in July 2017), 69.8 per cent of respondents stated that corruption was a problem in their daily life, while 83.7 per cent stated that corruption is a major problem in Afghanistan as a whole. The Asia Foundation, Afghanistan in 2017, November 2017, https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf, p. 10. In addition, 19 per cent of respondents stated that they or a family member had suffered from racketeering or extortion in the past year. The Asia Foundation, ibid., pp. 7, 49, 161.

pay the illegal taxation imposed by these groups.622 For example, civilians have been reportedly targeted in Kunduz province by pro-government militias, “whose livelihoods now mostly depend on extortion, kidnappings, and murders”.623 Additionally, pro-government militias have reportedly targeted farmers and traders for extortion.624

AGEs are reported to operate illegal checkpoints and to extort money and goods from civilians.625 The Taliban are reported to make extensive profits from illegal activities, including extortion and kidnapping for ransom.626 Similarly, Islamic State fighters reportedly subject the civilian population to threats, kidnappings and extortion.627 Additionally, clashes between the Taliban and Islamic State have reportedly taken place due to the increased competition between the groups over “seizing cash and other assets from civilians”.628

622 “Pro-Government armed group abuses also took place in Jawzjan, Samangan, Daikundi, Ghazni, Paktia, Kunduz, Helmand, and Balkh provinces, and included the deliberate killing of relatives of those perceived to be Taliban members, killing of civilians who objected to the armed groups’ activities, and killing, threatening and/or harassment of civilians who failed to pay illegal taxation imposed by the groups.” In 2017 UNAMA documented 10 cases where pro-Government armed groups deliberately killed civilians following personal disputes or civilians’ refusal to pay illegal taxation to members. UNAMA, Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017, February 2018, http://www.refworld.org/docid/5a854a614.html, p. 52.


In 2017 UNAMA documented 255 incidents involving the abduction of 1,005 civilians by AGEs which resulted in the death of 76 persons and injury to 17.629 According to UNAMA, the AGEs “kidnapped civilians based on suspicions that they had connections to or worked for the Government, but also for financial gain, with release predicated on payment of a substantial ransom”.630 According to UNAMA most incidents of abduction by AGEs resulted in the release of the abducted civilians following mediation of local elders or payment of a ransom.631 Businessmen and other individuals who have or who are perceived to have financial means have reportedly been increasingly targeted by kidnapping rings.632

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),633 or on the basis of their race/ethnicity or their religion,634 the individual concerned may, depending on the individual circumstances of the case, be in need of international refugee 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 refugee 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 refugee protection on the basis of a well-founded fear of persecution at the hands of State or non-State actors for reasons of their membership of a particular social group or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution.


B. 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 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.635

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.636

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.

1. Refugee Status under UNHCR’s Broader Mandate Criteria and Regional Instruments

   a) Refugee Status under UNHCR’s Broader Mandate Criteria

UNHCR’s mandate encompasses individuals who meet the refugee criteria under the 1951 Convention and its 1967 Protocol637 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.638 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.639

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

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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 this respect, 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.

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 combat 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.

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. For the same reasons as above, UNHCR

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642 On the meaning of the phrase “events seriously disturbing public order” in the 1969 OAU Convention, see Marina Sharpe, The 1969 OAU Refugee Convention and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in the Context of Individual Refugee Status Determination, January 2013, http://www.refworld.org/docid/50f3edeb2.html; Alice Edwards, “Refugee Status Determination in...
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 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.643

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. 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.644 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

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643 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 15 national laws and State practice. For guidance on the interpretation of the refugee definition in the Cartagena Declaration, see: UNHCR, Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions, 2 December 2016, HCR/GIP/16/12, http://www.refworld.org/docid/583995f4f.html, paras 61-85.

644 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/4f197fd0f2.html, arts 2(f), 15.
forms of serious harm (death penalty, 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.

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 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.

These factors, either alone or cumulatively, may be found to give rise to a situation in a particular part 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.

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645 Article 170 of Afghanistan’s revised Penal Code, which entered into force on 15 February 2018, lists the crimes which can incur the death penalty. Afghanistan, Penal Code, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR). In addition, in accordance with Article 2 of the Penal Code, those found guilty of hudoor crimes are to be punished in accordance with the principles of Hanafi jurisprudence of Sharia law; hudoor punishments include execution and stoning to death. See also, Hossein Gholami, Basics of Afghan Law and Criminal Justice, undated, http://www.auswaertiges-amt.de/cae/servlet/contentblob/343976/publicationFile/3727/Polizei-Legal-Manual.pdf; Cornell Law School, Death Penalty Database, http://www.deathpenaltyworldwide.org/country-search-post-clm?country-Afghanistan.

