



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

**United Nations High Commissioner for Refugees (UNHCR)
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NOTE

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

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

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List of Abbreviations

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

I. Executive Summary

These Guidelines supersede the August 2013 *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*.¹ They are issued against a background of continuing concerns about the security situation in parts of Afghanistan and about widespread human rights abuses. They contain information on particular profiles of persons for whom international protection needs may arise in the current context in Afghanistan.

UNHCR has included in these Guidelines the most up-to-date information available at the time of writing, from a wide variety of sources.² 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.

Refugee Status under the 1951 Convention

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

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

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

¹ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 6 August 2013, HCR/EG/AFG/13/01, <http://www.refworld.org/docid/51ffdca34.html>.

² These Guidelines are based on information available to UNHCR as of 1 March 2016, unless otherwise stated.

³ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, Vol. 189, p. 137, <http://www.refworld.org/docid/3be01b964.html>.

⁴ UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations Treaty Series, Vol. 606, p. 267, <http://www.refworld.org/docid/3ae6b3ae4.html>.

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

Afghanistan continues to be affected by a non-international armed conflict.⁵ Individuals fleeing harm or the threat of harm in the context of this conflict may meet the criteria for refugee status as contained in Article 1(A)(2) of the 1951 Convention. For this to be the case, there must be a reasonable possibility that the individual would experience serious harm amounting to persecution for reasons related to the grounds set out in Article 1(A)(2) as a result of the conflict.

Human rights violations and other consequences of exposure to conflict-related violence may amount to persecution within Article 1(A)(2) of the 1951 Convention, either independently or cumulatively. In the context of the conflict in Afghanistan, relevant factors in assessing the human rights violations or other serious harm that would be reasonably possible for an individual fleeing the conflict include: (i) the control over civilian populations by anti-government elements (AGEs), including through the imposition of parallel justice structures and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, restrictions on freedom of movement, and the use of extortion and illegal taxation; (ii) forced recruitment; (iii) the impact of violence and insecurity on the 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.⁶

For an individual who flees harm or the threat of harm in the context of the armed conflict in Afghanistan to meet the criteria for refugee status as contained in Article 1(A)(2) of the 1951 Convention, the persecution flowing from the violence must also be for reason of a 1951 Convention ground. In the context of Afghanistan, examples of circumstances where civilians are subjected to violence for a 1951 Convention ground include situations where violence is targeted at areas where civilians of specific ethnic, political or religious profiles predominantly reside, or at locations where civilians of such profiles predominantly gather (including markets, mosques, schools, or large social gatherings such as weddings). To qualify for refugee status there is no requirement that an individual be known personally to the agent(s) of persecution or be sought out personally by those agents. Similarly, entire communities may have a well-founded fear of persecution for one or more of the 1951 Convention grounds; there is no requirement that an individual suffer a form or degree of harm that differs from that suffered by other individuals with the same profile.⁷

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.⁸

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

⁵ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 71. See also for example Robin Geiß and Michael Siegrist, "Has the Armed Conflict in Afghanistan Affected the Rules on the Conduct of Hostilities?", *International Review of the Red Cross*, Vol. 93, No. 881, March 2011, <http://www.refworld.org/docid/511e1ecc2.html>.

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

⁷ Canada: Federal Court, *Ralph Prophète v. The Minister of Citizenship and Immigration*, 2008 FC 331, 12 March 2008, <http://www.refworld.org/docid/54c109a24.html>.

⁸ See UNHCR Executive Committee, *Conclusion on the Provision on International Protection Including through Complementary Forms of Protection*, No. 103 (LVI) – 2005, 7 October 2005, <http://www.refworld.org/docid/43576e292.html>.

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

UNHCR's mandate encompasses individuals who meet the refugee criteria under the 1951 Convention and its 1967 Protocol, but has been broadened through successive UN General Assembly and ECOSOC resolutions to a variety of other situations of forced displacement resulting from indiscriminate violence or public disorder.⁹ 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.¹⁰

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

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

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

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

⁹ UNHCR, *Providing International Protection Including Through Complementary Forms of Protection*, 2 June 2005, EC/55/SC/CRP.16, available at: <http://www.refworld.org/docid/47fd49d.html>; UN General Assembly, *Note on International Protection*, 7 September 1994, A/AC.96/830, <http://www.refworld.org/docid/3f0a935f2.html>.

¹⁰ See for example UNHCR, *MM (Iran) v. Secretary of State for the Home Department - Written Submission on Behalf of the United Nations High Commissioner for Refugees*, 3 August 2010, C5/2009/2479, <http://www.refworld.org/docid/4c6aa7db2.html>, para. 10.

¹¹ Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa* ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45, <http://www.refworld.org/docid/3ae6b36018.html>. The definition of the term "refugee" as contained in Article I of the 1969 OAU Convention has been incorporated into Article I of the *Bangkok Principles on the Status and Treatment of Refugees* (Bangkok Principles). See Asian-African Legal Consultative Organization (AALCO), *Bangkok Principles on the Status and Treatment of Refugees* (Final Text of the AALCO's 1966 Bangkok Principles on Status and Treatment of Refugees, as adopted on 24 June 2001 at the AALCO's 40th Session, New Delhi), <http://www.refworld.org/docid/3de5f2d52.html>.

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

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

Afghans who seek international protection in Member States of the European Union (EU) and who are found not to be refugees under the 1951 Convention may qualify for subsidiary protection under Article 15 of EU Directive 2011/95/EU (Qualification Directive), if there are substantial grounds for believing that they would face a real risk of serious harm in Afghanistan.¹⁴ In light of the information presented in Section 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 that they would face a real risk of the relevant forms of serious harm (death penalty¹⁵ or execution; or torture or inhuman or degrading treatment or punishment), either at the hands of the State or its agents, or at the hands of AGEs.¹⁶ Equally, in light of the fact that Afghanistan continues to be affected by a non-international armed conflict and in light of the information presented in Sections II.B, II.C, II.D and II.E of these Guidelines, applicants originating from or previously residing in conflict-affected areas may, depending on the individual circumstances of the case, be in need of subsidiary protection under Article 15(c) on the grounds that they would face a serious and individual threat to their life or person by reason of indiscriminate violence.

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

¹² 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/50fd3edb2.html>; Alice Edwards, “Refugee Status Determination in Africa”, 14 *African Journal of International and Comparative Law* 204-233 (2006); UNHCR, *Extending the Limits or Narrowing the Scope? Deconstructing the OAU Refugee Definition Thirty Years On*, April 2005, ISSN 1020-7473, <http://www.refworld.org/docid/4ff168782.html>.

¹³ *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>. Although the Cartagena Declaration is included in a non-binding regional instrument, the Cartagena refugee definition has attained a particular standing in the region, not least through its incorporation into 14 national laws and State practice. For guidance on the interpretation of the refugee definition in the Cartagena Declaration, see: UNHCR, *Summary Conclusions on the Interpretation of the Extended Refugee Definition in the 1984 Cartagena Declaration: Roundtable 15 and 16 October 2013, Montevideo, Uruguay*, 7 July 2014, <http://www.refworld.org/docid/53c52e7d4.html>.

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/4f06fa5e2.html>, arts 2(f), 15.

¹⁵ Under Article 24 of Afghanistan’s Penal Code, the death penalty may be imposed for felony crimes. *Penal Code* [Afghanistan], No. 1980, 22 September 1976, <http://www.refworld.org/docid/4c58395a2.html>. Under Article 1 of the Penal Code, those found guilty of *hudoob* crimes are to be punished in accordance with the principles of Hanafi jurisprudence of Sharia law; *hudoob* punishments include execution and stoning to death. 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>. In October 2014, five men were hanged in Kabul after having been found guilty for a gang rape in a trial that was heavily criticized by international observers. Reuters, *Afghanistan Hangs Five Men over Gang Rape, Despite Concerns of Rights Groups (Update 1)*, 8 October 2014, <http://in.reuters.com/article/afghanistan-execution-idINL3NOS33BR20141008>. See also 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.

reliable information about the situation in Afghanistan, giving due weight to the future-oriented nature of assessments of protection needs.

Internal Flight or Relocation Alternative

An assessment of the availability of an internal flight or relocation alternative (IFA/IRA) requires an assessment of the relevance as well as the reasonableness of the proposed IFA/IRA.¹⁷ An IFA/IRA is relevant only if the proposed area of relocation is practically, safely and legally accessible, and if the individual concerned would not be exposed to a further risk of persecution or serious harm in the area of relocation. In assessing the relevance of an IFA/IRA for Afghan applicants, the following considerations must be taken into account:

- (i) The volatility and fluidity of the armed conflict in Afghanistan in terms of the difficulty of identifying potential areas of relocation that are durably safe; and
- (ii) The concrete prospects of safely accessing the proposed area of relocation, taking into account the risks associated with the widespread use of IEDs and landmines throughout the country, attacks and fighting taking place on roads, and restrictions on civilians' freedom of movement imposed by AGEs.

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

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

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

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

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

¹⁷ UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>.

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

In the case of unaccompanied and separated children from Afghanistan, UNHCR considers that in addition to the requirement of meaningful support of the child's own (extended) family or larger ethnic community in the area of prospective relocation, it must be established that relocation is in the best interest of the child. The return of unaccompanied and separated children to Afghanistan is furthermore subject to the minimum safeguards identified in the 2010 *Aide-mémoire: Special Measures Applying to the Return of Unaccompanied and Separated Children to Afghanistan*.¹⁸

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

Exclusion Considerations

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

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

¹⁸ UNHCR, *Special Measures Applying to the Return of Unaccompanied and Separated Children to Afghanistan*, August 2010, <http://www.refworld.org/docid/4c91dbb22.html>.

II. Overview of the Situation in Afghanistan

A. Main Developments in Afghanistan

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

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

¹⁹ United Nations Assistance Mission in Afghanistan (UNAMA), *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 71.

²⁰ UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 7 March 2016, A/70/775-S/2016/218, <http://www.refworld.org/docid/56f2667d4.html>, paras. 52-62; UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 10 December 2015, A/70/601-S/2015/942, <http://www.refworld.org/docid/5672ac7c4.html>, para. 63.

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

²² Special Inspector General for Afghanistan Reconstruction (SIGAR), *Quarterly Report to the United States Congress*, 30 January 2016, <https://www.sigar.mil/pdf/quarterlyreports/2016-01-30qr.pdf>, p. 69; Washington Post, *A Year of Taliban Gains Shows That 'We Haven't Delivered,' Top Afghan Official says*, December 27 2015, https://www.washingtonpost.com/world/asia_pacific/a-year-of-taliban-gains-shows-that-we-havent-delivered-top-afghan-official-says/2015/12/27/172213e8-9cfb-11e5-9ad2-568d814bbf3b_story.html. According to data compiled by the Long War Journal, the Taliban controlled 40 districts and contended another 39 districts as of December 2015. Long War Journal, *Taliban Controls or Contests Nearly All of Southern Afghan Province*, 21 December 2015, <http://www.longwarjournal.org/archives/2015/12/taliban-controls-or-contests-nearly-all-of-southern-afghan-province.php>. The UN Secretary-General reported in December 2015 that "control of approximately 25 per cent of districts remains contested throughout the country." UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 10 December 2015, A/70/601-S/2015/942, <http://www.refworld.org/docid/5672ac7c4.html>, para. 15.

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

²⁴ According to the BBC, "About a dozen militant groups, having different goals and agendas, are fighting in Afghanistan. A few of them have challenged the Taliban's supremacy, but most of them are directly or indirectly supporting the Afghan Taliban with money and/or manpower." BBC, *Why Are the Taliban Resurgent in Afghanistan?*, 5 January 2016, <http://www.bbc.com/news/world-asia-35169478>. The increasing fragmentation of the Taliban has reportedly increased the volatility of the security situation, while the fragmentation has reportedly not led to a decrease in anti-government initiatives. UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 7 March 2016, A/70/775-S/2016/218, <http://www.refworld.org/docid/56f2667d4.html>, paras. 14, 56. See also Khaama Press, *31 Militants Killed in Taliban-Daesh Clashes in Nangarhar*, 6 January 2016, <http://www.khaama.com/31-militants-killed-in-taliban-daesh-clashes-in-nangarhar-4468>; BBC, *Why Taliban Special Forces Are Fighting Islamic State*, 18 December 2015, <http://www.bbc.com/news/world-asia-35123748>; The Guardian, *Taliban Leader Mullah Mansoor Wounded in Gunfight, Says Kabul*, 3 December 2015, <http://www.theguardian.com/world/2015/dec/03/taliban-leader-mullah-mansoor-wounded-gunfight-pakistan-renegade-commander>. Al Qaeda has also reportedly established training camps in the southern part of Afghanistan. New York Times, *As U.S. Focuses on ISIS and the Taliban, Al Qaeda Re-emerges*, December 29 2015, <http://www.nytimes.com/2015/12/30/us/politics/as-us-focuses-on-isis-and-the-taliban-al-qaeda-re-emerges.html>. In January 2016 the US State Department designated the Afghan ISIS affiliate a foreign terrorist organization, allowing US military operations against them. New York Times, *U.S. Lists Afghan Branch of ISIS as Terrorist Group*, 14 January 2016, <http://www.nytimes.com/2016/01/15/world/asia-us-lists-afghan-branch-of-isis-as-terrorist-group.html>.

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

the government's authority in their areas of influence and are increasingly associated with human rights violations.²⁶

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

On 1 January 2015, ISAF ended its combat mission and ANSF assumed full responsibility for the security situation in the country.²⁹ A significantly reduced international military presence remained under the NATO Resolute Support Mission (RSM), with a focus on training, advising and assisting the ANSF; in December 2015, it was agreed to sustain the RSM presence during 2016.³⁰ In addition, the United States maintained a separate and complementary counterterrorism mission in the country.³¹ According to analysts, the ANSF have proved generally adept in defending provincial capitals and major urban centres, with the chief exception of the brief capture by the Taliban of Kunduz in September 2015. However, the ANSF suffered a substantial increase in casualties in 2015 and have typically been forced into reactive positions as a resurgent Taliban launched multi-pronged offensives and strengthened their control in rural areas across the country during the 2015 fighting season.³²

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

²⁶ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 64-66; UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 81.

²⁷ Asia Foundation, *Survey Reveals 2014 Election Major Driver of Optimism in Afghanistan*, 19 November 2014, <http://asiafoundation.org/in-asia/2014/11/19/survey-reveals-2014-election-major-driver-of-optimism-in-afghanistan/>; New York Times, *Afghans, Looking Ahead to U.S. Withdrawal, Vote With Guarded Optimism*, 14 June 2014, <http://www.nytimes.com/2014/06/15/world/asia/afghanistan-election.html>; Al Jazeera, *Afghan Optimism and The Road Ahead*, 30 March 2014, <http://www.aljazeera.com/indepth/2014/03/afghan-new-poll-presidential-election-201432781420553548.html>. However, some analysts also expressed doubt that the elections and power transition would lead to the desired change. For example, the Afghanistan Research and Evaluation Unit (AREU) wrote in March 2014, "...to pin hopes on the 2014 and 2015 Presidential, Provincial Council and Parliamentary Elections and overestimate the importance of 'Afghanistan's first real transfer of political power from one elected President to another' would only lead to disappointment. Real and genuine change will come, but in decades not years. Dealing with a context as complex as Afghanistan's requires the actors to question longheld assumptions, to adopt a long-term learning approach and to view interventions as experiments." AREU, *Governance in Afghanistan: An Introduction*, March 2014, <http://www.refworld.org/docid/533165784.html>, p. 51.

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

²⁹ NATO, *ISAF Flag Returns to NATO Headquarters from Kabul, As NATO Commitment to Afghanistan Endures*, 15 January 2015, http://www.nato.int/cps/en/natohq/news_116550.htm.

³⁰ NATO, *A New Chapter in NATO-Afghanistan Relations*, February 2016, http://www.nato.int/nato_static_fl2014/assets/pdf/2016_01/20160202_1601-backgrounder-afghanistan-ru.pdf. In early 2016, the U.S. military increased the deployment of troops to areas where the Afghan army is involved in heavy fighting with AGEs. While the troops are reported to continue their functions as advisors, American Special Operations forces are reported to be increasingly drawn into fighting against Taliban insurgents in Helmand province. See New York Times, *U.S. to Send More Troops to Aid Afghan Forces Pressed by Taliban*, 9 February 2016, <http://www.nytimes.com/2016/02/10/world/asia/us-troops-helmand-province-afghanistan.html>; Reuters, *U.S. Troop Reinforcements Head for Embattled Southern Afghan Province*, 9 February 2016, <http://www.reuters.com/article/us-afghanistan-military-idUSKCN0VIOFX>.

³¹ US Department of Defense, *Enhancing Security and Stability in Afghanistan*, December 2015, http://www.defense.gov/Portals/1/Documents/pubs/1225_Report_Dec_2015_-_Final_20151210.pdf, p. 1. It should be noted, however, that command of both missions is assumed by a 'double-hatted' American. Afghanistan Analysts Network (AAN), *Resolute Support Light: NATO's New Mission versus the ANSF Political Economy*, 12 January 2015, <https://www.afghanistan-analysts.org/publication/aan-papers/resolute-support-light-natos-new-mission-versus-the-ansf-political-economy/>.

³² UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 7 March 2016, A/70/775-S/2016/218, <http://www.refworld.org/docid/56f2667d4.html>, para. 15; UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 10 December 2015, A/70/601-S/2015/942, <http://www.refworld.org/docid/5672ac7c4.html>, para. 64; US Department of Defense, *Enhancing Security and Stability in Afghanistan*, December 2015, http://www.defense.gov/Portals/1/Documents/pubs/1225_Report_Dec_2015_-_Final_20151210.pdf, p. 18.

³³ UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 7 March 2016, A/70/775-S/2016/218, <http://www.refworld.org/docid/56f2667d4.html>, para. 3; see also Al Jazeera, *Four-Country Talks Resume to Revive Afghan Peace Plan*, 6 February 2016, <http://www.aljazeera.com/news/2016/02/country-talks-resume-revive-afghan-peace-plan-160206101157692.html>; Reuters, *Pakistan, China, U.S. Urge Taliban to Rejoin Afghan Peace Talks*, 19 January 2016, <http://www.reuters.com/article/afghanistan-taliban-talks-idUSKCN0UW0AP>.

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

The National Unity Government (NUG) remains a fragile governing coalition hampered by ethnic divisions, tensions related to political patronage and internal disagreements over key strategic issues.³⁷ Concerns over the deteriorating security situation have reportedly reduced popular support and belief in the Government's ability to provide security for the population, while political opponents have also increasingly voiced their disapproval with the Government's inability to implement promised reforms.³⁸ Following the postponement of parliamentary elections that were due to be held in April 2015, some progress was made in efforts to reform the electoral process through the establishment of a Special Electoral Reform Commission in July 2015.³⁹ However, while the Commission issued its final recommendations in December 2015, implementation of the reforms reportedly stalled.⁴⁰ Parliamentary and District Council elections are scheduled to be held in the second half of 2016.⁴¹

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

³⁴ The Guardian, *Dozens Killed in Clashes Between Rival Taliban Factions in Afghanistan*, 10 March 2016, <http://www.theguardian.com/world/2016/mar/10/dozens-killed-clashes-rival-taliban-factions-afghanistan-herat>; Deutsche Welle, *Afghan Peace Talks Aimed at Bringing Taliban to Negotiating Table*, 8 January 2016, <http://www.dw.com/en/afghan-peace-talks-aimed-at-bringing-taliban-to-negotiating-table/a-18967629>; Tolo News, *A Divided Taliban Explained*, 3 December 2015, <http://www.tolonews.com/en/afghanistan/22636-a-divided-taliban-explained>; AAN, *Toward Fragmentation? Mapping the Post-Omar Taleban*, 24 November 2015, <https://www.afghanistan-analysts.org/toward-fragmentation-mapping-the-post-omar-taleban/>.

³⁵ Institute for War and Peace Reporting, *Afghanistan's High Peace Council: Five Years On*, 18 January 2016, <http://www.refworld.org/docid/569ff95d11.html>; Tolo News, *Gunmen Kill Samangan HPC Head*, 5 January 2016, <http://www.tolonews.com/en/afghanistan/23147-gunmen-kill-samangan-hpc-head>; The Express Tribune, *All Eyes on New High Peace Council Chief*, 7 November 2015, <http://tribune.com.pk/story/986486/all-eyes-on-new-high-peace-council-chief/>. According to the HPC, 33 members of its provincial peace committees have been killed in 17 provinces since the start of the programme in 2010. Pajhwok Afghan News, *Huge Expenses on Afghan Peace Effort Achieve Little Gains*, 30 August 2015, <http://www.pajhwok.com/en/2015/08/30/huge-expenses-afghan-peace-effort-achieve-little-gains>.

³⁶ Human Rights Watch (HRW), *Afghanistan: Set Out Concrete Plan to Involve Women*, 12 January 2016, <http://www.refworld.org/docid/569612034.html>; Afghan Women's Network, *Into Peace and Then*, 7 January 2016, http://www.awn-af.net/cms/press_detail/843/12; Women and Children Legal Research Foundation, *Women's Participation In the Peace Process*, 2015, <http://www.wclrf.org/af/wp-content/uploads/2016/Women's%20Participation%20in%20Peace%20Process-%20English.pdf>, pp. 21-32.

³⁷ The Guardian, *Afghan President Left Battling Disunity After Aide Punches Elder*, 5 February 2016, <http://www.theguardian.com/world/2016/feb/05/afghan-president-ashraf-ghani-disunity-aide-punch-elder-kandahar>; The Economist, *A bloody year of transition*, 9 January 2016, <http://www.economist.com/news/asia/2168515-resurgent-taliban-winning-territory-all-not-lost-bloody-year-transition>; Foreign Policy, *NUG One Year On: Struggling to Govern*, 29 September 2015, <http://foreignpolicy.com/2015/09/29/afghan-national-unity-government-one-year-on-struggling-to-govern/>;

³⁸ UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 7 March 2016, A/70/775-S/2016/218, <http://www.refworld.org/docid/56f2667d4.html>, para. 7. Several opposition political parties have been set up criticizing the performance of the government and seeking fresh presidential elections. Pajhwok Afghan News, *Stability Party Wants Fresh Polls After Electoral Reforms*, 18 January 2016, <http://www.pajhwok.com/en/2016/01/18/stability-party-wants-fresh-polls-after-electoral-reforms>; Tolo News, *Ahadi Launches New Party, Says NUG Has Failed*, 14 January 2016, <http://www.tolonews.com/en/afghanistan/23292-ahadi-launches-new-party-says-nug-has-failed>; Voice of America, *Afghanistan's Old Guard Set Up Opposition Party*, 18 December 2015, <http://m.voanews.com/a/afghanistan-old-gaurd-set-up-opposiotion-party/3108633.html>; Tolo News, *Ghani's Approval Rating Continues to Slide: Survey*, 16 August 2015, <http://www.tolonews.com/en/afghanistan/20930-ghanis-approval-rating-continues-to-slide-survey>. See also Institute for War and Peace Reporting, *Harsh Words for Afghan Unity Government*, 3 November 2015, <http://www.refworld.org/docid/564b5aa64.html>.

³⁹ UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 10 December 2015, A/70/601-S/2015/942, <http://www.refworld.org/docid/5672ac7c4.html>, para. 67.

⁴⁰ UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 7 March 2016, A/70/775-S/2016/218, <http://www.refworld.org/docid/56f2667d4.html>, paras. 9-10.

⁴¹ Tolo News, *IEC Announces Election Date Amid Controversy Over Reforms*, 18 January 2016, <http://www.tolonews.com/en/afghanistan/23348-iec-announces-election-date-amid-controversy-over-reforms>; UNAMA, *UNAMA Welcomes the National Unity Government's Commitment to Hold Elections*, 2 January 2016, <http://unama.unmissions.org/unama-welcomes-national-unity-government%E2%80%99s-commitment-hold-elections>.

⁴² SIGAR, *Quarterly Report to the United States Congress*, 30 January 2016, <https://www.sigar.mil/pdf/quarterlyreports/2016-01-30qr.pdf>, p. 3; Stockholm International Peace Research Institute (SIPRI), *Afghanistan's Private Sector: Status and Ways Forward*, October 2015, <http://www.sipri.org/research/security/afghanistan/sipri-afghanistan-report-october-2015>, p. 8; World Bank, *Afghanistan Development Update*, October 2015, http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2015/10/27/090224b083174638/1_0/Rendered/PDF/Afghanistan0de0pd ate00October020150.pdf, p. 1.

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

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

⁴³ In Nangarhar province the Taliban are reported to tolerate the cultivation of opium poppy and marijuana, which is popular with rural communities because of the higher financial returns compared to legal crops. AREU, *The Devil is in the Details: Nangarhar's Continued Decline into Insurgency, Violence and Widespread Drug Production*, February 2016, <http://www.refworld.org/docid/56c2eaa34.html>, p. 8; SIPRI, *Afghanistan's Private Sector: Status And Ways Forward*, October 2015, <http://www.sipri.org/research/security/afghanistan/sipri-afghanistan-report-october-2015>, p. 9. According to the New York Times, members of both the Government and the Taliban are reported to profit from the opium trade through taxation and other means in areas under their effective control. New York Times, *Penetrating Every Stage of Afghan Opium Chain, Taliban Become a Cartel*, 16 February 2016, <http://www.nytimes.com/2016/02/17/world/asia/afghanistan-opium-taliban-drug-cartel.html>; New York Times, *Tasked With Combating Opium, Afghan Officials Profit From It*, 15 February 2016, <http://www.nytimes.com/2016/02/16/world/asia/afghanistan-opium-heroin-taliban-helmand.html>. See also Integrated Regional Information Networks (IRIN), *Opium Bounces Back, Enriching Taliban and Afghan Officials*, 4 March 2016, <http://www.irinnews.org/feature/2016/03/04/opium-bounces-back-enriching-taliban-and-afghan-officials>.

⁴⁴ IRIN, *Afghanistan's Surprisingly Predictable Economic Crash*, 14 March 2016, <http://www.irinnews.org/analysis/2016/03/13/afghanistan%E2%80%99s-surprisingly-predictable-economic-crash>; SIGAR, *Quarterly Report to the United States Congress*, 30 January 2016, <https://www.sigar.mil/pdf/quarterlyreports/2016-01-30qr.pdf>, p. 4; Al Jazeera, *When Taliban Offer You Gold: Afghan Youth in Crisis?*, 16 January 2016, <http://www.aljazeera.com/programmes/talktojazeera/inthefield/2016/01/taliban-offer-gold-afghan-youth-crisis-160115133950196.html>; Reuters, *Idle Cranes, Untapped Mines As Afghans Struggle to Wean Themselves Off Aid*, 2 December 2015, <http://www.reuters.com/article/us-afghanistan-economy-idUSKBN0TL2SB20151202>; Washington Post, *As the U.S. Pulls Back, More Afghans Descend Into Joblessness*, 17 August 2015, https://www.washingtonpost.com/world/asia_pacific/jobless-afghans-flow-in-and-out-of-the-country-in-search-of-a-stable-life/2015/08/17/fbea873c-3c3c-11e5-a312-1a6452ac77d2_story.html.

⁴⁵ Tolo News, *Unemployment Rate Spikes in Afghanistan*, 2 October 2015, <http://www.tolonews.com/en/afghanistan/21676-unemployment-rate-spikes-in-afghanistan>. There were demonstrations against the government for their perceived lack of efforts in providing employment opportunities for young people. Pajhwok Afghan News, *Angry Youth Shuts Labour Ministry's Gate During Protest*, 1 November 2015, <http://www.pajhwok.com/en/2015/11/01/angry-youth-shuts-labour-ministry%E2%80%99s-gate-during-protest>. According to the Afghan Living Conditions Survey 2013-2014, the unemployment rate increased from 13.5 per cent in 2007-08 to 22.0 per cent in 2013-2014. The youth unemployment rate was reported at 27.4 per cent, while the share of the population not gainfully employed (unemployed or underemployed) was reported at 39.0 per cent in 2013-2014. Central Statistics Organization, *Afghanistan Living Condition Survey 2013-2014: National Risk and Vulnerability Assessment*, 2016, <http://cso.gov.af/Content/files/ALCS%202013-14%20Main%20Report%20-%20English%20-%2020151221.pdf>, pp. 57-64.

⁴⁶ The survey included face-to-face interviews with 9,586 Afghans from 14 different ethnic groups in all 34 provinces of the country. The Asia Foundation, *Afghanistan in 2015: A Survey of the Afghan People*, November 2015, <http://asiafoundation.org/resources/pdfs/Afghanistanin2015.pdf>, pp. 56-57.

⁴⁷ According to UNAMA, the chaos and breakdown in rule of law following the Taliban capture of Kunduz, "enabled an environment in which arbitrary killings, opportunistic criminality and destruction took place with complete impunity. UNAMA confirmed that fear of gender-based violence by armed men or opportunistic criminals stemming from unconfirmed reports was a key factor in the mass displacement of women from the city." UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 27. See also Tolo News, *Rise in Crime Irks Kabulies*, 28 February 2016, <http://www.tolonews.com/en/afghanistan/23984-rise-in-crime-irks-kabulies>; Pajhwok Afghan News, *70 Detained over Various Crimes in Herat*, 17 January 2016, <http://www.pajhwok.com/en/2016/01/17/70-detained-over-various-crimes-herat>; Khaama Press, *Kabul Police Arrests 411 over Various Criminal Charges in Past 3 Weeks*, 10 January 2016, <http://www.khaama.com/kabul-police-arrests-411-over-various-criminal-charges-in-past-3-weeks-1964>.

⁴⁸ See Section II.C.

⁴⁹ New York Times, *From Under Kabul's Bridges, Addicts Get Help at Old U.S. Base*, 10 January 2016, <http://www.nytimes.com/2016/01/11/world/asia/from-under-kabuls-bridges-addicts-get-help-at-old-us-base.html>; Institute for War and Peace Reporting, *Unemployment Fuelling Afghan Drug Use*, 7 December 2015, <http://www.refworld.org/docid/566936744.html>; Institute for War and Peace Reporting, *Tackling Addiction Among Afghan Women*, 3 December 2015, <http://www.refworld.org/docid/566157c44.html>; AAN, *Homeless and Unwanted: How Kabul's Drug Users Are Driven From Place to Place*, 29 October 2015, <https://www.afghanistan-analysts.org/homeless-and-unwanted-how-kabuls-drug-addicts-are-driven-like-a-flock/>; The Guardian, *Afghanistan Tackles Hidden Mental Health Epidemic*, 2 September 2015, <http://www.theguardian.com/global-development/2015/sep/02/afghanistan-tackles-hidden-mental-health-epidemic-therapists>.

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

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

The conflict is increasingly affecting all parts of the country.⁵⁷ Moreover, the nature of the conflict has reportedly continued to change.⁵⁸ Since the completion of the withdrawal of international combat

- ⁵⁰ UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 7 March 2016, A/70/775–S/2016/218, <http://www.refworld.org/docid/56f2667d4.html>, paras. 24-25, 54; UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 1. See also International Committee of the Red Cross (ICRC), *Afghanistan: Concern over Growing Number of Civilian Casualties*, 30 April 2015, <http://reliefweb.int/report/afghanistan/afghanistan-concern-over-growing-number-civilian-casualties>; Institute for War and Peace Reporting, *Afghans Discuss Trauma of War*, 18 February 2015, ARR Issue 510, <https://iwpr.net/global-voices/afghans-discuss-trauma-war>.
- ⁵¹ UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 7 March 2016, A/70/775–S/2016/218, <http://www.refworld.org/docid/56f2667d4.html>, para. 12; US Department of Defense, *Enhancing Security and Stability in Afghanistan*, December 2015, http://www.defense.gov/Portals/1/Documents/pubs/1225_Report_Dec_2015_-_Final_20151210.pdf, pp. 1-2, 17-23. For the reporting period June-August 2015, the UN Secretary-General noted that “the sustained conflict grew in both intensity and geographic scope”. UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 1 September 2015, A/70/359–S/2015/684, <http://www.refworld.org/docid/55f677871e.html>, para. 14. See also Institute for the Study of War (ISW), *Backgrounder: Afghanistan Threat Assessment: The Taliban and ISIS*, 10 December 2015, http://www.understandingwar.org/sites/default/files/Afghanistan%20Threat%20Assessment_The%20Taliban%20and%20ISIS_3.pdf.
- ⁵² According to The Long War Journal, as of December 2015 the Taliban held 39 districts throughout Afghanistan, with control over an additional to 39 districts being contested: The Long War Journal, *Taliban Lose Control of District in Southern Afghanistan, Gain Another in Northeast*, 18 December 2015, <http://www.longwarjournal.org/archives/2015/12/taliban-lose-control-of-district-in-southern-afghanistan-gain-another-in-northeast.php>.
- ⁵³ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 7; Stars and Stripes, *Islamic State Attack Claim Signals Escalation by Group in Afghanistan*, 14 January 2016, <http://www.stripes.com/news/islamic-state-attack-claim-signals-escalation-by-group-in-afghanistan-1.388693>; UNAMA, *Afghanistan: Midyear Report 2015, Protection Of Civilians In Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 12; ISW, *Backgrounder: ISIS in Afghanistan*, 3 December 2015, http://www.understandingwar.org/sites/default/files/ISIS%20in%20Afghanistan_2.pdf; Public Broadcasting Service (PBS), *ISIS is in Afghanistan, But Who Are They Really?*, 17 November 2015, <http://www.pbs.org/wgbh/frontline/article/isis-is-in-afghanistan-but-who-are-they-really/>; National Public Radio (NPR), *ISIS Gains A Foothold In Afghanistan*, 16 November 2015, <http://www.npr.org/2015/11/16/456174727/isis-gains-a-foothold-in-afghanistan>. In January 2016, the US Department of State designated the Afghanistan branch of ISIS as a terrorist organization. US Department of State, *Foreign Terrorist Organization Designation of ISIL - Khorasan (ISIL-K)*, 14 January 2016, <http://www.state.gov/r/pa/prs/ps/2016/01/251237.htm>.
- ⁵⁴ New York Times, *As U.S. Focuses on ISIS and the Taliban, Al Qaeda Re-emerges*, 29 December 2015, <http://www.nytimes.com/2015/12/30/us/politics/as-us-focuses-on-isis-and-the-taliban-al-qaeda-re-emerges.html>; US Department of Defense, *Enhancing Security and Stability in Afghanistan*, December 2015, http://www.defense.gov/Portals/1/Documents/pubs/1225_Report_Dec_2015_-_Final_20151210.pdf, p. 18.
- ⁵⁵ UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 10 December 2015, A/70/601–S/2015/942, <http://www.refworld.org/docid/5672ac7c4.html>, paras 14-16. See also, for example, The Long War Journal, *Rival Taliban Factions Clash in Western Afghanistan*, 8 December 2015, <http://www.longwarjournal.org/archives/2015/12/rival-taliban-factions-clash-in-western-afghanistan.php>; Al Jazeera, *The Afghan Battlefield Has Become More Complicated*, 1 November 2015, <http://www.aljazeera.com/indepth/opinion/2015/11/afghan-battlefield-complicated-151101081133323.html>; Al Jazeera, *ISIL and the Taliban*, 1 November 2015, <http://www.aljazeera.com/programmes/specialseries/2015/11/islamic-state-isil-taliban-afghanistan-151101074041755.html>; Al Jazeera, *Afghans Fear the Rising Influence of Taliban*, 12 October 2015, <http://www.aljazeera.com/indepth/features/2015/10/afghans-fear-rising-influence-taliban-151012143748059.html>.
- ⁵⁶ AAN, *Toward Fragmentation? Mapping the post-Omar Taleban*, 24 November 2015, <https://www.afghanistan-analysts.org/toward-fragmentation-mapping-the-post-omar-taleban/>; New York Times, *In ISIS, the Taliban Face an Insurgent Threat of Their Own*, 4 June 2015, <http://www.nytimes.com/2015/06/05/world/asia/afghanistan-taliban-face-insurgent-threat-from-isis.html>.
- ⁵⁷ UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 7 March 2016, A/70/775–S/2016/218, <http://www.refworld.org/docid/56f2667d4.html>, para. 14. See also AAN, *The 2015 Insurgency in the North (4): Surrounding the Cities in Baghlan*, 21 October 2015, <https://www.afghanistan-analysts.org/insurgency-in-the-north-4-baghlan/>; AAN, *The 2015 Insurgency in the North (3): The Fall and Recapture of Kunduz*, 16 October 2015, <https://www.afghanistan-analysts.org/the-2015-insurgency-in-the-north-3-the-fall-and-recapture-of-kunduz/>; The Washington Post, *Afghans Who once Watched War from Afar Forced to Flee as Front Lines Shift*, 13 July 2015,

troops at the end of 2014, AGEs are reported to have engaged in an increasing number of attacks,⁵⁹ including complex and suicide attacks as well as targeted and deliberate killings,⁶⁰ and directly attacking ANSF checkpoints and smaller garrisons.⁶¹ There has been a significant increase in targeted killings and abductions of local civilian leaders by AGEs, as well as a general campaign of intimidation aimed at controlling communities in rural areas.⁶² AGEs continue to carry out high-profile attacks in Kabul and other cities,⁶³ and to expand their reach in rural or less populated areas.⁶⁴

Concerns have been expressed about the ANSFs' capability and effectiveness in ensuring security and stability across Afghanistan.⁶⁵

https://www.washingtonpost.com/world/asia_pacific/number-of-afghans-forced-from-home-soars-to-highest-level-since-taliban-era/2015/07/13/816fd27e-19d1-11e5-bed8-1093ee58dad0_story.html.

⁵⁸ Mark Bowden, the UN Deputy Special Representative of the Secretary-General for Afghanistan, was quoted saying: "The conflict is changing in nature, in the way it is being fought and the impact is primarily on civilian population [...] also, there has been a change in control of areas". See UN News Service, *Afghanistan: Despite Intensification of Violence, UN Official Reports Progress in Overall Relief Assistance*, 15 December 2015, <http://www.refworld.org/docid/5672be0f417.html>.

⁵⁹ Radio Free Europe, *The Taliban's Rare Winter Offensive In Afghanistan*, 8 January 2016, <http://www.rferl.org/content/taliban-rare-winter-offensive/27477046.html>; Foreign Policy, *Mapped: The Taliban Surged in 2015, but ISIS Is Moving In on Its Turf*, 4 January 2016, <http://foreignpolicy.com/2016/01/04/mapped-the-taliban-surged-in-2015-but-isis-is-moving-in-on-its-turf/>; The Washington Post, *A Year of Taliban Gains Shows that 'We Haven't Delivered,' Top Afghan Official Says*, 27 December 2015, https://www.washingtonpost.com/world/asia_pacific/a-year-of-taliban-gains-shows-that-we-havent-delivered-top-afghan-official-says/2015/12/27/172213e8-9cfb-11e5-9ad2-568d814bbf3b_story.html; New York Times, *Afghan Taliban's Reach Is Widest Since 2001*, U.N. Says, 11 October 2015, <http://www.nytimes.com/2015/10/12/world/asia/afghanistan-taliban-united-nations.html>.

⁶⁰ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 2.

⁶¹ New York Times, *Taliban Step Up Urban Assaults, Testing the Mettle of Afghan Forces*, 9 January 2016, <http://www.nytimes.com/2016/01/10/world/middleeast/taliban-step-up-urban-assaults-testing-the-mettle-of-afghan-forces.html>; US Department of Defense, *Enhancing Security and Stability in Afghanistan*, December 2015, http://www.defense.gov/Portals/1/Documents/pubs/1225_Report_Dec_2015_-_Final_20151210.pdf, p. 17.

⁶² UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 45-46; UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, pp. 52-57. See also UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 10 December 2015, A/70/601-S/2015/942, <http://www.refworld.org/docid/5672ac7c4.html>, para. 17; UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 10 June 2015, A/69/929 - S/2015/422, <http://www.refworld.org/docid/558284aa4.html>, para. 22.

⁶³ In the last months of 2015 and in early 2016 there was an escalation of attacks in urban centres. Targets of these attacks included several foreign embassies. See, for example: UN News Service, *UN Condemns Suicide Attack Targeting Media in Kabul*, 21 January 2016, <http://www.refworld.org/docid/56a1dcc840b.html>; Radio Free Europe, *Five Said Killed in Suicide Attack near Russian Embassy in Kabul*, 20 January 2016, <http://www.rferl.org/content/kabul-russian-embassy-suicide-bomber/27499238.html>; New York Times, *Suicide Attack Kills at Least 13 in Afghanistan*, 17 January 2016, <http://www.nytimes.com/2016/01/18/world/asia/suicide-attack-kills-at-least-13-in-afghanistan.html>; New York Times, *ISIS Claims Assault that Killed 7 near Pakistani Consulate in Afghanistan*, 13 January 2016, <http://www.nytimes.com/2016/01/14/world/asia/jalalabad-afghanistan-blast.html>; UNAMA, *UNAMA Condemns Taliban Attacks in Kabul City that Kill Five and Injure 56*, 6 January 2016, <http://unama.unmissions.org/unama-condemns-taliban-attacks-kabul-city-kill-five-and-injure-56>; New York Times, *Taliban Step Up Urban Assaults, Testing the Mettle of Afghan Forces*, 9 January 2016, <http://www.nytimes.com/2016/01/10/world/middleeast/taliban-step-up-urban-assaults-testing-the-mettle-of-afghan-forces.html>; New York Times, *Bombings Near Kabul Airport Add to String of Attacks Around Afghan Capital*, 4 January 2016, <http://www.nytimes.com/2016/01/05/world/asia/bombings-near-kabul-airport-add-to-string-of-attacks-around-afghan-capital.html>; Radio Free Europe, *Two Dead in Kabul Explosion Claimed by Taliban*, 1 January 2016, <http://www.rferl.org/content/article/27461844.html>; The Wall Street Journal, *Taliban Attacks Spanish Embassy Compound in Kabul*, 11 December 2015, <http://www.wsj.com/articles/gunmen-suicide-bomber-attack-spanish-embassy-in-kabul-1449845240>; AAN, *The Triple Attack in Kabul: A Message? If so, to Whom?*, 10 August 2015, <https://www.afghanistan-analysts.org/the-triple-attack-in-kabul-a-message-if-so-to-whom/>. See also: The Washington Post, *After Kunduz, Taliban Is Now Targeting Other Afghan Cities*, 14 October 2015, https://www.washingtonpost.com/world/asia_pacific/after-kunduz-taliban-is-now-targeting-other-afghan-cities/2015/10/14/551ab668-7272-11e5-ba14-318f8e87a2fc_story.html.