646 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.


648 See Court of Justice of the European Union, Elgafaji v. Staatssecretaris van Justitie, C-465/07, 17 February 2009, http://www.refworld.org/docid/499aee52.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.”
C. Internal Flight, Relocation or Protection Alternative

A detailed analytical framework for assessing the availability of an internal flight or relocation alternative (IFA/IRA), 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 established in some localized part of the country of origin, the determination of whether the 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.

If an IFA/IRA is considered in asylum procedures, a particular area of proposed relocation must be identified, and all relevant general and personal circumstances regarding the relevance and reasonableness of the proposed area of relocation for the particular applicant must be established to the extent possible and must duly be taken into account. The applicant must be given an adequate opportunity to respond to the purported relevance and reasonableness of the proposed IFA/IRA.

The guidance provided in this Section applies to IFA/IRA assessments in the context of determinations of the need for international refugee protection under the 1951 Convention (Section III.A), UNHCR’s broader mandate criteria (Section III.B.1a), and the Cartagena Declaration (see Section III.B.1c). The guidance provided in this Section also applies to internal protection assessments under Article 8 of the Qualification Directive.

Sections III.C.1 and III.C.2 provide general guidance on applying the criteria of relevance and reasonableness to a proposed area of IFA/IRA in Afghanistan. Section III.C.3 provides relevant considerations to be taken into account where the proposed area of IFA is an Afghan city, while Section III.C.4 provides guidance for the particular case of Kabul as the proposed area of IFA/IRA.

The consideration of possible internal relocation is not generally relevant to the determination of refugee status under Article I(2) of the OAU Convention.

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649 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/3f2791a44.html, Article 8.

650 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/4f197df02.html, para. 7. In relation to applications for international protection in EU Member States, see also Article 8(2) of the 2011 Qualification Directive, which provides that “Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant”.

651 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/3f2791a44.html, para. 6.


653 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/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
I. Relevance Analysis

I. Areas of Afghanistan where an IFA/IRA is not available

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 an IFA/IRA is also not available in areas of the country affected by active combat between pro-government forces and AGEs, or between different AGEs.

II. Assessing whether the applicant would be exposed to the original risk of being persecuted in the proposed area of IFA/IRA

A proposed area of IFA/IRA would not be relevant if the applicant would be exposed to the original risk of being persecuted in that area.

1. 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.\(^{656}\)

2. Where the applicant has a well-founded fear of persecution at the hands of members of society as a result of harmful traditional practices and religious norms of a persecutory nature (see for example risk profiles 7, 10 and 12 in Section III.A), 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. UNHCR considers that, coupled with the evidence provided in Section II.C regarding the limitations on the ability of the State to provide protection from human rights abuses, there is a presumption that consideration of an IFA/IRA in these cases is not relevant.

3. In cases where the agents of persecution are AGEs, the relevance of a proposed IFA/IRA must be assessed taking into account a number of different elements.\(^{657}\)

   (i) 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, including the Taliban and Islamic State, a viable IFA/IRA may not be available to individuals at risk of being targeted by such groups.

   (ii) In addition, 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 from human rights abuses at the hands of AGEs, as a result of ineffective governance and high levels of corruption.

III. Assessing whether the applicant would be exposed to new risks of being persecuted in the proposed area of IFA/IRA, or to other forms of serious harm

In addition to the considerations above relating to the original form of persecution in the applicant’s home area, the decision-maker must also establish that the applicant would not face any new form of...
persecution in the proposed area of IFA/IRA, nor any other serious harm, including as a result of indiscriminate violence.\textsuperscript{658}

As UNHCR has noted in its \textit{Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative”}:

\begin{quote}
“a person with an established fear of persecution for a 1951 Convention reason in one part of the country cannot be expected to relocate to another area of serious harm. If the claimant would be exposed to a new risk of serious harm, including a serious risk to life, safety, liberty or health, or one of serious discrimination, an internal flight or relocation alternative does not arise, irrespective of whether or not there is a link to one of the Convention grounds. The assessment of new risks would therefore also need to take into account serious harm generally covered under [broader refugee criteria or] complementary forms of protection.”\textsuperscript{659}
\end{quote}

The assessment must be based on up-to-date information about the security situation in the proposed area of IFA/IRA, including in particular the impact of the conflict in Afghanistan on civilians.

\textbf{IV. Assessing where the proposed area of IFA/IRA is practically, safely and legally accessible}

In cases where an area of Afghanistan has been identified that is not excluded as a relevant IFA/IRA on the basis of considerations under I and II above, it would still need to be assessed whether the proposed area of IFA/IRA is practically, safely and legally accessible to the individual.\textsuperscript{660} In the context of Afghanistan, this 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.\textsuperscript{661}

\textbf{2. Reasonableness Analysis}

\textit{a) The Applicant’s Personal Circumstances}

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 their age, gender, health, disability, family situation and relationships, as well as their educational and professional background.\textsuperscript{662}

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 bests 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{663} Adjudicators need to give due


\textsuperscript{659} Ibid.

\textsuperscript{660} Ibid., para. 7.


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. In the case of unaccompanied and separated children from Afghanistan, UNHCR considers that in addition to a requirement of meaningful support of the child’s own (extended) family or larger ethnic community in the area of prospective relocation, the best interests of the child must be a primary consideration in assessing the availability of an IFA/IRA for the child, in accordance with Article 3(1) of the Convention on the Rights 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.

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.

In light of the serious human rights situation for women in Afghanistan (see Section III.A.7), as well as social norms that restrict women’s freedom of movement (see Section III.A.8), and the generally low employment rates for women in Afghanistan, UNHCR considers that an IFA/IRA is not reasonable for women who are single heads of household and who do not or who are not perceived to have male protection through members of their family.

b) Safety and Security

A proposed area of IFA/IRA would only be reasonable if the applicant is able to live in the proposed area in safety and security, free from danger and risk of injury. These conditions must be durable, not illusory or unpredictable. In this regard, the volatility and fluidity of the armed conflict in Afghanistan must 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 a proposed IFA/IRA.

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668 Ibid.
c) Respect for Human Rights and Economic Survival

For a proposed IFA/IRA to be reasonable, the applicant must be able to exercise his or her basic human rights in the area of relocation, and the applicant must have possibilities for economic survival in dignified conditions. In this regard, the assessment of the reasonableness of a proposed IFA/IRA must give particular attention to:

(i) access to shelter in the proposed area of relocation;
(ii) the availability of basic infrastructure and access to essential services in the proposed area of relocation, such as potable water and sanitation, health care and education;
(iii) the presence of livelihood opportunities, including access to land for Afghans originating from rural areas; or in the case of applicants who cannot be expected to provide for their own livelihood (for example elderly applicants), proven and sustainable support to enable access to an adequate standard of living.

In relation to (i) – (iii) above, in the specific context of Afghanistan the importance of the availability and access to social networks, existing of the applicant’s extended family or members of his or her ethnic group, has been widely documented. In this regard, the presence of members of the same ethnic background as the applicant in the proposed area of relocation cannot by itself be taken as evidence that the applicant would be able to benefit from meaningful support from such communities; rather, such support would generally require specific pre-existing social relations connecting the applicant to individual members of the ethnic community in question.

Moreover, even where such pre-existing social relations exist, an assessment should be made whether the members of this network are willing and able to provide genuine support to the applicant in practice, against the background of Afghanistan’s precarious humanitarian situation, the low developmental indicators, and the wider economic constraints affecting large segments of the population. In addition, the extent to which applicants are able to rely on family networks in the proposed area of relocation also has to be considered in light of