⁶⁴ See US Department of Defense, *Enhancing Security and Stability in Afghanistan*, December 2015, http://www.defense.gov/Portals/1/Documents/pubs/1225_Report_Dec_2015_-_Final_20151210.pdf, pp. 17-18; The Guardian, *Why Capturing Helmand Is Top of the Taleban's Strategic Goals*, 26 December 2015, <http://www.theguardian.com/world/2015/dec/26/taliban-helmand-opium>; AAN, *The Second Fall of Musa Qala: How the Taleban Are Expanding Territorial Control*, 3 September 2015, <https://www.afghanistan-analysts.org/the-second-fall-of-musa-qala-how-the-taleban-are-expanding-territorial-control/>.

⁶⁵ See SIGAR, *Quarterly Report to Congress*, 30 October 2015, <https://www.sigar.mil/pdf/quarterlyreports/2015-10-30qr.pdf>, p. 4; US Department of Defense, *Enhancing Security and Stability in Afghanistan*, December 2015, http://www.defense.gov/Portals/1/Documents/pubs/1225_Report_Dec_2015_-_Final_20151210.pdf, pp. 29, 31; RT, *NATO Report Slams Afghan Army as Mission Incapable*, 10 December 2015, <https://www.rt.com/news/328408-afghan-army-mission-incapable/>; The Guardian, *Why Capturing Helmand Is Top of the Taleban's Strategic Goals*, 26 December 2015, <http://www.theguardian.com/world/2015/dec/26/taliban-helmand-opium>; Council on Foreign Relations, *Can Afghan Forces Resist the Taliban?*, 9 October 2015, <http://www.cfr.org/afghanistan/can-afghan-forces-resist-taliban/p37108>. See also AAN, *Ghazni Jailbreak: Where the Government Failed and Its Enemy Succeeded*, 15 January 2016, <https://www.afghanistan-analysts.org/ghazni-jailbreak-where-the-government-failed-and-its-enemy-succeeded/>; Reuters, *Confusion, Corruption among Afghan Forces Hit Helmand Defence*, 25 December 2015, <http://uk.reuters.com/article/uk-afghanistan-taliban-helmand-idUKKBN0U80C620151225>. According to the US Department of Defense, given their current stage of development, the ANSF "cannot manage the insurgency and ensure security and stability across Afghanistan without further improvement in key enabling capabilities, competent operational-level leaders, and continued development of

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

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

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

1. Civilian Casualties

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

UNAMA observed that the rise in civilian casualties was due to an increase in ground engagements, targeted killings and complex and suicide attacks.⁷¹ While in the first half of 2015 casualties from

human capital". US Department of Defense, *Enhancing Security and Stability in Afghanistan*, December 2015, http://www.defense.gov/Portals/1/Documents/pubs/1225_Report_Dec_2015_-_Final_20151210.pdf, p. 31.

⁶⁶ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 64.

⁶⁷ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 2, 25. See also UNAMA, *Afghanistan: Human Rights and Protection of Civilians in Armed Conflict Special Report on Kunduz Province*, December 2015, <http://www.refworld.org/docid/566fd0e64.html>, p. 14.

⁶⁸ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 1. UNAMA notes that it is likely to be underreporting civilian casualties as a result of limitations associated with the operating environment in Afghanistan. *Ibid.*, p. ii.

⁶⁹ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 1.

⁷⁰ UNAMA, *UN Chief in Afghanistan: Do More Now to Protect Civilians - UNAMA Releases Civilian Casualty Data for the First Quarter of 2016*, 17 April 2016, <https://unama.unmissions.org/un-chief-afghanistan-do-more-now-protect-civilians-unama-releases-civilian-casualty-data-first>.

⁷¹ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 2. According to UNAMA, groups affiliated to ISIS caused civilian casualties primarily from ground engagements with the Taliban. UNAMA, *ibid.*, p. 56.

ground engagements decreased by 19 per cent, increased ground fighting across Afghanistan caused a 60 per cent increase in civilian casualties from ground engagements in the second half of 2015. Pro-government forces⁷² were responsible for 30 per cent of civilian casualties caused by ground engagements, while AGEs caused 25 per cent of the civilian casualties from ground engagements (UNAMA could not determine the perpetrator for 44 per cent of the casualties from ground engagements).⁷³ According to UNAMA, the significant increase in 2015 in civilian casualties from ground engagements by pro-government forces was due in large part to the completion of the security transition at the end of 2014, with the ANSF taking full responsibility in 2015 for counter-insurgency operations.⁷⁴

In 2014, improvised explosive devices (IEDs) were responsible for 925 civilian deaths and 2,053 injuries, marking an increase by 3 per cent compared to 2013.⁷⁵ In 2015, for the first time since 2012, civilian deaths (713) and injuries (1,655) resulting from the use of IEDs decreased by 20 per cent compared to the previous year; however they remained the second most important cause of casualties after ground engagements, representing 21 per cent of civilian casualties.⁷⁶

AGEs also continued to use suicide attacks to target public places, including crowded markets, mosques, social gatherings such as weddings, gatherings of tribal elders and civilian government offices, in violation of international humanitarian law. In 2014 UNAMA documented 1,582 civilian casualties (371 killed and 1,211 injured) from suicide attacks, a 28 per cent increase from 2013; in 2015 these attacks increased by a further 16 per cent compared to 2014, causing 1,840 civilian casualties (308 deaths and 1,532 injured).⁷⁷

Marking a 28 per cent increase from 2014, in 2015 pro-government forces caused 1,854 civilian casualties (621 deaths and 1,233 injured), the vast part of which (68 per cent) were caused by ground engagements.⁷⁸ UNAMA notes that it may be under-reporting the number of civilian casualties from night search operations, as a result of the limitations linked to the operating environment and limited access to information.⁷⁹ In 2015, aerial operations by both international military forces and the Afghan Air Force caused 296 civilian casualties, an 83 per cent increase compared to 2014.⁸⁰

⁷² UNAMA defines pro-government forces as “Afghan Government National Security Forces and other forces and groups that act in military or paramilitary counter-insurgency operations and are directly or indirectly under the control of the Government of Afghanistan. These forces include, but are not limited to, the ABP, ALP, ANA, ANP, NDS and other Pro-Government local defence forces.” UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 81.

⁷³ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 25-26.

⁷⁴ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 26. For the government’s response to UNAMA’s findings, see *Statement by the Government of the Islamic Republic of Afghanistan on the 2015 UNAMA (United Nations Assistance Mission in Afghanistan) Report on Civilian Protection*, 14 February 2016, <http://president.gov.af/en/news/66833>. For the Taliban’s response, see Islamic Emirate of Afghanistan, *We Reject Partial Civilian Casualty Report of UNAMA*, 14 February 2016, <http://shahamat-english.com/we-reject-impartial-civilian-casualty-report-of-unama/>.

⁷⁵ UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 42.

⁷⁶ UNAMA observed that this reduction may be due to the increasing ability of Afghan security forces to detect and make safe IEDs rather than a reduced use of these devices by AGEs. UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 35. UNAMA also observed that the decrease may be related to the fact that there were no elections, and therefore no attacks directed against election-related activities in the period under consideration. UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 6.

⁷⁷ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 41; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 51. During the siege of Kunduz in September 2015, the Taliban reportedly put civilians at further risk by forcing them to house fighters and by systematically conducting door-to-door searches for Afghan security forces or government members. UNAMA, *Afghanistan: Human Rights and Protection of Civilians in Armed Conflict Special Report on Kunduz Province*, December 2015, <http://www.refworld.org/docid/566fd0e64.html>, pp. 13-18; Amnesty International, *Afghanistan: Taliban Tactics Put Civilians in Harm’s Way*, 29 September 2015, <https://www.amnesty.org/en/latest/news/2015/09/afghanistan-taliban-tactics-put-civilians-in-harms-way/>.

⁷⁸ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 58-59.

⁷⁹ UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. ii.

⁸⁰ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 59-60.

Incidents of cross-border shelling by the Pakistani military from Pakistan into Afghanistan continue to impact areas in the eastern region of Afghanistan. In 2015, a total of 19 incidents of cross-border shelling resulted in 32 civilian casualties.⁸¹

As of April 2014, more than 500 square kilometres of land were contaminated by landmines, affecting 1,609 communities in 253 districts.⁸² In mid-2015, the release of the nationwide Mine and ERW Impact Free Community Survey (MEIFCS) revealed that an additional area of about 30 square kilometres was contaminated, increasing the number of communities known to be impacted to 1,726.⁸³

2. Security Incidents

In 2015, 22,634 security incidents were recorded, a 3 per cent increase compared to 2014 and the second-highest number since 2001.⁸⁴ A marked increase in the number of security incidents was recorded in areas in the north, such as the provinces of Sari Pul, Faryab, Jawzjan, Kunduz and Takhar.⁸⁵

C. Human Rights Situation

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

1. Human Rights Abuses

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

⁸¹ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 24.

⁸² Mine Action Coordination Centre of Afghanistan (MACCA), *Mine Action Programme of Afghanistan, Annual Report 1393 (April 2014 - March 2015)*, 2015, <http://www.macca.org.af/macca/wp-content/uploads/2015/09/MAPA-Annual-Report-1393.pdf>, p. 3.

⁸³ United Nations Mine Action Service (UNMAS), *Mine Action Programme of Afghanistan (MAPA) Fast Facts April to June 2015*, July 2015, <http://www.macca.org.af/macca/wp-content/uploads/2015/07/MAPA-Fast-Facts-Apr-Jun-2015.pdf>. Much of this contamination relates to the Soviet-Afghan war and the internal armed conflicts prior to 2001. MACCA, *Mine Action Programme of Afghanistan, Annual Report 1393 (April 2014 - March 2015)*, 2015, <http://www.macca.org.af/macca/wp-content/uploads/2015/09/MAPA-Annual-Report-1393.pdf>, p. 3.

⁸⁴ UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 7 March 2016, A/70/775-S/2016/218, <http://www.refworld.org/docid/56f2667d4.html>, para. 12.

⁸⁵ UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 10 December 2015, A/70/601-S/2015/942, <http://www.refworld.org/docid/5672ac7c4.html>, para. 14.

⁸⁶ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 13-22, 42-57, 64-70. See also US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, pp. 15-19, 55-66, 87-89.

⁸⁷ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 58, 67; Amnesty International, *Amnesty International Report 2015/16 - Afghanistan*, 24 February 2016, <http://www.refworld.org/docid/56d05b7cc.html>.

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

⁸⁹ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 50-51.

areas of their respective control.⁹⁰ Severe human rights violations are reported to be particularly widespread in contested areas in which fighting is ongoing.⁹¹

a) *Human Rights Violations by State Actors*

Various State actors and their agents have been accused of committing serious human rights violations. Members of the security forces have reportedly committed unlawful killings and sexually abused and exploited children. Government officials, security forces, detention centre authorities, and police have reportedly used torture or cruel, inhuman or degrading treatment or punishment (see below). Impunity for human rights violations committed by each of these State actors is reported to have remained widespread.⁹²

In successive reports, UNAMA has documented the widespread use of torture and ill-treatment of conflict-related detainees held by the National Directorate of Security (NDS), the Afghan National Police (ANP), the Afghan Local Police (ALP) and the Afghan National Army (ANA). Detainees reportedly lack access to remedial mechanisms and meaningful access to defence counsel.⁹³ Abuse and torture of detainees were also reported to occur in unofficial detention facilities operated by security forces which are inaccessible to independent observers.⁹⁴ Public statistics on the number of conflict-related detainees held outside the regular prison system are not available.⁹⁵

The prison system run by the Central Prisons Directorate reportedly suffers from severe overcrowding and poor hygienic conditions.⁹⁶ Lengthy pre-trial detention remained a problem, despite the coming into effect of a new criminal procedure code in 2014.⁹⁷ Law enforcement agencies reportedly use

⁹⁰ Both pro-government forces and AGEs have been reported to commit abuses such as targeted killings; combat operations with civilian casualties; complex and suicide attacks; and threats, harassment, and intimidation, both within and outside areas under their control. UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 41-53, 58-63. The Taliban have been reported to carry out targeted killings and attacks in Government-controlled areas, including in Kabul, targeting in particular persons perceived to support the Government and the international community. Immigration and Refugee Board of Canada, *Afghanistan: Whether the Taliban Has the Capacity to Pursue Individuals After They Relocate to Another Region; Their Capacity to Track Individuals Over the Long Term; Taliban Capacity to Carry Out Targeted Killings (2012-January 2016)*, 15 February 2016, AFG105412.E, <http://www.refworld.org/docid/56d7f2670.html>; Christian Science Monitor, *In Afghanistan Capital, Tentacles of Taliban Reach Deep*, 18 November 2015, <http://www.csmonitor.com/World/Asia-South-Central/2015/1118/In-Afghanistan-capital-tentacles-of-Taliban-reach-deep>. In its announcement of the 2016 spring offensive, the Taliban stated "the Operation will employ large scale attacks on enemy positions across the country, martyrdom-seeking and tactical attacks against enemy strongholds, and assassination of enemy commanders in urban centers." *Statement by Leadership Council of Islamic Emirate Regarding Inauguration of Spring Offensive Entitled "Operation Omari"*, 12 April 2016, <http://shahamat-english.com/statement-by-leadership-council-of-islamic-emirate-regarding-inauguration-of-spring-offensive-entitled-operation-omari/>. See also AAN, *Operation Omari: Taleban Announces 2016 Spring Offensive*, 14 April 2016, <https://www.afghanistan-analysts.org/operation-omari-taleban-announces-2016-spring-offensive/>.

⁹¹ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, pp. 40-79; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, pp. 41-93.

⁹² US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.

⁹³ UNAMA, *Update on the Treatment of Conflict Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129*, February 2015, <http://www.refworld.org/docid/54f06e814.html>, p. 17; UNAMA, *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On*, 20 January 2013, <http://www.refworld.org/docid/50ffe6852.html>. See also Amnesty International, *Amnesty International Report 2014/15 - Afghanistan*, 25 February 2015, <http://www.refworld.org/docid/54f07e2215.html>.

⁹⁴ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; UNAMA, *Update on the Treatment of Conflict Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129*, February 2015, <http://www.refworld.org/docid/54f06e814.html>, p. 19.

⁹⁵ SIGAR, *Quarterly Report to the United States Congress*, 30 October 2015, <https://www.sigar.mil/pdf/quarterlyreports/2015-10-30qr.pdf>, p. 151.

⁹⁶ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; SIGAR, *Quarterly Report to the United States Congress*, 30 October 2015, <https://www.sigar.mil/pdf/quarterlyreports/2015-10-30qr.pdf>, p. 152; Freedom House, *Freedom in the World 2015 - Afghanistan*, 20 March 2015, <http://www.refworld.org/docid/55116f4111.html>.

⁹⁷ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.

torture in order to coerce confessions from detainees, particularly conflict-related detainees.⁹⁸ Female prisoners are reportedly subject to widespread sexual abuse and bullying.⁹⁹

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

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

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

⁹⁸ UNAMA, *Update on the Treatment of Conflict Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129*, February 2015, <http://www.refworld.org/docid/54f06e814.html>, p. 19; UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights On the Situation of Human Rights in Afghanistan and On the Achievements of Technical Assistance in the Field of Human Rights in 2014*, 8 January 2015, A/HRC/28/48, <http://www.refworld.org/docid/5697d1474.html>, para. 35.

⁹⁹ Paiwand Afghan Association, *Afghan Women Penal System*, December 2015, http://www.tolonews.com/pdf/The-Afghan-Women-Penal-System_PAA-Research-Report.pdf, pp. 29-30; Institute for War and Peace Reporting, *Afghanistan: Female Prisoners Complain of Bullying*, 10 December 2015, <http://www.refworld.org/docid/5672c71e4.html>.

¹⁰⁰ According to International Crisis Group, "the ALP program has not improved security in many places and even exacerbated the conflict in a number of districts. A minority of villagers describe it as an indispensable source of protection, without which their districts would become battlegrounds or insurgent havens, but it is more common to hear complaints that ALP prey upon the people they are supposed to guard." International Crisis Group, *The Future of the Afghan Local Police*, 4 June 2015, <http://www.refworld.org/docid/55702a544.html>, p. i. See also UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 67-69. The continuous human rights violations committed by members of the ALP against the population in and around Kunduz city were reported to contribute to fuelling dissatisfaction against the Government, a situation which aided Taliban in their quick capture of the city in September 2015. UNAMA, *Afghanistan: Human Rights and Protection of Civilians in Armed Conflict Special Report on Kunduz Province*, December 2015, <http://www.refworld.org/docid/566fd0e64.html>, p. 1; New York Times, *For Afghans in Kunduz, Taliban Assault Is Just the Latest Affront*, 7 October 2015, <http://www.nytimes.com/2015/10/08/world/asia/for-afghans-in-kunduz-taliban-assault-is-just-the-latest-affront.html>.

¹⁰¹ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 68; US Department of Defense, *Report on Progress Towards Security and Stability in Afghanistan*, October 2014, http://www.defense.gov/Portals/1/Documents/pubs/Oct2014_Report_Final.pdf, p. 73. UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, pp. 71-72.

¹⁰² UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 67.

¹⁰³ UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 79.

¹⁰⁴ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 67.

¹⁰⁵ According to UNAMA and the United Nations Children's Fund (UNICEF), 24 schools were used for military purposes by pro-government forces in 2015. Among these, the highest numbers were documented in Kunduz province, where the military use of 15 schools affected 6,680 students (3,980 boys and 2,700 girls). The ALP were also reported to use a school in Baghlan province as a base for operations for several months in 2015, during which approximately 700 students (340 girls and 360 boys), and 20 teachers (including eight female teachers) were denied access to the school. UNAMA, *Education and Healthcare At Risk: Key Trends and Incidents Affecting Children's Access to Healthcare and Education in Afghanistan*, 18 April 2016, https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf, p. 19. See also UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 19; UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 30; UN Secretary-General, *Report of the Secretary-General on Children and Armed Conflict in Afghanistan*, 15 May 2015, S/2015/336, <http://www.refworld.org/docid/55965b254.html>, paras 47-48.

¹⁰⁶ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 20. See also analysis by AAN, which reports that reactions by Government and ANSF officials to such incidents indicate that they consider wounded fighters in hospitals and clinics to be lawful and legitimate targets. AAN, *Clinics Under Fire? Health Workers Caught Up In The Afghan Conflict*, 15 March 2016, <https://www.afghanistan-analysts.org/clinics-under-fire-health-workers-caught-up-in-the-afghan-conflict/>. According to UNAMA and UNICEF, 15 incidents affecting access to health care were attributed to pro-government forces in 2015. UNAMA, *Education and Healthcare At Risk: Key Trends and Incidents Affecting Children's Access to Healthcare and Education in Afghanistan*, 18 April 2016, https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf, p. 7.

particular, a United States military airstrike on a Médecins Sans Frontières (MSF) hospital in Kunduz City in October 2015 was reported to have had a devastating impact on healthcare in Kunduz province, leaving thousands without access to emergency health care.¹⁰⁷ At the end of 2015 and in early 2016 there was an increase in reports of search operations in health facilities causing civilian casualties, arrests and harassment of health care staff, and damage to medical equipment, attributed to Afghan security forces acting with support of international military forces.¹⁰⁸

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.¹⁰⁹ In 2015, UNAMA documented 136 civilian casualties (54 deaths and 82 injured) by such groups, compared to 102 casualties (53 deaths and 49 injured) documented in 2014.¹¹⁰ Twenty-two of the deaths and 3 of the injuries in 2015 were reportedly the results of targeted killings of civilians.¹¹¹

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.¹¹² Impunity for human rights violations committed by pro-government armed groups is reportedly widespread.¹¹³

The formation of private militias reportedly increased in 2015 as Afghan security forces struggled to contain AGE offensives across the country.¹¹⁴

¹⁰⁷ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 20; UNAMA, *Afghanistan: Human Rights and Protection of Civilians in Armed Conflict Special Report on Kunduz Province*, December 2015, <http://www.refworld.org/docid/566fd0e64.html>, pp. 7-12; MSF, *MSF Factsheet – Kunduz Hospital Attack*, 8 February 2016, http://www.msf.org/sites/msf.org/files/msf_factsheet_-_kunduz_hospital_attack_-_feb_2016.pdf; AAN, *Ripping Up the Rule Book? US Investigation Into the MSF Hospital Attack*, 27 November 2015, <https://www.afghanistan-analysts.org/ripping-up-the-rule-book-us-investigation-into-the-msf-hospital-attack/>.

¹⁰⁸ On 17 February 2016, a joint operation by the Afghan Ministry of Interior Special Forces and the international military in Wardak province led to the summary execution of two patients and a 15-year-old boy. The staff at the clinic was reportedly arrested and beaten. UNAMA, *UN Calls On All Parties to Respect Health Facilities*, 23 February 2016, <http://unama.unmissions.org/un-calls-all-parties-respect-health-facilities>; Swedish Committee for Afghanistan, *International Troops Supported the Raid on the Clinic of Swedish Committee for Afghanistan*, 25 February 2016, <http://swedishcommittee.org/blog/international-troops-supported-raid-clinic-swedish-committee-afghanistan>; New York Times, *Swedish Aid Group Seeks Inquiry Into Afghan Hospital Raid*, 24 February 2016, <http://www.nytimes.com/2016/02/25/world/asia/swedish-committee-for-afghanistan-hospital-raid.html>; HRW, *Afghanistan: Investigate Army Killings of Hospital Patients*, 19 February 2016, <http://www.refworld.org/docid/56caccfe4.html>. UNAMA documented two joint search operations by Afghan security forces and international military forces in Logar and Helmand provinces in December 2015 which resulted in the arrest of healthcare staff and destruction of clinic equipment. UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 63.

¹⁰⁹ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 64; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, pp. 83-87.

¹¹⁰ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 64-66; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 84. Examples of violations included the killing of an education department worker for failing to give higher grades to a student related to a commander. UNAMA, *Afghanistan: Annual Report 2014*, pp. 85-86.

¹¹¹ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 64.

¹¹² Al Jazeera, *Is an 'Afghan Awakening' the Solution?*, 28 September 2015, <http://www.aljazeera.com/indepth/opinion/2015/09/afghan-awakening-solution-150927075224969.html>; UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, pp. 76-77.

¹¹³ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 64-66; HRW, *"Today We Shall All Die": Afghanistan's Strongmen and the Legacy of Impunity*, 3 March 2015, <http://www.refworld.org/docid/54f6c1e44.html>, p. 4.

¹¹⁴ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 65-66; HRW, *World Report 2016: Afghanistan*, January 2016, <https://www.hrw.org/world-report/2016/country-chapters/afghanistan>; Tolo News, *Experts Advise Against Establishment Of Militia Groups*, 29 November 2015, <http://www.tolonews.com/en/afghanistan/22576-experts-advise-against-establishment-of-militia-groups>; New York Times, *Afghans Form Militias and Call on Warlords to Battle Taliban*, 24 May 2015, <http://www.nytimes.com/2015/05/25/world/asia/afghanistan-advance-afghanistans-reluctantly-recruits-militias.html>.

c) *Human Rights Abuses by Anti-Government Elements*

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

AGEs are reported to take advantage of the absence of governmental justice mechanisms or services to enforce their own parallel “judicial” structures, primarily in, but not limited to, areas under their control.¹¹⁵ UNAMA notes that these “parallel judicial structures are illegal and have no legitimacy or basis under the laws of Afghanistan. Punishments carried out by these structures amount to human rights abuses, criminal acts under the laws of Afghanistan, and in some circumstances, war crimes under international law.”¹¹⁶ In 2015, UNAMA documented 76 civilian casualties (60 deaths and 16 injured) following death sentences and lashings by AGEs.¹¹⁷ AGEs are also reportedly imposing illegal taxes in areas where they attempt to impose parallel systems of governance.¹¹⁸

AGEs reportedly place limitations on the right to freedom of expression. Civilians who speak out against AGEs or in favour of the Government, as well as civilians who are accused by AGEs of spying for the Government, reportedly face a risk of being subjected to summary trials in parallel and illegal judicial procedures operated by AGEs; the punishment for such alleged “crimes” is usually execution (see Section III.A.1.g).¹¹⁹ The Taliban have issued multiple threats and have committed violent attacks against media companies and journalists that are perceived to report critically against them.¹²⁰

AGEs also reportedly place limitations on the right to political participation. During the 2014 election period, UNAMA recorded 674 casualties (173 civilian deaths and 501 injured) from attacks directly targeting the electoral process, where the vast majority resulted from ground engagements and IED attacks by AGEs targeting election convoys, polling centres or electoral candidates and their supporters.¹²¹

AGEs are also reported to limit the right to freedom of movement through illegal checkpoints and the use of IEDs.¹²² While there was a reduction in civilian casualties caused by IEDs in 2015, UNAMA

¹¹⁵ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 50-51. UNAMA reported receiving multiple reports of executions carried out by parallel justice structures by the Taliban during the siege of Kunduz city in September 2015. UNAMA, *Afghanistan: Human Rights and Protection of Civilians in Armed Conflict Special Report on Kunduz Province*, December 2015, <http://www.refworld.org/docid/566fd0e64.html>, p. 13. UNAMA noted that it documented punishments associated with parallel justice structures in all regions of Afghanistan except for the Central Highlands in 2014. UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 61.

¹¹⁶ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 51.

¹¹⁷ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 50.

¹¹⁸ Tolo News, *Taliban 'Tax' Phone Companies*, 12 January 2016, <http://www.tolonews.com/en/afghanistan/23371-taliban-tax-phone-companies>; The Guardian, *British Engineers Evacuated From Key Afghan Dam as Taliban Approach*, 18 September 2015, <http://www.theguardian.com/world/2015/sep/18/british-engineers-evacuated-key-afghan-dam-taliban-approach-kajaki>; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, pp. 60, 69.

¹¹⁹ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 47; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, pp. 61.

¹²⁰ In January 2016, the Taliban claimed responsibility for a suicide attack against media workers in Kabul. Eight civilians were killed and 24 injured, many of them media workers. UNAMA, *UNAMA Condemns Suicide Attack Targeting Media in Kabul*, 21 January 2016, <http://unama.unmissions.org/unama-condemns-suicide-attack-targeting-media-kabul>. On 12 October 2015, the Taliban released a statement explicitly designating Tolo and 1 TV media outlets as legitimate military targets. *Statement by the Military Commission of Islamic Emirate Concerning Intelligence TV Networks of Tolo and 1 TV*, 12 October 2015, <http://shahamat-english.com/statement-by-the-military-commission-of-islamic-emirate-concerning-intelligence-tv-networks-of-tolo-and-1-tv/>. See also Reporters Without Borders, *Taliban and Islamic State Treat Media as Targets*, 13 October 2015, <http://www.refworld.org/docid/5620b15340a.html>; New York Times, *Taliban Threats to Afghan Journalists Show Shift in Tactics*, 18 October 2015, <http://www.nytimes.com/2015/10/19/world/asia/taliban-threats-to-afghan-journalists-show-shift-in-tactics.html>.

¹²¹ UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2014*, July 2014, <http://www.refworld.org/docid/53bd394f4.html>, p. 53.

¹²² UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 35-41; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, pp. 42-50. See also US Department of State, *2015 Country*

documented 1,051 civilian casualties (459 deaths and 592 injured) from the use of pressure-plate IEDs,¹²³ a 35 per cent increase compared to 2014.¹²⁴ While primarily deployed by AGEs as a defensive combat weapon against security forces, pressure plate IEDs are victim-operated and frequently impact civilians moving through public roads, footpaths, civilian agricultural areas, and other public areas frequented by civilians.¹²⁵ UNAMA has expressed concerns about “the continued use of IEDs by Anti-Government Elements to target Afghan security forces in areas crowded with civilians, including bazaars, central areas of towns and cities, mosques and close to hospitals or schools, despite the indiscriminate and disproportionate impact upon civilians in such circumstances.”¹²⁶ 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.¹²⁷

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.¹²⁸ In some areas, the Taliban have facilitated the re-opening of schools and the resumption of education,¹²⁹ and some moderate factions within the Taliban have reportedly expressed support for the education of girls and women.¹³⁰ However, there have been reports of both the Taliban and ISIS-affiliated groups using schools and madrassas as places for the indoctrination and recruitment of children for use in combat and in combat support functions.¹³¹ The Taliban have also been reported to interfere in or attempt to control the curriculum for adherence to Taliban-approved criteria.¹³²

Incidents of conflict-related violence directly impacting access to education continue to be reported in all regions of the country.¹³³ The vast majority of reported incidents were attributed to AGEs, including the Taliban, and included burning of schools, targeted killings and intimidation of teachers and staff, IEDs inside or in the vicinity of schools, rocket attacks against educational facilities, and

Reports on Human Rights Practices - Afghanistan, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; AIHRC, *The Situation of Human Rights in Afghanistan in 1393*, 11 August 2015, <http://www.refworld.org/docid/5694bc384.html>, pp. 43-44.

¹²³ A pressure plate IED is a victim-operated IED that detonates when a person or vehicle triggers the initiator or switch, in this case a pressure plate: UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 79.

¹²⁴ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 38.

¹²⁵ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 37-38.

¹²⁶ UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 45; see also UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 38.

¹²⁷ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 35-41; UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, pp. 42-49; UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General*, 27 February 2015, A/69/801-S/2015/151, <http://www.refworld.org/docid/556585104.html>, para. 41.

¹²⁸ See for example the statements issued by the Taliban: Islamic Emirate of Afghanistan, *Message of Felicitation of the Esteemed Amir-ul-Momineen, Mullah Akhtar Mohammad Mansoor, (May Allah Protect Him), on the Eve of Eid-ul-Odha*, 22 September 2015, <http://shahamat-english.com/message-of-felicitation-of-the-esteemed-amir-ul-momineen-mullah-akhtar-mohammad-mansoor-may-allah-protect-him-on-the-eve-of-eid-ul-odha/>; Islamic Emirate of Afghanistan, *Full text of the Statement Delivered by the Delegation of Political Office of the Islamic Emirate in the International Pugwash Research Conference*, 2 May 2015, <http://shahamat-english.com/full-text-of-the-statement-delivered-by-the-delegation-of-political-office-of-the-islamic-emirate-in-the-international-pugwash-research-conference/>.

¹²⁹ Radio Free Europe/Radio Liberty, *Afghan Authorities, Taliban Agree to Reopen Schools in Contested Region*, 23 November 2015, <http://gandhara.rferl.org/content/afghan-authorities-taliban-agree-to-reopen-schools/27382363.html>.

¹³⁰ Washington Post, *A New Taliban Breakaway Group Claims Support for Peace and Women's Rights*, 8 November 2015, https://www.washingtonpost.com/world/asia_pacific/a-new-taliban-breakaway-group-claims-support-for-peace-and-womens-rights/2015/11/08/846cdc79-6e07-4c44-9256-b2ba105eb945_story.html; Wall Street Journal, *Taliban Take Girls Back to School*, 16 January 2014, <http://www.wsj.com/articles/SB10001424052702304049704579318592003912998>.

¹³¹ HRW, *Afghanistan: Taliban Child Soldier Recruitment Surges*, 17 February 2016, <https://www.hrw.org/news/2016/02/17/afghanistan-taliban-child-soldier-recruitment-surges>; PBS Frontline, *Why Afghanistan's Children Are Used as Spies and Suicide Bombers*, 17 November 2015, <http://www.pbs.org/wgbh/frontline/article/why-afghanistans-children-are-used-as-spies-and-suicide-bombers/>.

¹³² Washington Post, *The Taliban Indoctrinates Kids with Jihadist Textbooks Paid for by the U.S.*, 8 December 2014, <https://www.washingtonpost.com/news/worldviews/wp/2014/12/08/the-taliban-indoctrinates-kids-with-jihadist-textbooks-paid-for-by-the-u-s/>.

¹³³ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 18-19.

closure of schools, particularly girls' schools.¹³⁴ Schools were reportedly also occupied and used for military purposes, compromising their protected status under international humanitarian law and depriving children of access to education.¹³⁵ Moreover, many schools are reported to remain closed in Afghanistan due to the prevailing local security conditions.¹³⁶

AGEs are similarly reported to restrict access to health care. In 2015, UNAMA documented 63 incidents targeting hospitals and health personnel by AGEs, a 47 per cent increase compared to 2014.¹³⁷ Despite pledges by the Taliban to support polio vaccination campaigns, vaccination bans imposed by AGEs and attacks against polio workers continue to be reported.¹³⁸

The right to freedom of religion is also reported to come under attack from AGEs, including through the use of threats and attacks against individuals and communities who are perceived to contravene AGEs' interpretation of Islamic principles, norms and values.¹³⁹

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

Even where the legal framework provides for the protection of human rights, the implementation of Afghanistan's commitments under national and international law to promote and protect these rights in practice frequently remains a challenge. Afghan governance and the adherence to the rule of law are perceived as particularly weak,¹⁴⁰ while public satisfaction with government performance and confidence in public institutions reportedly decreased sharply in 2015.¹⁴¹

¹³⁴ According to UNAMA and UNICEF, between 1 January 2013 and 31 December 2015 there was "a growing number of incidents of threats and intimidation against education personnel. Throughout 2015, these incidents increasingly impeded children's access to education and resulted in school closures, bans on girls' education and extortion. In 2015, UNAMA and UNICEF documented 19 incidents where Anti-Government Elements directly or indirectly limited girls' access to education." UNAMA, *Education and Healthcare At Risk: Key Trends and Incidents Affecting Children's Access to Healthcare and Education In Afghanistan*, 18 April 2016, https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf, p. 8. See also UN Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926-S/2015/409, <http://www.refworld.org/docid/557abf904.html>, para. 33; UN Secretary-General, *Report of the Secretary-General on Children and Armed Conflict in Afghanistan*, 15 May 2015, S/2015/336, <http://www.refworld.org/docid/55965b254.html>, para. 44.

¹³⁵ According to UNAMA and UNICEF, at least 11 schools in Nangarhar, Nuristan, Logar and Kunduz provinces were used by AGEs for military purposes in 2015. UNAMA, *Education and Healthcare At Risk: Key Trends and Incidents Affecting Children's Access to Healthcare and Education In Afghanistan*, 18 April 2016, https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf, p. 19. See also UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 19; UN Secretary-General, *Report of the Secretary-General on Children and Armed Conflict in Afghanistan*, 15 May 2015, S/2015/336, <http://www.refworld.org/docid/55965b254.html>, para. 48.

¹³⁶ The Taliban offensive in Kunduz City reportedly "led to the closure of all 497 schools, barring the access to education of more than 330,000 children. In addition to damaging 21 schools, the Taliban used 4 for military purposes." UN General Assembly, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 10 December 2015, A/70/601-S/2015/942, <http://www.refworld.org/docid/5672ac7c4.html>, para. 34. See also IRIN, *School Closures Fuel Taliban Recruitment*, 16 December 2015, <http://www.refworld.org/docid/569412eb6d2b.html>. ISIS-affiliated groups have also reportedly closed down dozens of school in Nangarhar province. Vice News, *The Islamic State Has Shut Down 57 Afghan Schools*, 17 September 2015, <https://news.vice.com/article/the-islamic-state-has-shut-down-57-afghan-schools>.

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

¹³⁸ According to the UNICEF, "by the end of 2015, 681,962 children in Afghanistan had missed polio vaccination due to anti-vaccination bans imposed by Anti-Government Elements and direct attacks against polio workers." UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 20-21. UNAMA also observed that although the Taliban were reported to have released statements in support of polio vaccination campaigns, certain Taliban commanders and other AGEs obstructed or banned the campaigns. UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, pp. 22-23. See also UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 10 December 2015, A/70/601-S/2015/942, <http://www.refworld.org/docid/5672ac7c4.html>, para. 52.

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

¹⁴⁰ In the annual Rule of Law Index for 2015 compiled by the World Justice Project, Afghanistan ranks 101st out of 102 countries. World Justice Project, *Rule of Law Index 2015*, 2015, http://worldjusticeproject.org/sites/default/files/roli_2015_0.pdf. See also United States Congressional Research Service, *Afghanistan: Politics, Elections, and Government Performance*, 12 January 2015, RS21922, <http://www.refworld.org/docid/56bb1e834.html>, p. 31.

¹⁴¹ Asia Foundation, *Afghanistan in 2015: A Survey of the Afghan People*, November 2015, <http://asiafoundation.org/resources/pdfs/Afghanistanin2015.pdf>, pp. 95-97.

The capability of the Government to protect human rights is undermined in many districts by insecurity and the high number of attacks by AGEs. Rural and unstable areas reportedly suffer from a generally weak formal justice system that is unable to effectively and reliably adjudicate civil and criminal disputes.¹⁴² Government-appointed judges and prosecutors are reportedly frequently unable to remain in such communities, due to insecurity.¹⁴³

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.¹⁴⁴ 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.¹⁴⁵ 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.¹⁴⁶ Up to two-thirds of Afghan citizens who are in contact with public officials at provincial and district levels reportedly have to pay bribes to access public services.¹⁴⁷ Within the police, corruption is reported to be endemic, as is the abuse of power and extortion.¹⁴⁸ The justice system is similarly reported to suffer from widespread corruption.¹⁴⁹

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

¹⁴³ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 45-46. Judges and lawyers are reportedly often subject to threats from local leaders or armed groups. Freedom House, *Freedom in the World 2015 - Afghanistan*, 20 March 2015, <http://www.refworld.org/docid/55116f4111.html>. There were reports of a widespread shortage of judges, primarily in insecure areas. US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.

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

¹⁴⁵ A report mapping war crimes and crimes against humanity since the Communist era was prepared by the AIHRC in 2011 and handed over to former President Karzai in early 2014. Despite election promises by President Ghani to release the report, no release date has been set. HRW, *World Report 2015 - Afghanistan*, 29 January 2015, <http://www.refworld.org/docid/54cf83c915.html>. See also US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.

¹⁴⁶ Afghanistan came 166th out of 168 countries in the 2015 Corruption Perceptions Index: Transparency International, *2015 Corruption Perceptions Index*, <http://www.transparency.org/cpi2015>. According to the Afghanistan Independent Joint Anti-Corruption Monitoring & Evaluation Committee, “the justice sector remains largely incapable of investigating and prosecuting corruption cases, especially against well-connected individuals who operate with near impunity, secure in the knowledge that they are effectively above the law.” Independent Joint Anti-Corruption Monitoring & Evaluation Committee, *News Release: Uneven Results in the Fight Against Corruption*, September 17 2015, [http://www.mec.af/files/2015_09_17_MEC_News_Release_\(English\).pdf](http://www.mec.af/files/2015_09_17_MEC_News_Release_(English).pdf). See also US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.

¹⁴⁷ According to a survey by the Asia Foundation, 61 percent of respondents had to pay a bribe some, most or all of the time when accessing public services at the provincial level, while the equivalent number at municipal level was 66 per cent. Asia Foundation, *Afghanistan in 2015: A Survey of the Afghan People*, November 2015, <http://asiafoundation.org/resources/pdfs/Afghanistanin2015.pdf>, pp. 99-100.

¹⁴⁸ See for example SIGAR, *Afghan Local Police: A Critical Rural Security Initiative Lacks Adequate Logistics Support, Oversight, and Direction*, October 2015, <https://www.sigar.mil/pdf/audits/SIGAR-16-3-AR.pdf>.

¹⁴⁹ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.

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

D. Humanitarian Situation

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

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

¹⁵⁰ Voice of America, *Corruption Encourages Parallel Judiciary in Afghanistan*, 12 January 2016, <http://www.voanews.com/content/corruption-encourages-parallel-judiciary-afghanistan/3142316.html>; Institute for War and Peace Reporting, *Afghans Turn to Taliban Justice*, 1 June 2015, <http://www.refworld.org/docid/556d79ee4.html>.

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

¹⁵² UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 7 March 2016, A/70/775-S/2016/218, <http://www.refworld.org/docid/56f2667d4.html>, para. 41; UN Office for the Coordination of Humanitarian Affairs (OCHA), *Afghanistan 2016 Humanitarian Needs Overview*, 31 December 2015, https://www.humanitarianresponse.info/en/system/files/documents/files/afg_2016_hno_final_20151209.pdf.

¹⁵³ UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 7 March 2016, A/70/775-S/2016/218, <http://www.refworld.org/docid/56f2667d4.html>, paras. 12-14; AAN, *The Second Fall of Musa Qala: How the Taliban Are Expanding Territorial Control*, 3 September 2015, <https://www.afghanistan-analysts.org/the-second-fall-of-musa-qala-how-the-taliban-are-expanding-territorial-control/>. For further information on the security situation, see Section II.B.

¹⁵⁴ OCHA, *Afghanistan 2016 Humanitarian Response Plan*, 31 December 2015, https://www.humanitarianresponse.info/en/system/files/documents/files/afg_2016_hrp_final_20160107_lr.pdf, p. 12. OCHA reported a decrease in security incidents affecting humanitarian workers compared to 2014 (255 against 294); however, those incidents had a more serious impact. OCHA, *Humanitarian Bulletin Afghanistan, Issue 47*, December 2015, https://www.humanitarianresponse.info/en/system/files/documents/files/afg_mhb_december_2015_v1.pdf, p. 6. See also IRIN, *Aid at Risk as Afghanistan's War Splinters*, 19 January 2015, <http://www.refworld.org/docid/54be5e7e4.html>.