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669 UNHCR, ibid., paras 28-30.
670 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.
671 See, for example, Refugee Support Network, After Return: Documenting the Experiences of Young People Forcibly Removed to Afghanistan, April 2016, http://www.refugeesupportnetwork.org/sites/default/files/After%20Return%20RSN_April%202016.pdf; Oppein, C. and Majidi, N., Can Afghans Reintegrate after Assisted Return from Europe?, Peace Research Institute Oslo (PRIO), 22 May 2015,
673 For example, in an expert opinion provided by William Maley, Professor of Diplomacy at the Asia-Pacific College of Diplomacy at The Australian National University, on the return to Afghanistan of Hazaras, Prof. Maley made the following observations. [...] an Hazara returned from abroad with no ties in areas they can safely access would be in an even more perilous position [compared to someone who has ties to persons in the region to which he or she is returned]. This ties in directly with the issue of livelihood opportunities. Again, serious research in this area highlights the importance of social relations. A recent study by Kantor and Pain emphasises the centrality of relationships to livelihoods in rural Afghanistan, and the points they make apply equally to urban areas (Paula Kantor and Adam Pain, Securing Life and livelihoods in Afghanistan: The Role of Social Relationships (Kabul: Afghanistan Research and Evaluation Unit, December 2010). The mere fact that there may be people of similar ethnic background living in a potential relocation destination does not overcome this problem, since ethnic identities do not in and of themselves give rise to the ties of personal affinity and reciprocity that arise from family connections. (Indeed, one mistake that observers — even Afghan observers — on occasion make is to underestimate the degree of differentiation amongst groups such as the Hazaras, including distinctions between elite and non-elite figures, distinctions based on district of origin and tribe, and distinctions based on values and ideology.) An Hazara who is returned to a region in which he lacks strong social connections is likely to end up destitute, or be exposed to gross exploitation or criminal predation. The simplistic and superficial conclusion that Kabul offers a safe or meaningful ‘relocation’ option for Hazaras should be avoided.” Professor William Maley, View on the Return of Hazaras to Afghanistan, 5 December 2016, http://worldhazaracouncil.org/en/professor-william-maley-view-on-the-return-of-hazaras-to-afghanistan/, para. 6. More generally, adjudicators should take into account that the various ethnic groups in Afghanistan are not necessarily homogenous communities. Among Pashtuns, for example, strong rivalries between different sub-groupings may be a cause of tensions and conflicts. See for example Civil-Military Fusion Centre, Afghanistan Ethnic Groups: A Brief Investigation, August 2011, http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigating; Tribal Analysis Center, Pashtun Tribal Dynamics, October 2009, http://www.tribalanalysecnter.com/PDF/TAC/Pashtun%20Tribal%20Dynamics.pdf.
674 See Sections IIA and ILD above.
the reported stigma and discrimination against those who return to Afghanistan after spending time abroad.\textsuperscript{674}

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 or proven and sustainable support to enable access to an adequate standard of living. Moreover, UNHCR considers an IFA/IRA as reasonable only where the individual has access to a 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.

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. In certain circumstances, such persons may 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.

3. Internal Flight or Relocation Alternative in Afghanistan’s Cities

In line with the guidance provided in Sections III.C.1 and III.C.2, an assessment of the possibility of relocation to a particular city requires an assessment of both the relevance and the reasonableness of relocation to the proposed city for the particular applicant. In addition, if an IFA/IRA to a specific city is considered in asylum procedures, all relevant general and personal circumstances regarding the relevance and reasonableness of that city as a proposed area of relocation for the particular applicant must be established to the extent possible and must duly be taken into account. The applicant must be given an adequate opportunity to respond to the purported relevance and reasonableness of the city in question as the proposed IFA/IRA.\textsuperscript{675}

In relation to the relevance assessment, a decision-maker would need to assess whether the city in question is practically and safely accessible to the applicant.\textsuperscript{676} This requires an assessment of the availability of transportation by air to the nearest airport and the safety of subsequent transportation by road to the final destination; or alternatively an assessment of the safety of transportation by road from Kabul international airport to the final destination.\textsuperscript{677}

UNHCR calls attention to the fact that few cities in Afghanistan are spared from attacks by AGEs that seek to make civilian victims. UNHCR notes that it is precisely civilians who partake in day-to-day economic and social activities in urban areas who are exposed to a risk of falling victim to such

\begin{itemize}
  \item Support from family networks 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., \textit{What Happens Post-Deportation? The Experience of Deported Afghans}, 2013, Migration studies, 1(2), pp. 221-240, \url{http://openaccess.city.ac.uk/4717/1/2013%20Schuster%20Majidi%20.pdf}.
  \item According to PRIO, returnees from Europe reportedly face a general assumption that they have become “westernized” or “anti-Islamic” in Europe, while many also feel that they have disappointed their family and become a drain on the family’s resources. PRIO, \textit{Can Afghans Reintegrate after Assisted Return from Europe?}, July 2015, \url{http://file.prio.no/publication_files/PRIO/Opopen%2020%20Car%20Afghans%20Reintegrate%20after%20Assisted%20Return%20from%20Europe,20%20PRIO%20Policy%20Brief%202015.pdf}.
  \item 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 struggle 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, \textit{After Return: Documenting The Experiences of Young People Forcibly Removed to Afghanistan}, April 2016, \url{https://refugeesupportnetwork.org/sites/default/files/files/After%20Return_RSN_April%202016.pdf}., pp. 6, 22.
  \item \textit{Ibid.}, paras 10-12.
  \item See for example, EASO, \textit{Afghanistan Security Situation}, December 2017, \url{http://www.refworld.org/docid/5ac603924.html}, Section 1.9.4 and sources quoted therein.
\end{itemize}
violence. Such activities include travelling to and from a place of work, travelling to hospitals and clinics, or travelling to school; livelihood activities that take place in the city’s streets, such as street vending; as well as going to markets, mosques and other places where people gather.