¹⁵⁵ UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 7 March 2016, A/70/775-S/2016/218, <http://www.refworld.org/docid/56f2667d4.html>, paras. 46, 56; OCHA, *Afghanistan 2016 Humanitarian Needs Overview*, 31 December 2015, https://www.humanitarianresponse.info/en/system/files/documents/files/afg_2016_hno_final_20151209.pdf, p. 20; UNHCR, *Global Focus - Afghanistan*, <http://reporting.unhcr.org/node/4505>; OCHA, *Afghanistan Third Quarter Report*, 2015, https://docs.unocha.org/sites/dms/Afghanistan/Afg_Dashboard_Quarter_Three_00_Final_20151224.pdf, p. 4; IRIN, *Afghan Conflict and Upcoming Winter Complicate Earthquake Relief*, 27 October 2015, <http://reliefweb.int/report/afghanistan/afghan-conflict-and-upcoming-winter-complicate-earthquake-relief>; ICRC, *Annual Report 2014 - Afghanistan*, 9 June 2015, <http://www.refworld.org/docid/558131973.html>, p. 277.

¹⁵⁶ See, for example, OCHA, *Afghanistan 2016 Humanitarian Needs Overview*, 31 December 2015, https://www.humanitarianresponse.info/en/system/files/documents/files/afg_2016_hno_final_20151209.pdf; UNAMA, *Afghanistan: Human Rights and Protection of Civilians in Armed Conflict Special Report on Kunduz Province*, December 2015, <http://www.refworld.org/docid/566fd0e64.html>, pp. 2-3; UN Office on Drugs and Crime (UNODC), *Afghanistan Opium Survey 2014 - Socio-Economic Analysis*, 20 April 2015, <http://www.refworld.org/docid/55672dcfa.html>, p. 36. According to the UN Secretary-General, "In 2015, the national task force on internally displaced persons, co-chaired by the Ministry of Refugees and Repatriations and the United Nations, recorded 335,000 persons displaced in Afghanistan as a result of conflict in 31 of the country's 34 provinces. One of the highest internal displacement figures recorded since 2002, it represents a 78 per cent increase compared with 2014 and brought the estimated number of displaced persons in Afghanistan to more than 1 million." UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 7 March 2016, A/70/775-S/2016/218, <http://www.refworld.org/docid/56f2667d4.html>, para. 41. According to INFORM, the risk assessment tool developed by the Inter-Agency Standing Committee Task Team for Preparedness and Resilience and the European Commission, Afghanistan ranks third for the risk of humanitarian crises and disasters that could overwhelm national response capacity. See INFORM, *Index for Risk Management - Results*

corrupt institutions are reported to have led to a situation where disaster preparedness, risk reduction and emergency response mechanisms are weak or absent.¹⁵⁷ As a result, natural disasters, including floods, mudslides, earthquakes, droughts and severe winter weather, are a further cause of vulnerability for people whose levels of resilience have already been worn down.¹⁵⁸ Observers expect that the number of people in need of humanitarian assistance in 2016 will increase.¹⁵⁹

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

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

2016, November 2015, http://issuu.com/inform_index/docs/inform_results_report_2016_web and INFORM, *Afghanistan Country Profile 2016*, http://www.inform-index.org/Portals/0/Inform/2016/country_profiles/AFG.pdf.

- ¹⁵⁷ Norwegian Refugee Council/Internal Displacement Monitoring Centre (NRC/IDMC), *Afghanistan: New and Long-Term IDPs Risk Becoming Neglected as Conflict Intensifies*, 16 July 2015, <http://www.refworld.org/docid/55af44064.html>, pp. 6, 11-12. See also IRIN, *Afghan Conflict and Upcoming Winter Complicate Earthquake Relief*, 27 October 2015, <http://reliefweb.int/report/afghanistan/afghan-conflict-and-upcoming-winter-complicate-earthquake-relief>. The UN Secretary-General notes that there has nevertheless been some progress in the capabilities of the response mechanisms. UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 10 December 2015, A/70/601–S/2015/942, <http://www.refworld.org/docid/5672ac7c4.html>, paras 49, 69.
- ¹⁵⁸ An earthquake in north-eastern Afghanistan on 26 October 2015 left over 140,000 people in need of humanitarian assistance. See Food Security and Agriculture Cluster (FSAC), *Earthquake Response Map*, December 2015, https://www.humanitarianresponse.info/en/system/files/documents/files/common_operating_picture_food_security_and_agriculture_cluster_earthquake_response_food_and_cash_assistance_provided_at_december_2015.pdf. See also UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 10 December 2015, A/70/601–S/2015/942, <http://www.refworld.org/docid/5672ac7c4.html>, para. 48.
- ¹⁵⁹ OCHA, *Afghanistan 2016 Humanitarian Response Plan*, 31 December 2015, https://www.humanitarianresponse.info/en/system/files/documents/files/afg_2016_hrp_final_20160107_lr.pdf, pp. 7, 9-10.
- ¹⁶⁰ OCHA, *Afghanistan 2016 Humanitarian Needs Overview*, 31 December 2015, https://www.humanitarianresponse.info/en/system/files/documents/files/afg_2016_hno_final_20151209.pdf, p. 12.
- ¹⁶¹ See OCHA, *Afghanistan 2016 Humanitarian Needs Overview*, 31 December 2015, https://www.humanitarianresponse.info/en/system/files/documents/files/afg_2016_hno_final_20151209.pdf, p. 19 and UN Inter-Agency Group for Child Mortality Estimation (UN IGME), *Levels & Trends in Child Mortality – Report 2015*, September 2015, http://www.childmortality.org/files_v20/download/IGME%20report%202015%20child%20mortality%20final.pdf, p. 18; UNICEF, *Country Statistics – Afghanistan*, <http://data.unicef.org/countries/AFG.html>. According to Save the Children, significant progress has been made in relation to maternal health, with Afghanistan having cut maternal deaths by 60-70 per cent between 2000 and 2014, as a result of which it ranked 146 out of 178 countries in the 2014 *Mothers' Index*, while until 2012 it was placed in the bottom ten of the list. Save the Children, *State of the World's Mothers 2014: Saving Mothers and Children in Humanitarian Crises*, 2014, <http://www.refworld.org/docid/53d60c3f4.html>, pp. 66-68.
- ¹⁶² UNDP, *Human Development Index*, 2015 rankings, <http://hdr.undp.org/en/composite/MPI>.
- ¹⁶³ OCHA, *Afghanistan 2016 Humanitarian Needs Overview*, 31 December 2015, https://www.humanitarianresponse.info/en/system/files/documents/files/afg_2016_hno_final_20151209.pdf, p. 17.
- ¹⁶⁴ UNICEF, *Child Notice Afghanistan*, November 2015, <http://www.refworld.org/docid/56430b2d4.html>, p. 44. According to a survey conducted by AIHRC, 84 per cent of the interviewees had access to potable water, but access remained a challenge for IDPs. AIHRC, *The Situation of Human Rights in Afghanistan in 1393*, 11 August 2015, <http://www.refworld.org/docid/5694bc384.html>, pp. 6, 51-52.
- ¹⁶⁵ UNDP, *Human Development Index*, 2015 rankings, <http://hdr.undp.org/en/composite/HDI>.
- ¹⁶⁶ According to OCHA, the lack of access to medical services caused an increase in the incidence of common communicable diseases. OCHA, *Afghanistan 2016 Humanitarian Needs Overview*, 31 December 2015, https://www.humanitarianresponse.info/en/system/files/documents/files/afg_2016_hno_final_20151209.pdf, pp.8-9. The temporary seizure of Kunduz by the Taliban in October 2015 had a significant impact on access to basic services for the civilian population who remained in the city, including as a result of the attack by US forces on the MSF hospital, which was the only medical facility of its kind in the city. UNAMA, *Afghanistan: Human Rights and Protection of Civilians in Armed Conflict Special Report on Kunduz Province*, December 2015, <http://www.refworld.org/docid/566fd0e64.html>, p. 19; see also UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 10 December 2015, A/70/601–S/2015/942, <http://www.refworld.org/docid/5672ac7c4.html>, para. 46.
- ¹⁶⁷ OCHA, *Afghanistan 2016 Humanitarian Needs Overview*, 31 December 2015, https://www.humanitarianresponse.info/en/system/files/documents/files/afg_2016_hno_final_20151209.pdf, p. 18.

E. Conflict-Induced Displacement

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

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

- ¹⁶⁸ As of the end of November 2015, the 10 provinces with the largest new displacement in 2015 were (from largest to smallest) Kunduz, Nangarhar, Takhar, Kabul, Helmand, Badghis, Faryab, Farah, Badakhshan, Paktia. UNHCR, *Afghanistan: Conflict-Induced Internal Displacement Monthly Update*, November 2015, <http://www.refworld.org/docid/56af05cb4.html>; NRC/IDMC, *Afghanistan: New and Long-Term IDPs Risk Becoming Neglected as Conflict Intensifies*, 16 July 2015, <http://www.refworld.org/docid/55af44064.html>. By the end of 2015, 31 out of 34 provinces in Afghanistan were affected by forced population movements due to conflict. UNHCR, *Major Situations of Conflict-Induced Displacement in the First Months of 2016*, 24 February 2016, http://www.unhcr.af/UploadDocs/DocumentLibrary/UNHCR_Summary_note_on_conflict_IDPs_APC_24.02.2016_635924216039050000.pdf, p. 1. See also S. Schmeidl, "Heeding the Warning Signs: Further Displacement Predicted for Afghanistan", *Forced Migration Review*, May 2014, <http://www.fmreview.org/afghanistan/schmeidl.html>.
- ¹⁶⁹ UNHCR, *Conflict-Induced Internal Displacement 2015: The Year In Review*, April 2016, http://www.unhcr.af/UploadDocs/DocumentLibrary/UNHCR_2015_End_Year_Report_Conflict_Induced_Internal_Displacement_Final_635962401577970000.pdf; UNHCR, *Major Situations of Conflict-Induced Displacement in the First Months of 2016*, 24 February 2016, http://www.unhcr.af/UploadDocs/DocumentLibrary/UNHCR_Summary_note_on_conflict_IDPs_APC_24.02.2016_635924216039050000.pdf, pp. 1-2; UNHCR, *IDP Monthly Package*, December 2015, http://www.unhcr.af/UploadDocs/DocumentLibrary/IDP_Monthly_Package_December_2015_v2_w_635899155398360000.xlsx.
- ¹⁷⁰ NRC/IDMC, *Afghanistan: New and Long-Term IDPs risk Becoming Neglected as Conflict Intensifies*, 16 July 2015, <http://www.refworld.org/docid/55af44064.html>; OCHA, *2015 Humanitarian Needs Overview Afghanistan*, November 2014, <https://docs.unocha.org/sites/dms/Afghanistan/Afghanistan%20HRP%202015%20Humanitarian%20Needs%20Overview.pdf>, p. 9. See also the analysis of challenges related to IDP assessment in UNHCR, *Afghanistan - Conflict-Induced Internal Displacement Monthly Update*, April 2015, <http://www.refworld.org/docid/55641ca04.html>.
- ¹⁷¹ The Government of the Islamic Republic of Afghanistan, *National Policy On Internally Displaced Persons*, 25 November 2013, [http://morr.gov.af/Content/files/National%20IDP%20Policy%20-%20FINAL%20-%20English\(1\).pdf](http://morr.gov.af/Content/files/National%20IDP%20Policy%20-%20FINAL%20-%20English(1).pdf); UNHCR, *UNHCR Welcomes Afghanistan's New IDP policy*, 11 February 2014, <http://www.unhcr.org/52fa062a9.html>.
- ¹⁷² UNHCR, *Afghanistan: Conflict-Induced Internal Displacement Monthly Update November 2015*, November 2015, <http://www.refworld.org/docid/56af05cb4.html>.
- ¹⁷³ OCHA, *2016 Humanitarian Needs Overview*, November 2015, http://reliefweb.int/sites/reliefweb.int/files/resources/afg_2016_hno_final_20151209.pdf, pp. 8-9. According to the AIHRC, "The displaced persons lose their home and living opportunities beside their other rights including the right of access to employment, welfare, the right to education, health care and access to food and potable water. Severe poverty is one the most serious problems of displaced persons. Elderly persons, children, pregnant women, sick and persons with disability face with intolerable problems that sometimes end up in their death." AIHRC, *A Report on the IDPs Situation in Afghanistan*, 19 December 2015, http://www.aihrc.org.af/home/press_release/5230. Women and children are found to be especially vulnerable to multiple displacement-related protection risks. Samuel Hall, *Policy Brief: National Policy on IDPs in Afghanistan - From Policy to Implementation: Engaging with National Procedures, National and International Stakeholders in 2015*, 8 April 2015, <http://samuelhall.org/REPORTS/Afghanistan%20National%20IDP%20Policy%20Brief.pdf>, p. 7. A joint study by Samuel Hall, NRC/IDMC and the Joint IDP Profiling Service in 2012 found that, "Approximately 90 per cent of IDPs interviewed qualified as extremely vulnerable individuals (EVI) whose socio-economic profiles place them not only below national averages, but also at significant risk of living in life-threatening conditions." Samuel Hall Consulting, *Challenges of IDP Protection: Research Study on the Protection of Internally Displaced Persons in Afghanistan*, November 2012, <https://www.nrc.no/arch/img/9154086.pdf>, p. 22.

humanitarian organizations.¹⁷⁴ Among IDPs, women, children, elderly persons and persons with disabilities are especially vulnerable.¹⁷⁵

Afghanistan is experiencing a period of rapid urbanization; many IDPs end up in large urban centres that have limited absorption capacity and where access to basic services remains a major concern.¹⁷⁶ 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.¹⁷⁷ A large proportion of Afghanistan's middle and low-income urban households are reportedly residing in poorly located and under-serviced informal settlements.¹⁷⁸ According to the Afghan Living Conditions Survey 2013-2014, 73.8 per cent of the urban population in Afghanistan live in slum households.¹⁷⁹ Poverty among urban households is reportedly widespread and the economic situation of urban households is reported to have deteriorated significantly in the past years.¹⁸⁰

The city of Kabul has seen the biggest population increase of Afghan cities. Official population estimates indicate that by 2015 the city had 3.5 million residents, with an estimated annual population growth of 10 per cent between 2005 and 2015.¹⁸¹ An estimated 21 per cent of Kabul's population was born elsewhere, and Kabul has reportedly received close to 40 per cent of all new conflict-induced IDPs in Afghanistan since 2002.¹⁸² Some estimates put the percentage of Kabul's population living in informal settlements at 70 per cent.¹⁸³ The financial situation of Kabul residents and their employment

¹⁷⁴ OCHA, *Afghanistan 2015 Humanitarian Response Plan: Mid-Year Review of Financing, Achievements and Response Challenges*, 18 August 2015, <http://reliefweb.int/report/afghanistan/afghanistan-2015-humanitarian-response-plan-mid-year-review-financing>, p. 4; UNHCR, *Afghanistan: Conflict-Induced Internal Displacement Monthly Update*, June 2015, <http://www.refworld.org/docid/55ba09dc4.html>.

¹⁷⁵ Three out of five IDP children are reported not to attend school. OCHA, *2016 Humanitarian Needs Overview*, November 2015, http://reliefweb.int/sites/reliefweb.int/files/resources/afg_2016_hno_final_20151209.pdf, p. 20. In May 2015, an assessment of recently displaced families in Kabul found that most of the children were working to contribute to the families' income, due to the high living costs and very low incomes. UNHCR, *Afghanistan - Conflict-Induced Internal Displacement Monthly Update*, May 2015, <http://www.refworld.org/docid/5594f2544.html>, p. 3. Based on interviews with 446 persons from both displaced and non-displaced communities in Kabul, the eastern city of Jalalabad and Kandahar in southern Afghanistan, NRC and the Liaison Office found that "despite some recent achievements by women in Afghanistan, young women and girls face significantly more and qualitatively different challenges in accessing education, health care and employment than their male counterparts. This seems to be even more pronounced in informal settlements." NRC / The Liaison Office, *Listening to Women and Girls Displaced to Urban Afghanistan*, 26 March 2015, <http://www.refworld.org/docid/5513bec24.html>, p. 13.

¹⁷⁶ United States Institute of Peace (USIP), *The Forced Return of Afghan Refugees and Implications for Stability*, January 2016, <http://www.usip.org/sites/default/files/PB199-The-Forced-Return-of-Afghan-Refugees-and-Implications-for-Stability.pdf>, p. 2; OCHA, *2016 Humanitarian Needs Overview*, November 2015, http://reliefweb.int/sites/reliefweb.int/files/resources/afg_2016_hno_final_20151209.pdf, p. 8; UNHCR, *Solutions Strategy for Afghan Refugees Update 2015-2016*, August 2015, <http://www.unhcr.org/542522922.html>, p. 11; OCHA, *2015 Strategic Response Plan: Afghanistan*, November 2014, <https://docs.unocha.org/sites/dms/Afghanistan/Afghanistan%20HRP%202015%20Strategic%20Response%20Plan.pdf>, p. 26.

¹⁷⁷ Government of the Islamic Republic of Afghanistan, *The State of Afghan Cities 2015*, September 2015, <http://unhabitat.org/books/soac2015/>, pp. vii-viii. See also AREU, *Governance in Afghanistan: An Introduction*, March 2014, <http://www.refworld.org/docid/533165784.html>, p. 50.

¹⁷⁸ Government of the Islamic Republic of Afghanistan, *The State of Afghan Cities 2015*, September 2015, <http://unhabitat.org/books/soac2015/>, pp. 10, 86.

¹⁷⁹ The estimate is based on the criteria to determine slum households used in the Millennium Development Goal indicator 7.10 for environmental sustainability. Central Statistics Organization, *Afghanistan Living Condition Survey 2013-2014: National Risk and Vulnerability Assessment*, 2016, <http://cso.gov.af/Content/files/ALCS%202013-14%20Main%20Report%20-%20English%20-%2020151221.pdf>, p. 209.

¹⁸⁰ A study on urban poverty in Afghan cities by Samuel Hall found that 78.2 per cent of urban households in Afghanistan live below the official poverty line (in Kabul the estimated percentage is 78.0 per cent), "a sign that the economic situation of urban households has deteriorated significantly over the past 3 years." Samuel Hall, *Urban Poverty Report: A Study of Poverty, Food Insecurity and Resilience in Afghan Cities (report commissioned by Danish Refugee Council and People in Need)*, November 2014, <http://samuelhall.org/wp-content/uploads/2014/11/DRC-PIN-Urban-Poverty-Report.pdf>, p. 30. A survey by The Asia Foundation found that "only 21.0% of Afghans say their household financial situation has improved in 2015, compared to 49.8% who said the same in 2012. Meanwhile, the percentage of Afghans who say their household financial situation worsened over the past year is 29.7% in 2015, compared to 6.9% in 2012." The survey included face-to-face interviews with 9,586 Afghans from 14 different ethnic groups in all 34 provinces of the country, conducted in June 2015. The Asia Foundation, *Afghanistan in 2015: A Survey of the Afghan People*, November 2015, <http://asiafoundation.org/resources/pdfs/Afghanistanin2015.pdf>, p. 57.

¹⁸¹ Government of the Islamic Republic of Afghanistan, *The State of Afghan Cities 2015, September 2015*, <http://unhabitat.org/books/soac2015/>, pp. 10, 12. It should be noted that Kabul population estimates vary; the Guardian reported in December 2014 that the population in Kabul was around 6 million residents. The Guardian, *Kabul – The Fifth Fastest Growing City in the World – Is Bursting at the Seams*, 11 December 2014, <http://www.theguardian.com/cities/2014/dec/11/kabul-afghanistan-fifth-fastest-growing-city-world-rapid-urbanisation>.

¹⁸² Central Statistics Organization, *Afghanistan Living Condition Survey 2013-2014: National Risk and Vulnerability Assessment*, 2016, <http://cso.gov.af/Content/files/ALCS%202013-14%20Main%20Report%20-%20English%20-%2020151221.pdf>, pp. 31, 40.

¹⁸³ NRC / The Liaison Office, *Listening to Women and Girls Displaced to Urban Afghanistan*, 26 March 2015, <http://www.refworld.org/docid/5513bec24.html>, p. 10; UNHCR, *Research Study on IDPs in Urban Settings - Afghanistan*, May 2011,

opportunities are reportedly worsening.¹⁸⁴ In the Kabul Informal Settlements (KIS), designated sites of protracted IDPs, returnees and other urban poor targeted for humanitarian assistance, 80 per cent of a population of about 55,000 people are reportedly severely or moderately food insecure.¹⁸⁵

Within this context, urban IDPs are more vulnerable than the non-displaced urban poor, as they are particularly affected by lack of access to social services and livelihood opportunities, with negative repercussions on food security and social protection mechanisms.¹⁸⁶ The lack of adequate land in urban areas and a lack of affordable housing often forces new and protracted IDPs to reside in informal settlements without an adequate standard of living and limited access to water and sanitation.¹⁸⁷ Antiquated land tenure policies and lack of security of tenure are reported to leave IDPs and other inhabitants of informal settlements vulnerable to continuous threats of evictions and secondary displacement.¹⁸⁸ Land grabbing, including of land allocated for returning refugees or IDPs, reportedly represents an additional obstacle.¹⁸⁹

<http://www.refworld.org/docid/511e51382.html>, p. 11. In Kabul, irregular residential land use (such as unplanned residential areas, residential development on hillsides, IDP settlements and Kuchi camps) reportedly comprises 71.5 per cent of the total residential area. The rate is higher in other Afghan cities. Residents in such areas are typically squatting and have no security of tenure. Government of the Islamic Republic of Afghanistan, *The State of Afghan Cities 2015*, September 2015, <http://unhabitat.org/books/soac2015/>, p. 76. According to AAN, an unpublished report estimated that in 2009, 69 per cent of the residential area were made up of informal settlements. AAN, *Afghanistan's Returning Refugees: Why Are So Many Still Landless?*, 29 March 2016, <https://www.afghanistan-analysts.org/afghanistans-returning-refugees-why-are-so-many-still-landless/>.