In relation to the reasonableness assessment, UNHCR calls attention to the general observation in OCHA’s Humanitarian Needs Overview for 2018 to the effect that, “Overall, provincial capitals across Afghanistan now host more than 54 percent of IDPs, further compounding the pressure on overstretched services and infrastructure and increasing competition for resources between incoming and host communities.” In addition, as noted in Section II.D, the northern and western parts of Afghanistan are facing the most severe drought in decades, with agriculture collapsing as a result of the cumulative effect of several years of low rainfall. Among the worst-affected provinces are Balkh, Ghor, Faryab, Badghis, Herat and Jowzjan.

In addition, as noted in Section II.F, in 2016 more than one million Afghans returned from Iran and Pakistan, followed by an additional 620,000 returnees in 2017. The Protection Cluster in Afghanistan noted already in April 2017, following the 2016 returns but prior to most of the 2017 returns, “The enormous surge in returns [from Pakistan and Iran] resulted in extreme stress on the already overstretched absorption capacity in Afghanistan’s main provincial and district centres, as many Afghans joined the legions of IDPs unable to return to their areas of origin due to the worsening conflict. [...] With limited job opportunities, no social protection nets and poor shelter conditions, displaced people not only face increased protection risks in their daily life, but are also forced into secondary displacement and negative coping strategies, like child labour, early marriage, reducing quantity and quality of food etc.”

According to the Afghan Living Conditions Survey 2016-2017, 72.4 per cent of the urban population in Afghanistan live in slums, informal settlements or inadequate housing households. Moreover, poverty levels in Afghanistan are reported to be rising, with the proportion of the population living below the national poverty line reportedly having increased from 34 per cent in 2007-2008 to 55 per cent in 2016-2017.


Central Statistics Organization, Afghanistan Living Condition Survey 2016-2017: Highlights Report, 2018, http://cso.gov.af/Content/files/Surveys/ALCS/Final%20En%20ALCS%20Highlight(1).pdf, pp. 6-7. “Perception-based indicators of economic health have worsened since last year (figure 3.2). One-third of respondents (33.5%) report that the financial well-being of their household has declined compared to last year, while 20.3% report improvement, and 46.0% report no change. By comparison, in 2012, almost half of respondents (49.8%) reported improvement compared to the previous year, and only 6.9% reported being worse off.” The Asia Foundation, Afghanistan in 2017: A Survey of the Afghan People, November 2017, https://asiafoundation.org/wp-
4. Internal Flight or Relocation Alternative in Kabul

In addition to the general guidance provided in Sections III.C.1 and III.C.2 above, and against the background of the additional information provided in Section III.C.3, UNHCR offers the following specific guidance relating to the two limbs of an IFA/IRA assessment for Kabul. In line with the guidance provided in Sections III.C.1 and III.C.2, an assessment of the possibility of relocation to Kabul requires an assessment of both the relevance and the reasonableness of this proposed area of relocation. In addition, if an IFA/IRA to Kabul is considered in asylum procedures, all relevant general and personal circumstances regarding the relevance and reasonableness of Kabul as a proposed area of relocation for the particular applicant must be established to the extent possible and must duly be taken into account. The applicant must be given an adequate opportunity to respond to the purported relevance and reasonableness of Kabul as the proposed IFA/IRA.