¹⁸⁴ According to The Asia Foundation survey, 73.6% of residents in Kabul reported that their employment opportunities had worsened over the past year, and 55.3% of Kabul residents reported that their household financial situation had worsened over the past year. The Asia Foundation, *Afghanistan in 2015: A Survey of the Afghan People*, November 2015, <http://asiafoundation.org/resources/pdfs/Afghanistanin2015.pdf>, pp. 56-57.

¹⁸⁵ World Food Programme, *Kabul Informal Settlement (KIS) Winter Needs Assessment November 2015*, 8 December 2015, <http://reliefweb.int/sites/reliefweb.int/files/resources/Kabul%20Informal%20Settlement%20Winter%20Needs%20Assessment%20November%202015%20Final%20Report%20on%20Food%20Security.pdf>. According to the Samuel Hall Consulting study on urban poverty, "IDPs living in the informal settlements that have been identified by humanitarian actors as areas of particular vulnerability show lower levels of resilience than other groups, but living in a KIS is not nearly as strong a determinant of vulnerability as other criteria such as having addicted members of households or being a female-headed household. The main difference comes from access to basic services, for which IDPs living in the KIS are disadvantaged." Samuel Hall, *Urban Poverty Report: A Study of Poverty, Food Insecurity and Resilience in Afghan Cities (report commissioned by Danish Refugee Council and People in Need)*, November 2014, <http://samuelhall.org/wp-content/uploads/2014/11/DRC-PIN-Urban-Poverty-Report.pdf>, pp. 7-8.

¹⁸⁶ The first volume of *The State of Afghan Cities* found that, "Urban IDPs are extremely vulnerable, particularly in the first year after their displacement. Often lacking identity documentation, IDPs can face significant barriers to accessing justice services, enrolling children in school and securing employment in the formal urban economy.... Largely excluded from participating in urban society, IDPs face a whole range of protection challenges including increased rates of crime, insecurity, increased risk of Gender Based Violence (GBV), child exploitation, and negative coping mechanisms, with women and girls in particular at greater risk. In addition, urban IDPs tend to have significantly higher rates of illiteracy and lower paid jobs, with a clear 'skills disadvantage' compared with other urban residents, even the urban poor." Government of the Islamic Republic of Afghanistan, *The State of Afghan Cities 2015*, September 2015, <http://unhabitat.org/books/soac2015/>, p. 17. See also AIHRC, *A Report on the IDPs Situation in Afghanistan*, 19 December 2015, http://www.aihrc.org.af/home/press_release/5230; Samuel Hall, *Policy Brief: National Policy on IDPs in Afghanistan - From Policy to Implementation: Engaging with National Procedures, National and International Stakeholders in 2015*, 8 April 2015, <http://samuelhall.org/REPORTS/Afghanistan%20National%20IDP%20Policy%20Brief.pdf>, p. 7.

¹⁸⁷ According to AAN, "IDP and refugee returnees started forming informal settlements on land they did not own. In urban areas, they joined the ranks of other urban migrants who made up cities' growing informal settlements." AAN, *Afghanistan's Returning Refugees: Why Are So Many Still Landless?*, 29 March 2016, <https://www.afghanistan-analysts.org/afghanistans-returning-refugees-why-are-so-many-still-landless/>. According to the Afghan Living Conditions Survey 2013-2014, "an important number of internally displaced people and former refugees now live in informal settlements located in or around the major cities of the country, like Kabul, Herat, Mazar-e-Sharif, Jalalabad and Kandahar. Indeed, rapid urban growth has been fuelled by the repatriation of refugees, the arrival of IDPs and by the economic migration from rural areas. Therefore, in specific areas of the country, housing conditions are particularly poor and slum dwellers are particularly numerous." Central Statistics Organization, *Afghanistan Living Condition Survey 2013-2014: National Risk and Vulnerability Assessment*, 2016, <http://cso.gov.af/Content/files/ALCS%202013-14%20Main%20Report%20-%20English%20-%2020151221.pdf>, p. 204. The first volume of *The State of Afghan Cities* states, "Lacking the means to enter the formal housing market, urban IDPs frequently come to reside in informal settlements, with very limited access to water and other basic services [and] sub-standard, overcrowded housing conditions and little or no tenure security." Government of the Islamic Republic of Afghanistan, *The State of Afghan Cities 2015*, September 2015, <http://unhabitat.org/books/soac2015/>, p. 17. UNICEF notes, in the context of the rapid urbanization in Afghanistan, that while "quantitative data indicate urban areas are better off in terms of child well-being and access to basic services," the data conceal differences among various groups. UNICEF further notes in the context of relocation that "families often have no choice but to settle in slums where they lack access to decent housing, water sources, sanitation, health care and education. Limited land availability has pushed people to settle in precarious places, such as the steep hillsides surrounding Kabul. These informal settlements are characterized by high exposure to natural hazards such as extreme winter weather, limited access to clean water and unhygienic environments, raising serious public health concerns." UNICEF, *Children and Women in Afghanistan: A Situation Analysis 2014*, November 2014, http://www.unicef.org/afghanistan/SitAn_-_Long_Report_-_small_size_.pdf, p. 31. In the cities of Herat and Helmand, the majority of IDPs reportedly live in informal settlements or "precarious open spaces". Samuel Hall Consulting, *Displacement Dynamics: IDP Movement Tracking, Needs and Vulnerability Analysis, Herat and Helmand Afghanistan*, May 2014, <http://samuelhall.org/wp-content/uploads/2014/05/IDP-Movement-Tracking-Needs-and-Vulnerability-Analysis-Afghanistan.pdf>, p. 47.

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

F. Refugees and Returnees

Pakistan and Iran continue to host the vast majority (an estimated 95 per cent) of the Afghan refugee population, totalling an estimated 2.5 million people.¹⁹⁰ Since 2002, more than 5.8 million Afghan refugees have returned to Afghanistan, representing about 20 per cent of the Afghan population; the vast majority returned between 2002 and 2008.¹⁹¹

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 quadripartite 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.¹⁹² The latter is particularly important in light of the fact that many Afghans who have returned in previous years are reported to have been unable to reintegrate into their home communities, resulting in significant secondary displacement, mostly to urban areas.¹⁹³ Returnees reportedly experience severe difficulties in rebuilding their lives in Afghanistan.¹⁹⁴ An estimated 40 per cent of returnees are reportedly vulnerable with poor access to livelihood, food, and shelter.¹⁹⁵ Obstacles to return for both IDPs and returning refugees include on-going insecurity in their

the Islamic Republic of Afghanistan, *The State of Afghan Cities 2015*, September 2015, <http://unhabitat.org/books/soac2015/>, p. 17. See also NRC/IDMC, *Still at Risk: Security of Tenure and the Forced Eviction of IDPs and Refugee Returnees in Urban Afghanistan*, 11 February 2014, <http://www.refworld.org/docid/52fb2aab4.html>, p. 17.

¹⁸⁹ According to UNAMA, there were reports of powerful individuals, including public officials, having sold land allocated for refugees and IDPs for personal profit. UNAMA, *The Stolen Lands of Afghanistan and its People – The State Land Distribution System*, March 2015, https://unama.unmissions.org/sites/default/files/unama_land_report_2_state_land_distribution_system_final_19march15_0.pdf, p. 30. See also AAN, *Afghanistan's Returning Refugees: Why Are So Many Still Landless?*, 29 March 2016, <https://www.afghanistan-analysts.org/afghanistans-returning-refugees-why-are-so-many-still-landless/>.

¹⁹⁰ An estimated 1.5 million Afghan refugees are in Pakistan, and an estimated 950,000 Afghan refugees are in Iran. In addition, an estimated 2 million undocumented Afghans reportedly reside in Pakistan and Iran. UNHCR, *High-level Segment on the Afghan Refugee Situation: Background Document*, October 2015, <http://www.unhcr.org/562a22979.html>, p. 4.

¹⁹¹ Return figures hit historical lows in 2013 and 2014 before increasing again in 2015. UNHCR, *Solutions Strategy for Afghan Refugees Update 2015-2016*, August 2015, <http://www.unhcr.org/542522922.html>, p. 11. The shrinking asylum space and deteriorating conditions in neighbouring countries, in particular Pakistan, is thought to have contributed to the increase in returns in 2015. See UNHCR, *Afghanistan - Volrep and Border Monitoring Monthly Update*, 01 January – 31 October 2015, 31 October 2015, <http://www.refworld.org/docid/56459f4a4.html>; HRW, "What Are You Doing Here?" - Police Abuses Against Afghans in Pakistan, 18 November 2015, <http://www.refworld.org/docid/564eeb464.html>.

¹⁹² UNHCR, *Solutions Strategy for Afghan Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries*, May 2012, <http://www.unhcr.org/pages/4f9016576.html>; UNHCR, *Afghan Conference: Delegates Urged to Support New Solutions Strategy*, 2 May 2012, <http://www.unhcr.org/4fa0e8319.html>.

¹⁹³ USIP, *Peacebrief: The Forced Return of Afghan Refugees and Implications for Stability*, January 2016, <http://www.usip.org/sites/default/files/PB199-The-Forced-Return-of-Afghan-Refugees-and-Implications-for-Stability.pdf>, p. 3; OCHA, *The 2015 Afghanistan Refugee and Returnee Overview*, November 2014, <https://docs.unocha.org/sites/dms/Afghanistan/2015%20Afghanistan%20Refugee%20and%20Returnee%20Overview.pdf>, p. 66. Forty-nine per cent of households returning from displacement are reported to be located in urban areas, twice as high as the percentage of the general population living in urban areas (24 per cent). Central Statistics Organization, *National Risk and Vulnerability Assessment 2011-12. Afghanistan Living Condition Survey*, 2014, <http://www.af.undp.org/content/dam/afghanistan/docs/MDGs/NRVA%20REPORT-rev-5%202013.pdf>, p. 27. See also Susanne Schmeidl, *Heeding the Warning Signs: Further Displacement Predicted for Afghanistan*, May 2014, <http://www.fmreview.org/en/afghanistan.pdf>, p. 42. According to the Task Force on Kabul Informal Settlements, "Most of the KIS inhabitants are returnees from Pakistan and Iran, or internally-displaced people (IDPs) fleeing conflict, insecurity or human rights abuses in their provinces of origin." Task Force on Kabul Informal Settlements, *Winter Assistance to the Kabul Informal Settlements 2014/2015: Report on the Post-Distribution Monitoring Survey*, April 2015, http://reliefweb.int/sites/reliefweb.int/files/resources/pdm_kis_2015_-_final_report.pdf, p. 2.

¹⁹⁴ UNHCR, *High-level Segment on the Afghan Refugee Situation: Background Document*, October 2015, <http://www.unhcr.org/562a22979.html>, p. 6. IOM, *Undocumented Afghan Returns from Iran & Pakistan: January to June 2015*, 2015, https://afghanistan.iom.int/sites/default/files/Reports/undocumented_afghan_returns_from_iran_and_pakistan_jan-jun_2015.pdf; British and Irish Agencies Afghanistan Group (BAAG), *Finding a Way Home: The Situation for Young Afghan Returnees*, 12 August 2014, <http://www.baag.org.uk/views-voices/finding-way-home-situation-young-afghan-returnees>.

¹⁹⁵ AAN, *The Refugee Dilemma: Afghans in Pakistan between Expulsion and Failing Aid Schemes*, 9 March 2015, <https://www.afghanistan-analysts.org/the-refugee-dilemma-afghans-in-pakistan-between-expulsion-and-failing-aid-schemes/>. See also AIHRC, *The Situation of Economic and Social Rights in Afghanistan Sixth Report, 1390 – 91, 10 August 2015*, http://www.aihrc.org.af/media/files/Research%20Reports/english/Economic%20and%20Social%20Rights%20Report_English.pdf, p. 39.

areas of origin; loss of livelihoods and assets; lack of access to health care and education; and difficulties in reclaiming land and property.¹⁹⁶

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

While there are no systematic efforts to track the situation of rejected Afghan asylum-seekers who are forcibly returned to Afghanistan from Western countries, research initiatives following selected groups of returnees indicate that the vast majority end up leaving the country again or are intending to do so.¹⁹⁷

Among all asylum-seekers who applied for asylum in 44 countries in Europe, North America, Oceania and Asia in 2014, asylum-seekers from Afghanistan were the third largest group with an estimated 59,500 claims.¹⁹⁸ Globally, in the first half of 2015 Afghans lodged some 72,100 claims for asylum, a marked increase from the same period in 2014 (26,500).¹⁹⁹

III. Eligibility for International Protection

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

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

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

¹⁹⁶ UNHCR, *Afghanistan - VolRep and Border Monitoring Monthly Update, 01 January—30 November 2015*, 30 November 2015, <http://www.refworld.org/docid/5671309e4.html>; UNHCR, *Durable Solutions for IDPs in Afghanistan: A Secondary Data Analysis*, November 2015, <http://www.refworld.org/docid/5655550a4.html>.

¹⁹⁷ Dr Liza Schuster of City University interviewed around 100 rejected asylum-seekers who had been returned to Kabul and found that "the vast majority of people she interviewed did try to leave the country again, and around 80% of them succeeded." The Bureau of Investigative Journalism, *From Kent to Kabul: The Former Asylum Seeking Children Sent Back to Afghanistan*, July 2015, <http://labs.thebureauinvestigates.com/from-kent-to-kabul/>. According to the Refugee Support Network (RSN), which tracked a group of Afghans who had been returned from the United Kingdom to Afghanistan, the majority of the returnees intended to leave Afghanistan again. RSN, *After Return: Documenting The Experiences of Young People Forcibly Removed to Afghanistan*, April 2016, https://refugeesupportnetwork.org/sites/default/files/files/After%20Return_RSN_April%202016.pdf, pp. 6, 7, 19, 30, 43. See also Reuters, *Sent Back from Europe, Some Afghans Prepare to Try Again*, 16 November 2015, <http://www.reuters.com/article/2015/11/16/us-afghanistan-migrants-insight-idUSKCN0T50E020151116>; Peace Research Institute Oslo (PRIO), *Can Afghans Reintegrate after Assisted Return from Europe?*, July 2015, http://file.prio.no/publication_files/PRIO/Oeppen%20-%20Can%20Afghans%20Reintegrate%20after%20Assisted%20Return%20from%20Europe.%20PRIO%20Policy%20Brief%207-2015.pdf; BBC, *The Young People Sent Back to Afghanistan*, 17 July 2015, <http://www.bbc.com/news/magazine-33524193>; UNHCR, *Why Do Children Undertake the Unaccompanied Journey?*, December 2014, PDES/2014/03, <http://www.refworld.org/docid/54994d984.html>, p. 21.

¹⁹⁸ UNHCR, *Asylum Trends 2014: Levels and Trends in Industrialized Countries*, June 2015, <http://www.unhcr.org/551128679.html>, p. 16.

¹⁹⁹ UNHCR, *Mid-Year Trends 2015*, December 2015, <http://www.unhcr.org/56701b969.html>, p. 13.

Afghanistan continues to be affected by a non-international armed conflict.²⁰⁰ 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.²⁰¹

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

- (i) the control over civilian populations by AGEs, including through the imposition of parallel justice structures and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, restrictions on freedom of movement, and the use of extortion and illegal taxation;
- (ii) forced recruitment;
- (iii) the impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty and the destruction of livelihoods;
- (iv) high levels of organized crime and the ability of local strongmen, warlords and corrupt government officials to operate with impunity;
- (v) systematic constraints on access to education and basic health care as a result of insecurity; and
- (vi) systematic constraints on participation in public life, including in particular for women.²⁰²

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

²⁰⁰ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 71. See also for example Robin Geiß and Michael Siegrist, "Has the Armed Conflict in Afghanistan Affected the Rules on the Conduct of Hostilities?", *International Review of the Red Cross*, Vol. 93, No. 881, March 2011, <http://www.refworld.org/docid/511e1ecc2.html>.

²⁰¹ Canada: Federal Court, *Ralph Prophète v. The Minister of Citizenship and Immigration*, 2008 FC 331, 12 March 2008, <http://www.refworld.org/docid/54c109a24.html>.

²⁰² UNHCR, *Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence; Roundtable 13 and 14 September 2012, Cape Town, South Africa*, 20 December 2012, <http://www.refworld.org/docid/50d32e5e2.html>, paras. 10-12. See also Section II.B of these Guidelines.

The status of recognized refugees should be reviewed only in the following circumstances:

- (i) If there are indications, in an individual case, that there are grounds for cancellation of refugee status which was wrongly granted in the first instance;
- (ii) Revocation of refugee status on the grounds of Article 1F of the 1951 Convention; or
- (iii) Cessation of refugee status on the basis of Article 1C(1-4) of the 1951 Convention.²⁰³

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

A. Potential Risk Profiles

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

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

On 22 April 2015, the Taliban announced that, as in previous years, the spring offensive would target government officials and others perceived as supportive of the government and the international community.²⁰⁸ Despite a stated intention by the Taliban to reduce civilian casualties,²⁰⁹ there are

²⁰³ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, Vol. 189, p. 137, <http://www.refworld.org/docid/3be01b964.html>.

²⁰⁴ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 42-43; UNAMA, *Afghanistan: Human Rights and Protection of Civilians in Armed Conflict Special Report on Kunduz Province*, December 2015, <http://www.refworld.org/docid/566fd0e64.html>, pp. 13-18; UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General*, 10 June 2015, A/69/929 – S/2015/422, <http://www.refworld.org/docid/558284aa4.html>, paras 18, 32-33.

²⁰⁵ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 43; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 55.

²⁰⁶ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 56.

²⁰⁷ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 43, 84; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, pp. 43, 55-56, 108.

²⁰⁸ The announcement of the 2015 “Azmi” spring offensive stated that “foreign invaders as well as their internal stooges” were targets of the ongoing Jihad, and refers to “officials of the stooge regime...and other pernicious individuals” as targets of the Azmi operations. *Statement by the Leading Council of the Islamic Emirate Regarding the Inauguration of Spring Operations Called ‘Azmi’ (Resolve)*, 22 April 2015, <http://shahamat-english.com/english/index.php/paighamoona/54149-statement-by-the-leading-council-of-the-islamic-emirate-regarding-the-inauguration-of-spring-operations-called-%E2%80%98azmi%E2%80%99-resolve>. The announcement of the 2014 spring offensive stated that the main targets were “the foreign invaders and their backers under various names like spies, military and civilian contractors and everyone working for them like translators, administrators and logistics personnel,” *Statement of Leadership Council of Islamic Emirate Regarding the Commencement of the Annual Spring Operation Named ‘Khaibar’*, 8 May 2014, <http://shahamat-english.com/english/index.php/paighamoona/44468-statement-of-leadership-council-of-islamic-emirate-regarding-the-commencement-of-the-annual-spring-operation-named-%E2%80%98khaibar%E2%80%99>. In contrast, the announcement of the 2016 spring offensive contained no details about specific targets of the Taliban’s operations: *Statement by Leadership Council of Islamic Emirate Regarding Inauguration of Spring Offensive Entitled “Operation Omari”*, 12 April 2016, <http://shahamat-english.com/statement-by-leadership-council-of-islamic-emirate-regarding-inauguration-of-spring-offensive-entitled-operation-omari/>; see also AAN, *Operation Omari: Taliban Announces 2016 Spring Offensive*, 14 April 2016, <https://www.afghanistan-analysts.org/operation-omari-taliban-announces-2016-spring-offensive/>.

continued reports of the Taliban specifically targeting civilians and objects protected under international humanitarian law.²¹⁰ In 2015 the Taliban admitted to causing civilian casualties in two incidents, but reportedly understated the full impact of these incidents on civilians.²¹¹

Apart from targeted killings, AGEs are also reported to use threats, intimidation, abductions and arson attacks to intimidate communities and individuals and thus extend their influence and control, targeting those who challenge their authority and ideas.²¹²

a) *Government Officials and Civil Servants*

Throughout 2014 and 2015, UNAMA documented several incidents of AGEs deliberately targeting civilian government employees during ground engagements, as well as civilian government offices and other buildings.²¹³

Civilian government employees were also frequently victims of targeted killings.²¹⁴ AGEs have targeted politicians and government officials at the local, provincial and national levels of government, including Members of Parliament,²¹⁵ members of the HPC,²¹⁶ and provincial and district governors and council members.²¹⁷

²⁰⁹ The announcement of the 2016 spring offensive stated that “the Mujahideen have been unequivocally instructed to implement their operations in such a manner that takes pains to protect civilians and civil infrastructure.” *Statement by Leadership Council of Islamic Emirate Regarding Inauguration of Spring Offensive Entitled “Operation Omari”*, 12 April 2016, <http://shahamat-english.com/statement-by-leadership-council-of-islamic-emirate-regarding-inauguration-of-spring-offensive-entitled-operation-omari/>. Similarly, the announcement of the 2015 spring offensive stated that top priority would be given to “safeguarding and protecting the lives and properties of the civilian people,” and to avoid targets such as “religious and other educational institutions like mosques, madrassas, schools, universities, health centers like clinics and hospitals, public buildings and other projects of public welfare.” *Statement by the Leading Council of the Islamic Emirate Regarding the Inauguration of Spring Operations Called ‘Azm’ (Resolve)*, 22 April 2015, <http://shahamat-english.com/english/index.php/paighamoona/54149-statement-by-the-leading-council-of-the-islamic-emirate-regarding-the-inauguration-of-spring-operations-called-%E2%80%98azm%E2%80%99-resolve>.

²¹⁰ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 54. See also UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General*, 10 June 2015, A/69/929 – S/2015/422, <http://www.refworld.org/docid/558284aa4.html>, para. 34.

²¹¹ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 54.

²¹² UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 34, 48-50; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, pp. 24, 67; UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General*, 10 June 2015, A/69/929 – S/2015/422, <http://www.refworld.org/docid/558284aa4.html>, para. 22.

²¹³ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 46; UNAMA, *Afghanistan: Human Rights and Protection of Civilians in Armed Conflict Special Report on Kunduz Province*, December 2015, <http://www.refworld.org/docid/566fd0e64.html>, p. 18; UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 33; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 32.

²¹⁴ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 44-46; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 55. The Taliban are reported to have shifted tactics to primarily target the ANSF and Government officials, following the withdrawal of ISAF in 2014. UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General*, 10 June 2015, A/69/929 – S/2015/422, <http://www.refworld.org/docid/558284aa4.html>, para. 12.

²¹⁵ On 22 June 2015, the Taliban used explosives, small arms and rocket-propelled grenades in an attack on the Afghan Parliament in Kabul city, killing two and injuring 39 civilians. UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 64.

²¹⁶ According to the HPC, 33 members of its provincial peace committees have been killed in 17 provinces since the start of the programme in 2010. Pajhwok Afghan News, *Huge Expenses on Afghan Peace Effort Achieve Little Gains*, 30 August 2015, <http://www.pajhwok.com/en/2015/08/30/huge-expenses-afghan-peace-effort-achieve-little-gains>. On 20 July 2015, a member of the HPC from central Maidan Wardak province was killed by unknown assailants in Kabul. Pajhwok Afghan News, *Wardak Peace Emissary Gunned Down in Kabul*, 21 July 2015, <http://www.pajhwok.com/en/2015/07/21/wardak-peace-emissary-gunned-down-kabul>. On 12 February 2015, a member of the HPC was killed in Kandahar. Radio Free Europe/Radio Liberty, *Afghan Peace Council Member Killed*, 13 February 2015, <http://www.refworld.org/docid/5509409542.html>.

²¹⁷ On 25 May 2015, an attack claimed by the Taliban on the provincial council office of southern Zabul province injured at least 65 civilians. Pajhwok Afghan News, *68 Injured as Truck Bomb Hits Zabul PC Office*, 25 May 2015, <http://www.pajhwok.com/en/2015/05/25/68-injured-truck-bomb-hits-zabul-pc-office>. On 17 March 2015, a suicide bomber detonated an explosive-rigged truck in Helmand province near a residential complex that housed the governor, the head of the provincial council and a deputy provincial police chief, killing seven and injuring 40. The attack was reportedly targeted at senior government officials, civil society members and journalists gathered for a seminar on human trafficking and kidnapping. Agence France-Presse, *Seven Killed, 41 Injured in Afghan Truck Bomb: Officials*, 18 March 2015, <http://reliefweb.int/report/afghanistan/seven-killed-41-injured-afghan-truck-bomb-officials>.

Government-appointed judges and prosecutors have been particularly targeted, with UNAMA reporting 188 civilian casualties (46 deaths and 142 injured) from targeted attacks against judges, prosecutors, and judicial institutions in 2015, a 109 per cent increase from 2014.²¹⁸

Teachers, school guards and officials of the Department of Education have also been widely targeted,²¹⁹ as have health workers,²²⁰ other civil servants and even contracted workers.²²¹

b) *Members of the ANP and ALP*²²²

Afghan security forces, particularly the ANP, continue to be the object of targeted campaigns.²²³ Since the withdrawal of most foreign combat forces in 2014, police bases and checkpoints have been increasingly targeted in attacks by AGEs.²²⁴ ANP police officers have been targeted both on duty and off duty.²²⁵

²¹⁸ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 45.

²¹⁹ UNAMA and UNICEF reported in April 2016 that “education personnel, including students, continued to face direct attacks and threats from Anti-Government Elements due to their association with education provided by the Government. For example, UNAMA documented multiple instances of teachers employed by the Government of Afghanistan being killed, beaten, abducted or threatened by Anti-Government Elements after being accused of pro-Government alignment.” UNAMA, *Education and Healthcare At Risk: Key Trends and Incidents Affecting Children’s Access to Healthcare and Education In Afghanistan*, 18 April 2016, https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf, p. 10. ISIS-affiliated groups were reported to force the closure of 25 education institutions in Nangarhar province in August 2015, organizing public meetings where they threatened teachers with severe punishment if they failed to comply with their orders to close schools. Some teachers also reported receiving phone calls threatening their lives. UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 19. Between 1 May and 31 October 2015, the Country Task Force on Monitoring and Reporting within the framework of Security Council resolution 1612 documented 74 attacks against schools and educational personnel. Most incidents were attributed to AGEs, in particular the Taliban. UN General Assembly, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 10 December 2015, <http://www.refworld.org/docid/5672ac7c4.html>, para. 34; UN General Assembly, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 1 September 2015, <http://www.refworld.org/docid/55f677871e.html>, para. 28. Between 1 September 2010 and 31 December 2014, the task force “documented 111 incidents of killing and injuring of educational personnel and 36 incidents of abduction by armed opposition groups, including the Taliban.” While a large number of these incidents were reported to have taken place in 2011, with the number of incidents decreasing until 2013, an increase was reported in 2014. The task force also verified “23 of 62 reported incidents of threats against educational personnel and students, most of which targeted girls’ education.” For example, “in August 2014, in the Shah Joy district of Zabul province, the Taliban forcefully entered a school, abducted and later killed a 32-year-old male schoolteacher who had received prior warnings to cease teaching at the school.” UN Secretary-General, *Report of the Secretary-General on Children and Armed Conflict in Afghanistan*, 15 May 2015, S/2015/336, <http://www.refworld.org/docid/55965b254.html>, paras 45-46.

²²⁰ UNAMA and UNICEF documented 66 abductions of health workers in 2015, a sharp increase from 2013 and 2014. All but one of these abductions in the period between 2013 and 2015 were attributed to AGEs. UNAMA, *Education and Healthcare At Risk: Key Trends and Incidents Affecting Children’s Access to Healthcare and Education In Afghanistan*, 18 April 2016, https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf, p. 10. UNAMA documented an increase in AGEs targeting hospitals and health personnel in 2015 (63 incidents, a 47 per cent increase from 2014, out of which Taliban fighters perpetrated 36 and ISIS-affiliated fighters perpetrated 12). Among these incidents, there was a reported increase in incidents of intimidation and threats against health care staff and institutions (31 incidents in 2015 compared to 14 in 2014). UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 20. During 2014, at least 10 health-care personnel were reported to be killed and a further 14 abducted. 38 incidents were attributed to armed groups, including 13 to the Taliban. UN Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926-S/2015/409, <http://www.refworld.org/docid/557abf904.html>, para. 34.

²²¹ In 2014 and 2015, UNAMA documented 19 targeted attacks (12 in 2014, 7 in 2015) against civilian contractors / labourers claimed by the Taliban. UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 84; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 108. Civilian Government contractors were also reportedly targets of abductions. UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 59. In January 2016, a contract worker for the government was reportedly killed after receiving warnings from the Taliban. Pajhwok News, *1 Worker Killed, Another Wounded in Taliban Attack*, 19 January 2016, <http://www.pajhwok.com/en/2016/01/19/1-worker-killed-another-wounded-taliban-attack>.

²²² 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 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 75.

²²³ The New York Times reported that during the first six months of 2015, 4,100 Afghan soldiers and police officers were killed and about 7,800 wounded, a 50 per cent increase compared to the same period in 2014. New York Times, *Afghan Security Forces Struggle Just to Maintain Stalemate*, 22 July 2015, <http://www.nytimes.com/2015/07/23/world/asia/afghan-security-forces-struggle-just-to-maintain-stalemate.html>. On 1 October 2014, a magnetic IED detonated near a bank in Kunduz city, Kunduz province, targeting the ANP, which caused 16 civilian casualties (one death and 15 injured including one woman and two children). The Taliban claimed responsibility and stated having killed five ANP. UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 50.

²²⁴ On 7 August 2015, a suicide bomber set off a bomb among police cadets outside a police academy in Kabul. UNAMA reported 57 civilian casualties and no non-civilian casualties. The Taliban claimed responsibility for the attack. AAN, *The Triple Attack in Kabul: A Message? If So, to Whom?*, 10 August 2015, <https://www.afghanistan-analysts.org/the-triple-attack-in-kabul-a-message-if-so-to-whom/>. See also Radio

ALP members are also widely targeted.²²⁶ As ALP members are often stationed in more volatile areas, estimates suggest that their casualty rate is three times higher than that of other ANSF members.²²⁷ AGEs are also reported to target officers of other police forces in Afghanistan,²²⁸ as well as former members of the ANSF.²²⁹

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

AGEs are widely reported to target civilians who are suspected of collaborating with, or “spying for” pro-government forces, including the ANSF.²³⁰

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

AGEs have reportedly threatened and attacked Afghan civilians who work for the international military forces as drivers, interpreters or in other civilian capacities.²³¹ There are also reports of AGEs targeting former employees of the international forces and the government.²³²

Free Europe/Radio Liberty, *Deadly Bomb Blast Hits Afghan Police Checkpoint*, 6 July 2015, <http://www.refworld.org/docid/55b5f45b11.html>; The Guardian, *Taliban Kill 20 Afghan Police Officers in Attacks on Checkpoints*, 13 June 2015, <http://www.theguardian.com/world/2015/jun/13/taliban-kill-20-afghan-police-officers-in-attacks-on-checkpoints>.

²²⁵ On 17 May 2015, in Laghman province, AGEs shot at and captured an off-duty ANP officer who attempted to flee, also injuring a 12-year-old girl. UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 61. In 2014 UNAMA documented 525 civilian casualties (201 civilian deaths and 324 injured) from ground engagements where AGEs attacked ANP officers, a 27 per cent increase from 2013. The civilian casualties were either bystanders close to the attacks, ANP officers engaging in civilian law enforcement, or off-duty ANP officers. UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 32.

²²⁶ During the first week of July 2015, at least 30 ALP members were reportedly killed as Taliban insurgents launched coordinated attacks against police checkpoints in Maidan Wardak province. Los Angeles Times, *Afghan Fighters Accuse Kabul of Neglect in Deadly Battle with Taliban*, 5 July 2015, <http://www.latimes.com/world/afghanistan-pakistan/la-fg-afghan-fighters-kabul-neglect-20150705-story.html>. On 23 November 2014, a suicide bomb believed to have targeted ALP members detonated among a crowd of some 400 people gathered for a volleyball game in Paktika province. UNAMA documented 138 civilian casualties, including ten ALP members. UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 53.

²²⁷ International Crisis Group, *The Future of the Afghan Local Police*, 4 June 2015, <http://www.refworld.org/docid/55702a544.html>, p. 8.

²²⁸ On 18 November 2014, an IED detonated at a buzkashi stadium in Baghlan province, injuring 24 civilians (including three boys). UNAMA reported that the main targets appeared to be members of the Afghan National Civil Order Police (ANCOP) who were in attendance. UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 50.

²²⁹ For example, in February 2016 the Taliban claimed responsibility for killing a 10-year-old boy who had fought against them alongside the ALP. The boy had returned from combat and was attending school when he was killed. New York Times, *Taliban Gun Down 10-Year-Old Militia Hero in Afghanistan*, 2 February 2016, <http://www.nytimes.com/2016/02/03/world/asia/afghanistan-taliban-child-soldiers.html>. A former district police chief in Helmand province was wounded in October 2014 when an explosives-laden vehicle exploded near his house. Five persons were killed and 18 others wounded in the explosion. Dawn, *Taliban Suicide Attack Kills Five in Afghanistan*, 8 October 2014, <http://www.dawn.com/news/1136627>. In August 2014, a former ANA soldier was reportedly shot when armed men entered a health clinic in Logar province. AAN, *The Empty Street of Mohammad Agha: Logar Struggle Against the Taleban*, 15 December 2014, <https://www.afghanistan-analysts.org/the-empty-streets-of-mohammad-gha-logars-struggle-against-the-taleban/>.

²³⁰ In 2015, UNAMA documented 44 incidents of AGEs punishing civilians for alleged infractions of Sharia law, perceived offences, and allegations of spying. UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 50. UNAMA reported that the killing of abductees often follows accusations of spying for pro-government forces. UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 61. In 2014, UNAMA documented 11 incidents in which AGEs beheaded 16 civilians, accusing them of spying for the Government or punishing them for supporting Afghan national security forces. For example, on 26 August 2014 AGEs beheaded a local mullah in Farah province who had reportedly continued to deliver funeral prayers for Afghan security forces despite threats from the Taliban. UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 56. IDPs profiled by the National IDP Task Force during 2015 reported being subjected to harassment and intimidation by AGEs due to their perceived support of the government and pro-government forces. See for example UNHCR, *Afghanistan: Conflict-Induced Internal Displacement Monthly Update*, September 2015, <http://www.refworld.org/docid/565554b14.html>. The Taliban have reportedly threatened and killed people for using government-run telecom services, on the basis that such people were suspected of spying for the government. Pajhwok News, *Kapisa Residents Resent Taliban Ban Salam Operations*, 17 January 2016, <http://www.pajhwok.com/en/2016/01/17/kapisa-residents-resent-taliban-ban-salam-operations>.

²³¹ According to independent confirmation from five sources, at least four translators were killed by Taliban insurgents while waiting for a decision from the US State Department about their eligibility for resettlement via the Special Immigrant Visa (SIV) program. Voice of America, *Where the Grave Isn't Free: One Afghan Interpreter's Trials of US Resettlement*, 22 April 2015, <http://www.voanews.com/content/afghan-interpreters-translators-siv-special-immigrant-visa/2729110.html>. According to Linda Fitchett, president of the International Association of Conference Interpreters (AIIC), visible collaboration with international troops turns translators and interpreters into targets. She estimates several hundred translators have been killed since the start of the war and several thousand wounded. Deutsche Welle, *Interpreters Are Caught in the Crossfire in Afghanistan*, 7 August 2014, <http://www.dw.com/en/interpreters-are-caught-in-the-crossfire-in-afghanistan/a-17839085>. See also BBC News, *Left to the Mercy of the Taliban*, 26 November 2014, <http://www.bbc.com/news/magazine-30215500>.

²³² In August 2015, it was reported that a former interpreter for the British Army in Helmand province was killed in his home after being labelled as a spy by the Taliban. The Telegraph, *Britain 'Owes Afghan Interpreters a Debt of Honour'*, 29 August 2015,

e) *Humanitarian Workers and Development Workers*

AGEs are reported to target civilians who are employees of international or Afghan humanitarian organizations,²³³ including Afghan nationals working for UN organizations;²³⁴ employees of international development agencies;²³⁵ employees of national and international non-governmental organizations (NGOs);²³⁶ and truck drivers, construction workers and individuals involved in mining projects and other development projects.²³⁷ Individuals with these profiles are reported to have been killed, abducted, and intimidated.

f) *Human Rights Activists*

AGEs are reported to target human rights activists, with activists having been killed or injured in targeted attacks.²³⁸ Women human rights defenders are reported to be at particularly high risk.²³⁹

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

AGEs are reported to kill civilians deliberately to punish them for supporting the government, with the killings intended to serve as a warning to others.²⁴⁰ AGEs are also reported to use different

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

²³³ According to UNAMA, AGEs targeted humanitarian workers in 15 abduction incidents in the first six months of 2015. UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 63.

²³⁴ During the attack on Kunduz in September 2015, the Taliban were reported to have a pre-prepared list of targets which included UNAMA staff members. UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 10 December 2015, A/70/601-S/2015/942, <http://www.refworld.org/docid/5672ac7c4.html>, para. 31. There were a reported 27 security incidents involving United Nations personnel between March and May 2015. UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 10 June 2015, A/69/929 – S/2015/422, <http://www.refworld.org/docid/558284aa4.html>, para. 24.

²³⁵ Following an attack on a hotel in Kabul on 13 May 2015, which killed five Afghans and nine foreign citizens, the Taliban released a statement that categorized Afghans who work with foreigners, including aid workers, as “hirelings” and justifiable targets. HRW, *Afghanistan: The Taliban’s Deadly Hypocrisy*, 18 May 2015, <http://www.hrw.org/news/2015/05/18/afghanistan-talibans-deadly-hypocrisy>.

²³⁶ UNAMA, *Afghanistan: Human Rights and Protection of Civilians in Armed Conflict Special Report on Kunduz Province*, December 2015, <http://www.refworld.org/docid/566fd0e64.html>, p. 16. Nine local aid workers working for the National Solidarity Program, an Afghan government initiative, were killed when gunmen entered the compound of the agency in the northern Balkh Province on 2 June 2015. New York Times, *Gunmen in Northern Afghanistan Kill 9 Local Aid Workers*, 2 June 2015, <http://www.nytimes.com/2015/06/03/world/asia/afghanistan-aid-workers-killed-in-attack.html>. In 2014, UNAMA documented 17 attacks deliberately targeting de-miners that caused 51 civilian casualties (34 killed and 17 injured). AGEs carried out these attacks, with the Taliban publicly claiming responsibility for two of the attacks. For example, on 13 December 2014 AGEs opened fire on a group of de-miners clearing unexploded ordnance in Wa Sher district, Helmand province, killing 11 de-miners and injuring another six. UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 23.

²³⁷ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 84; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, pp. 55, 108.

²³⁸ See United Kingdom: Foreign and Commonwealth Office, *Human Rights and Democracy Report - Afghanistan*, 12 March 2015, <http://www.refworld.org/docid/551a53045e.html>; Freedom House, *Freedom in the World 2015 - Afghanistan*, 20 March 2015, <http://www.refworld.org/docid/55116f4111.html>. On 26 October 2015, two staff members of the AIHRC were killed and six other staff members injured when a remote-controlled explosive device detonated under the group’s minibus in Nangarhar province. UN News Service, *UN Condemns Attack on Human Rights Workers in Afghanistan that Killed Two, Injured Six*, 26 October 2015, <http://www.refworld.org/docid/562f417840b.html>. During the attack on Kunduz in September 2015, Taliban forces reportedly had a ‘hit list’ of targets which included the names and photos of activists, journalists and civil servants. Amnesty International, *Afghanistan: Harrowing Accounts Emerge of the Taliban’s Reign of Terror in Kunduz*, 1 October 2015, <https://www.amnesty.org/en/latest/news/2015/10/afghanistan-harrowing-accounts-emerge-of-the-talibans-reign-of-terror-in-kunduz/>.

²³⁹ See UNAMA, *Afghanistan: Human Rights and Protection of Civilians in Armed Conflict Special Report on Kunduz Province*, December 2015, <http://www.refworld.org/docid/566fd0e64.html>, p. 15; UNAMA, *UN Special Representative Nicholas Haysom on Murder of UNAMA Staff Member in Kandahar*, 25 October 2015, <https://unama.unmissions.org/un-special-representative-nicholas-haysom-murder-unama-staff-member-kandahar>; Amnesty International, *Afghanistan: Their Lives on the Line: Women Human Rights Defenders under Attack in Afghanistan*, 7 April 2015, ASA 11/1279/2015, <http://www.refworld.org/docid/55277ff24.html>; International Foundation for the Protection of Human Rights Defenders, *Human Rights Defenders, Lives in the Balance*, 14 January 2015, https://www.frontlinedefenders.org/sites/default/files/annual_report_2014_final_revised.pdf, p. 8.