a) The relevance of Kabul as an IFA/IRA

To assess the relevance of Kabul as a proposed IFA/IRA, and in particular the risk that the applicant would face a real risk of serious harm, including a serious risk to life, safety, liberty or health, or one of serious discrimination, decision-makers must pay due regard to the negative trends in relation to the security situation for civilians in Kabul. UNAMA reported 993 civilian casualties (321 killed and 672 injured) in Kabul province during the first six months of 2018.685 In 2017 UNAMA “continued to document the highest levels of civilian casualties in Kabul province, mainly from indiscriminate attacks in Kabul city. Of the 1,831 civilian casualties (479 deaths and 1,352 injured) documented in Kabul province, 88 per cent resulted from suicide and complex attacks carried out by Anti-Government Elements in Kabul city.”686 As also noted in Section II.B.1 above, UNAMA reported that the number of civilian casualties in Kabul city caused by suicide and complex attacks in 2017 represented 70 per cent of all civilian casualties in Afghanistan in 2017 caused by such attacks.687

UNHCR notes that civilians who partake in day-to-day economic and social activities in Kabul are exposed to a risk of falling victim to the generalized violence that affects the city.688 Such activities


688 The European Asylum Support Office (EASO) has assessed that “indiscriminate violence is taking place in the province of Kabul, including the capital city.” EASO, Country Guidance: Afghanistan, June 2018, https://www.easo.europa.eu/sites/default/files/easo-country-guidance-afghanistan-2018.pdf, p. 83. EASO’s conclusion is based on: EASO, Afghanistan: Security Situation: Update, May 2018, http://www.refworld.org/docid/5b5e3d4a4.html, Section 2.1 (pp. 25-34); EASO, Afghanistan Security Situation, December 2017, http://www.refworld.org/docid/5ac603924.html, Section 2.1 (pp. 69-74) and Section 2.15 (pp. 153-157). See also, Administrative Court of Appeal of Lyon, 13 March 2018, Nos 17LE02181 – 17LE02184, http://www.ashylumlawdatabase.eu/en/case-law/france-administrative-court-appeal-lyon-13-march-2018-nos-17le02181-17le02184, where the Court found that an internal armed conflict prevails throughout the territory of Afghanistan, and that the situation in the Kabul region and Kabul city constitutes indiscriminate violence resulting from this internal armed conflict. See also, Administrative Court of Nantes, 8 June 2018, Nos 17NT03167 and 17NT03174, http://www.ashylumlawdatabase.eu/sites/www.ashylumlawdatabase.eu/files/aid/files/CA%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%
include travelling to and from a place of work, travelling to hospitals and clinics, or travelling to school; livelihood activities that take place in the city’s streets, such as street vending; as well as going to markets, mosques and other places where people gather.

b) The reasonableness of Kabul as an IFA/IRA

In accordance with the guidance provided in Section III.C.2 above, to assess whether Kabul provides a reasonable IFA/IRA, it must be established that the applicant will have access in Kabul to:

(i) shelter;
(ii) essential services, such as potable water and sanitation, health care and education;
(iii) livelihood opportunities, or proven and sustainable support to enable access to an adequate standard of living.

Relevant information to be taken into account by decision-makers in this regard includes the grave concerns expressed by humanitarian and development actors about the limits of Kabul’s absorption capacity. Since the fall of the former Taliban regime in 2001, Kabul City Region has seen the largest population increase in Afghanistan. Official population estimates indicate that by early 2016 Kabul City Region had 5 million residents, 60 per cent of which were in Kabul city.689 The city’s population has seen further rapid growth in the wake of the large-scale returns to Afghanistan from Iran and Pakistan (see Section II.F).690

The International Growth Centre noted in January 2018, “Kabul has been undergoing rapid urbanisation for the last three decades. Population growth in the city is outpacing the city’s capacity to provide necessary infrastructure, services and jobs to citizens, resulting in the emergence of widespread informal settlements that house an estimated 70% of the city’s population.”691

Against a background of general concerns about rising poverty levels in Afghanistan,692 the Asia Foundation’s 2017 Survey of the Afghan People found that perceptions of a worsening financial situation was most common in the Central/Kabul region, at 43.9 per cent.693 In January 2017 it was reported that 55 per cent of households in Kabul informal settlements were severely food insecure.694

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OCHA’s 2018 Humanitarian Needs Overview ranks Kabul among the 10 provinces (out of a total of 34 provinces) that are “the most conflict-affected”.

In addition, the Humanitarian Needs Overview notes that “needs are particularly pronounced in large urban centres, including Kabul and Jalalabad City, where both IDP and returnee populations have congregated in search of income and livelihood opportunities as well as access to basic and essential services. Humanitarian needs in these two provinces [Kabul and Nangarhar] comprise 42 percent of all those relating to internal displacement and cross-border influxes.”

c) Conclusion on the Availability of an IFA/IRA in Kabul

UNHCR considers that given the current security, human rights and humanitarian situation in Kabul, an IFA/IRA is generally not available in the city.

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 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 regime and (v) the non-
international armed conflict between the Government and the Taliban and other armed groups which continues until the present day.\(^\text{700}\)

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).\(^\text{701}\) Where the crimes in question constitute fundamentally inhuman 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.\(^\text{702}\) 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.\(^\text{703}\)

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.\(^\text{704}\) These actors include not only organized criminal networks, but also warlords and AGEs. The crimes in question may be linked to the armed


\(^{701}\) War crimes are serious violations of IHL which entail individual 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 Motion for Interlocutory Appeal on Jurisdiction, IT-94-1, 2 October 1995, http://www.refworld.org/docid/472f4b520.html, para. 134. Serious violations of the aforementioned rules could not be considered “war crimes”, but they may fall within the scope of “serious non-political crimes” (Article 1F(b)) or, depending on the circumstances, “crimes against humanity” (Article 1F(a)).


conflicts in Afghanistan. If this is the case, they would need to be assessed against 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. Otherwise, such crimes may give rise to exclusion as serious non-political crimes within the meaning of Article 1F(b) of the 1951 Convention.

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.

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. 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. 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), but also with regard to crimes prohibited under

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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”.


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](http://www.refworld.org/docid/3f5857d24.html), paras 41 and 81.

707 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/Eng/documents/doc?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/documents/faq-terrorism-faq-050504.htm](http://www.icrc.org/eng/resources/documents/faq-terrorism-faq-050504.htm). See also ICTY, Prosecutor v. Galic, Case No. IT-98-29-A, Appeal Chamber judgment of 30 November 2006, [http://www.refworld.org/docid/47f7f565.html](http://www.refworld.org/docid/47f7f565.html), paras 98 and 102-104.

708 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/EN/ENGREV. 3, [http://www.refworld.org/docid/4f313c8d7.html](http://www.refworld.org/docid/4f313c8d7.html), para. 162.
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.\footnote{712}

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 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.\footnote{713}

In 2007, the Government passed the National Stability and Reconciliation Law,\footnote{714} 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.\footnote{715} In UNHCR’s view, this does not mean that

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\footnote{712}{Rather than focus on the “terrorism” 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/35f5b7524.html, paras 46–49. See also UNHCR, Yasser al-Siriri (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/4fd692b13.html.}

\footnote{713}{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/35f5b7524.html, paras 50–73 and paras 76–78.}

exclusion may not be applied where crimes within the scope of Article 1F were committed prior to that date. Given the heinous nature 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.716

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 ANDSF, 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.

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,717 were involved in operations subjecting civilians to arrest, disappearances, torture, inhuman and degrading treatment and punishment, and extrajudicial executions.718 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.719

In this context, careful consideration needs to be given to cases of former employees of the Khadmate Ettelaate Dowlati (KhAD), the State Information Service, which later became the Wezarat-e Anmiyat-
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 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 of war 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.

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720 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/482947db2.html.

721 UNHCR, Note on the Structure and Operation of the KhAD/WAD in Afghanistan 1978-1992, May 2008, http://www.refworld.org/docid/482947db2.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 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.

722 Applicants whose applications require careful scrutiny 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), Jombesh-e-Melli-Islami, Itehad-e-Islami, Harkat-e-Inqilab-e-Islami (led by Mohammad Nabi Mohammadi) and Harkat-e-Islami.


3. Members and Commanders 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 commandants 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 Talibam 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 commandants of other AGEs, including Al-Qaeda, Islamic State and members of groups claiming to be affiliated to Islamic State, and the Haqqani Network, Hezb-e-Islami (Party of...

The Islamic Jihad Union is reported to be a splinter group of the Islamic Movement of Uzbekistan and is affiliated with Al Qaeda. See, Global Security, Islamic Movement of Uzbekistan (IMU), undated, https://www.globalsecurity.org/military/world/para/imu.htm.


Mohammad,736 Maulvi Nazim Group,737 Tora-Bora Nizami Mahaz (Tora-Bora Military Front),738 Jundallah,739 Harkat ul-Jihad-i-Islami (HuJ),740 Harkat ul-Mujahideen (HuM),741 and the East Turkestan Islamic Movement (ETIM).742

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 ANDSF, 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 ANDSF 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.