²⁴⁰ In May 2015, according to a village elder who witnessed the beheading of an engineer by the Taliban, a Taliban commander instructed a Taliban member to record that he had imposed the punishment because the engineer had supposedly supported the Government. The Taliban

mechanisms to warn civilians against supporting the Government, including text messages, local radio broadcasts, social media and “night letters” (*shab nameha*).²⁴¹ In locations where AGEs have been unable to win public support, they are reported to harass and intimidate local communities, and to mete out punishments against the local population for supporting the Government.²⁴² 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.²⁴³

h) Tribal Elders and Religious Leaders

AGEs are reported to target local traditional leaders such as tribal elders who are perceived to be supporters of the Government or the international community, or as non-supportive of AGEs.²⁴⁴

AGEs are also reported to target religious leaders who are perceived as pro-government, or on the basis of their particular interpretations of Islam.²⁴⁵ Imams have reportedly been targeted for

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

²⁴¹ See for example Washington Post, *A New Islamic State Radio Station Spreads Panic in Eastern Afghanistan*, 22 December 2015, https://www.washingtonpost.com/world/asia_pacific/a-new-islamic-state-radio-station-spreads-panic-in-eastern-afghanistan/2015/12/21/f41ecf96-a75c-11e5-b596-113f59ee069a_story.html; New York Times, *Taliban Threats to Afghan Journalists Show Shift in Tactics*, <http://www.nytimes.com/2015/10/19/world/asia/taliban-threats-to-afghan-journalists-show-shift-in-tactics.html>; and *Fear of Taliban Drives Women Out of Kunduz*, 14 October 2015, <http://www.nytimes.com/2015/10/15/world/asia/taliban-targeted-women-kunduz-afghanistan.html>; Immigration and Refugee Board of Canada, *Afghanistan: Night letters [Shab Nameha, Shabnamah, Shabnameh], Including Appearance (2010-2015)*, 10 February 2015, <http://www.refworld.org/docid/54f02a6c4.html>; VICE news, *The Afghan Interpreters Facing Taliban Death Threats Are Taking Britain to Court*, 16 January 2015, <https://news.vice.com/article/the-afghan-interpreters-facing-taliban-death-threats-are-taking-britain-to-court>. While the Taliban have stated that they have ceased the practice of issuing night letters, there have been reports of ISIS issuing such letters in Nangarhar and Kunar provinces. Foreign Policy, *In Nangarhar, IS Recruits Amidst Af-Pak Border Tensions*, 24 November 2015, <http://foreignpolicy.com/2015/11/24/in-nangarhar-is-recruits-amidst-af-pak-border-tensions/>; Islamic Emirate of Afghanistan, *Notice by Islamic Emirate Concerning Countrymen Fleeing Afghanistan*, 20 December 2015, <http://shahamat-english.com/notice-by-islamic-emirate-concerning-countrymen-fleeing-afghanistan/>; Associated Press, *Afghans Seeking Asylum Buy Fake Taliban Threat Letters*, 22 November 2015, <http://bigstory.ap.org/article/6c4fd4cae7284ac9b9453ce0040457dc/afghans-seeking-asylum-buy-fake-taliban-threat-letters>.

²⁴² Between 1 August and 31 December 2014, UNAMA documented 10 incidents of Taliban members burning homes of civilians who had expressed political or verbal opposition to the Taliban. Affected communities and civilians described the house burnings as acts of intimidation intended to spread terror and serve as collective punishment for individuals and families perceived as pro-Government. UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 67. AAN reports that “In Mohammad Agha, everyone must look after the ‘guests’ who arrive at night. The visitors, roaming groups of Taleban, are patrolling the district and regularly knock on doors to ask for food. If villagers in this district of Logar, a province located just southeast of the capital Kabul, refuse to help, they risk being marked as spies of the government and punished – meaning beaten or even killed.” AAN, *The Empty Streets of Mohammad Agha: Logar’s Struggle against the Taleban*, 15 December 2014, <https://www.afghanistan-analysts.org/the-empty-streets-of-mohammad-gha-logars-struggle-against-the-taleban/>.

²⁴³ In 2015, UNAMA documented 44 incidents of AGEs, including Taliban, punishing civilians through parallel justice structures for alleged infractions of Sharia law, perceived offences, and allegations of spying. UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 50. In 2014, the Taliban abducted 15 boys, accusing them of being Government spies. UN Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926–S/2015/409, <http://www.refworld.org/docid/557abf904.html>, para. 36. In 2014, UNAMA documented 12 incidents in which AGEs beheaded 17 civilians. In all but one incident, where the motive could not be ascertained, the civilians who were abducted and beheaded were accused by the responsible AGEs of spying for the Government or supporting the ANSF. For example on 10 December 2014, the beheaded body of a civilian was found in the Shekha area of Deh Bala district, Nangarhar province. Residents confirmed that the man was a civilian driver whom the Taliban had accused of spying and assisting the Government. On 5 December 2014, a group of AGEs abducted four civilian men in Deh Bala district, Nangarhar province. Local residents found the beheaded bodies of the four victims on 8 December 2014 and stated that local Taliban had accused the men of spying and supporting the Government. UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 56.

²⁴⁴ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 84; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, pp. 43, 55, 108. Groups claiming affiliation to ISIS are reported to have targeted and killed tribal leaders in eastern Afghanistan. New York Times, *Afghan ISIS Branch Makes Inroads in Battle against Taliban*, 13 October 2015, <http://www.nytimes.com/2015/10/14/world/asia/afghan-isis-branch-makes-inroads-in-battle-against-taliban.html>.

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

i) *Women in the Public Sphere*

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

²⁴⁵ According to UNAMA, “Attacks deliberately targeting mullahs and places of worship decreased slightly in 2015, with UNAMA documenting 56 civilian casualties (42 deaths and 14 injured) - an eight per cent decrease from 2014.” UNAMA further noted that “while the total number of civilian casualties from attacks deliberately targeting religious personnel decreased, the number of fatalities more than doubled, from 19 deaths in 2014 to 42 deaths in 2015.” UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 46-47. See also UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 58.

²⁴⁶ UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 56; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 56.

²⁴⁷ Between August and November 2014, Amnesty International interviewed more than 50 women human rights defenders, including government officials, police officers, health care professionals, teachers, prosecutors, defence lawyers, civil society activists, academics, journalists and politicians, from 13 provinces across Afghanistan. The interviews revealed a range of daily threats against women in the public sphere, including threats, harassment, intimidation, attacks and killings. Amnesty International, *Afghanistan: Their Lives on the Line: Women Human Rights Defenders under Attack in Afghanistan*, 7 April 2015, ASA 11/1279/2015, <http://www.refworld.org/docid/55277ff24.html>, p. 7. The UN Security Council in March 2015 condemned the targeted killing of women and girls in Afghanistan, in particular high-level female officials. UN Security Council, *Security Council Resolution 2210 (2015) [on Extension of the Mandate of the UN Assistance Mission in Afghanistan (UNAMA) until 17 Mar. 2016]*, 16 March 2015, S/RES/2210 (2015), <http://www.refworld.org/docid/550aa9914.html>, p. 5.

²⁴⁸ Following the attack on Kunduz in September 2015, Taliban forces were reported to have targeted “women with any sort of public profile” and to have a “hit list” of female activists. See UNAMA, *Afghanistan: Human Rights and Protection of Civilians in Armed Conflict Special Report on Kunduz Province*, December 2015, <http://www.refworld.org/docid/566fd0e64.html>, pp. 15-16; New York Times, *Fear of Taliban Drives Women Out of Kunduz*, 14 October 2015, <http://www.nytimes.com/2015/10/15/world/asia/taliban-targeted-women-kunduz-afghanistan.html>; *The Telegraph*, *We Can't Go Back' Say Women Activists on Taliban Kunduz 'Hit List'*, 18 October 2015, <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/11938891/We-cant-go-back-say-women-activists-on-Taliban-Kunduz-hit-list.html>. A female Member of Parliament was targeted in a suicide attack in Kabul in November 2014. BBC, *Afghan Woman MP Survives Car Attack*, 16 November 2014, <http://www.bbc.com/news/world-asia-30073189>. See also New York Times, *Afghan Policewomen Struggle Against Culture*, 1 March 2015, <http://www.nytimes.com/2015/03/02/world/asia/afghan-policewomen-struggle-against-culture.html>.

²⁴⁹ According to the AIHRC, during the first six months of the Afghan year 1394 (equivalent to 21 March – 22 September 2015) there were 89 incidents of targeted killings of women committed by AGEs for political purposes. AIHRC, *Elimination of violence against Women 1394*, 30 November 2015, http://www.aihrc.org.af/home/research_report/5170.

²⁵⁰ The female governor of Ghor province has reportedly received death threats against herself and her family from local ‘armed commanders’ who demand her resignation. Radio Free Europe/Radio Liberty, *Female Afghan Governor Won't Back Down Amid Threats, Controversy*, 19 October 2015, <http://www.rferl.org/content/afghanistan-ghor-province-female-governor-death-threats/27314931.html>. Afghanistan’s first female fixed-wing military pilot reportedly received death threats both from the Taliban and from members of her extended family after becoming a public persona. Wall Street Journal, *In Afghanistan, Death Threats Shatter Dream of First Female Pilot*, 4 August 2015, <http://www.wsj.com/articles/in-afghanistan-death-threats-shatter-dream-of-first-female-pilot-1438738716>. Amnesty International reported that, “Women human rights defenders face threats and violence not only from the Taliban and other armed opposition groups but also from state actors, and, in particular, law enforcement and security officials. They are also at risk of harm from powerful commanders and warlords, who are either connected to state authorities or are the local officials themselves.” Amnesty International, *Afghanistan: Their Lives on the Line: Women Human Rights Defenders under Attack in Afghanistan*, 7 April 2015, ASA 11/1279/2015, <http://www.refworld.org/docid/55277ff24.html>, p. 19.

²⁵¹ United States Commission on International Religious Freedom, *USCIRF Annual Report 2015 - Tier 2: Afghanistan*, 1 May 2015, <http://www.refworld.org/docid/554b355e20.html>. For further information on the treatment of women perceived as transgressing social norms, see Section III.A.8.

²⁵² On the eve of the election in April 2014, the Taliban published a list of names and addresses of hundreds of female police officers. The Times, *Taliban Step up Their Intimidation of Female Police on Eve of Election*, 5 April 2014, <http://www.thetimes.co.uk/tto/news/world/asia/afghanistan/article4054966.ece>.

²⁵³ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 14. For example, a female member of the provincial council of Nangarhar province died days after the explosion of a magnetic bomb attached to her vehicle. Khaama Press, *Angeza Shinwari Succumbs to Injuries*, 16 February

According to human rights activists, in many instances law enforcement agencies failed to combat impunity for harassment and attacks against women in the public sphere.²⁵⁴

j) *Individuals perceived as “Westernized”*

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

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

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

2015, <http://www.khaama.com/angeza-shinwari-succumbs-to-injuries-29072>. See also New York Times, *Afghan Policewomen Struggle Against Culture*, 1 March 2015, <http://www.nytimes.com/2015/03/02/world/asia/afghan-policewomen-struggle-against-culture.html>.

²⁵⁴ Amnesty International, *Afghanistan: Their Lives on the Line: Women Human Rights Defenders under Attack in Afghanistan*, 7 April 2015, ASA 11/1279/2015, <http://www.refworld.org/docid/55277ff24.html>, p. 10.

²⁵⁵ Young people with Western connections and mannerisms are reportedly at risk of being mistaken for collaborators with the government and the international community. Bureau of Investigative Journalism, *From Kent to Kabul: The Former Asylum Seeking Children Sent Back to Afghanistan*, 17 July 2015, <http://labs.thebureauinvestigates.com/from-kent-to-kabul/>. See also BBC, *The Young People Sent Back to Afghanistan*, 17 July 2015, <http://www.bbc.com/news/magazine-33524193>. The Refugee Support Network (RSN), which tracked a group of young men returned from the United Kingdom to Afghanistan, found that, “In some cases, young people have been threatened or targeted as a result of issues connected to their original asylum claims, and, for a significant group, simply being identified as a returnee has put them at considerable risk of violence.” RSN, *After Return: Documenting The Experiences of Young People Forcibly Removed to Afghanistan*, April 2016, https://refugeesupportnetwork.org/sites/default/files/files/After%20Return_RSN_April%202016.pdf, p. 31. Returnees reportedly face a general assumption that they have become ‘westernized’ or ‘anti-Islamic’ in Europe. PRIO, *Can Afghans Reintegrate after Assisted Return from Europe?*, July 2015, http://file.prio.no/publication_files/PRIO/Oeppen%20-%20Can%20Afghans%20Reintegrate%20after%20Assisted%20Return%20from%20Europe.%20PRIO%20Policy%20Brief%207-2015.pdf.

A former Afghan army soldier who applied for asylum while he attended a military training in the USA was granted asylum by the Board of Immigration Appeals (BIA). The BIA was reported to have held that the fact that the former soldier had attended training in the USA would put him at risk on return to Afghanistan, as the Taliban would likely impute pro-government opinions to him. Reuters, *Former Afghan Soldier Who Flew U.S. Training Granted Asylum: Lawyer*, 30 June 2015, <http://www.reuters.com/article/us-usa-afghanistan-asylum-idUSKCN0PA2XT20150630>.

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

²⁵⁷ On 10 December 2015, a relative of a member of the Afghan security forces was reportedly abducted and later killed by AGEs. The member of the ANSF had recently been involved in the killing of a Taliban commander. UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 49. During the siege of Kunduz in September 2015, the husband of a female NGO worker was allegedly killed by members of the Taliban as they searched her house. Taliban members allegedly also killed two relatives of an ANP officer as they were taking his body away for burial. UNAMA, *Afghanistan: Human Rights and Protection of Civilians in Armed Conflict Special Report on Kunduz Province*, December 2015, <http://www.refworld.org/docid/566fd0e64.html>, p. 13. Family members of government workers are reportedly targets of abductions by AGEs. UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 61. UNAMA reported a new trend of incidents in eastern provinces between 1 August and 31 December 2014, where Taliban members burned homes of individuals and families perceived to be Pro-Government. UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 67. Children are reportedly abducted as a form of reprisal against family members working for or allegedly supporting the Government or international forces. UN Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, 15 May 2014, A/68/878-S/2014/339, <http://www.refworld.org/docid/53b3b7654.html>, para. 30.

²⁵⁸ According to UNAMA, AGEs continued in 2015 to target women with relatives serving in the security forces. UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 14. On 31 October 2015, Taliban militants in Jawzjan province reportedly kidnapped four civilians whose sons were former soldiers of ANA, accusing them of helping the government. Khaama Press, *Taliban Kidnap Four Civilians in Jawzjan*, 1 November 2015,

l) Summary

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

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

2. Journalists and Other Media Professionals

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

<http://www.khaama.com/taliban-kidnap-four-civilians-in-jawzjan-4069>. During the attack on Kunduz in September 2015, Taliban forces reportedly raped and killed family members, including children, of police commanders and soldiers, targeting families of ALP members in particular. Amnesty International, *Afghanistan: Harrowing Accounts Emerge of the Taliban’s Reign of Terror in Kunduz*, 1 October 2015, <https://www.amnesty.org/en/latest/news/2015/10/afghanistan-harrowing-accounts-emerge-of-the-talibans-reign-of-terror-in-kunduz/>. On 28 June 2015, AGEs reportedly abducted and killed the 17-year-old son of an ANP officer in Farah city. UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 64. On 20 July 2014, an IED explosion of a private vehicle in Faryab province caused eight casualties, all from the family of an ALP commander. The Taliban claimed responsibility for the attack. UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 50. According to UNAMA sources, in July 2014 the Taliban was accused of beheading a 15-year-old boy who was the son of a former ANA officer. UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, pp. 56-57.

²⁵⁹ Freedom House, *Freedom of the Press 2015 - Afghanistan*, 4 September 2015, <http://www.refworld.org/docid/55f001263d.html>. Article 34 of the Constitution qualifies the right to print and publish without prior submission to State authorities by means of the phrase “according to provisions of law”. Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>.

²⁶⁰ Freedom House, *Freedom of the Press 2015 - Afghanistan*, 4 September 2015, <http://www.refworld.org/docid/55f001263d.html>. In March 2015 the National Security Council and the Ministry of the Interior reportedly issued an official order prohibiting security officials to respond to questions about security-related issues. USIP, *Afghanistan’s Fourth Estate: Independent Media*, August 2015, <http://www.usip.org/sites/default/files/PB189-Afghanistans-Fourth-Estate-Independent-Media.pdf>. There is also reported concern about a lack of capacity among government spokespersons to respond to media requests. Institute for War and Peace Reporting, *Demands for Local Government Transparency in Afghanistan*, 31 March 2015, <http://www.refworld.org/docid/552253004.html>.

²⁶¹ Media oversight and accountability mechanisms, such as the now dissolved Media Violations Investigation Committee (MVIC), have reportedly mainly been used as a government tool to influence domestic media. Afghan Journalists Safety Committee, *Six-month Report 1 January - 30 June 2015*, 27 August 2015, <http://ajsc.af/wp-content/uploads/2015/08/AJSC-Six-month-Report-English.pdf>, p. 17; HRW, *“Stop Reporting or We’ll Kill Your Family”: Threats to Media Freedom in Afghanistan*, 21 January 2015, <http://www.refworld.org/docid/54c201034.html>, pp. 8-11; AAN, *A ‘Jihad on the Media’? Afghan Journalists Face the Storm in Insecure*

provision prohibiting production, reproduction, print, and publishing of works and materials contrary to the principles of Islam or offensive to other religions and sects.²⁶² While there were no reports of prosecutions under this provision of the law, the government reportedly used the provision for attempts to censure media outlets for content deemed to be against Islam or the national interest,²⁶³ while in one case an investigation was reportedly launched on the orders of the Chief Executive Officer against a newspaper on the grounds that a published opinion piece was blasphemous.²⁶⁴

The defamation provision of the Media Law is reportedly sometimes used as a pretext to suppress criticism of government officials.²⁶⁵ Politicians, security officials, and others in positions of power reportedly arrested, threatened, or harassed journalists as a result of their coverage, in particular those who reported critically on the government and powerful local figures.²⁶⁶ 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.²⁶⁷ Journalists were reported to revert to self-censorship due to fears of reprisals.²⁶⁸

Many of the private broadcasting stations and print media were reportedly owned or controlled by warlords, who used such control to further their political agendas and to constrain freedom of speech.²⁶⁹

Violence against journalists is reported to be a serious concern, with State authorities reportedly responsible for the majority of incidents.²⁷⁰ Women journalists are reportedly at a particular risk of

Legal Waters, 9 December 2013, <https://www.afghanistan-analysts.org/a-jihad-on-the-media-afghan-journalists-face-the-storm-in-insecure-legal-waters/>.

²⁶² US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>.

²⁶³ HRW, "Stop Reporting or We'll Kill Your Family": Threats to Media Freedom in Afghanistan, 21 January 2015, <http://www.refworld.org/docid/54c201034.html>, p. 8.

²⁶⁴ In October 2014 authorities reportedly detained several people tied to the publication of an opinion piece in the Afghanistan Express, on the grounds that the piece was blasphemous and in violation of the Media Law. Chief Executive Officer Abdullah reportedly ordered the arrest of Afghanistan Express staff during a Council of Ministers meeting. The investigation was later dropped and the staff released. US Department of State, *2014 Country Reports on Human Rights Practices - Afghanistan*, 25 June 2015, <http://www.refworld.org/docid/559bd58728.html>; Washington Post, *New Afghan Government Investigates Newspaper for 'Blasphemous Article'*, 22 October 2014, https://www.washingtonpost.com/world/asia_pacific/new-afghan-government-investigates-newspaper-for-blasphemous-article/2014/10/22/d8ffc136-59ea-11e4-b812-38518ae74c67_story.html.

²⁶⁵ For example, in August 2015, two journalists suspected of running a satirical Facebook-page were summoned for questioning by the NDS, after posting critical information about the work of the agency. The two journalists were reportedly warned that their lives and those of their families would be put at risk. Nai Supporting Open Media in Afghanistan, *Media Watch Report, Owner Nai, Monthly Report #123 August*, September 2015, <http://nai.org.af/files/documents/mw/Nai%20Monthly%20Report%20123%20English.pdf>; Reuters, *Afghan Satire 'Kabul Taxi' Angers Spies, Scribes Summoned*, 25 August 2015, <http://www.reuters.com/article/2015/08/25/us-afghanistan-press-idUSKCN0QU1HF20150825>. In April 2014, two journalists were allegedly summoned to the Appellate Attorney's Office in Baghlan province to respond to complaints made by the NDS, following public comments about NDS officials beating journalists. US Department of State, *2014 Country Reports on Human Rights Practices - Afghanistan*, 25 June 2015, <http://www.refworld.org/docid/559bd58728.html>.

²⁶⁶ Human Rights Watch reported, "Journalists in Afghanistan who publish articles critical of the authorities and government practices often encounter censorship, harassment, and violence. The perpetrators of that abuse include government officials, police and other members of the Afghan national security forces (ANSF), and government-allied warlords and militias." HRW, "Stop Reporting or We'll Kill Your Family": Threats to Media Freedom in Afghanistan, 21 January 2015, <http://www.refworld.org/docid/54c201034.html>, p. 13. See also US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; Amnesty International, *Amnesty International Report 2014/15 - Afghanistan*, 25 February 2015, <http://www.refworld.org/docid/54f07e2215.html>. International Media Support stated in 2013 that the government had emerged as the greatest threat to the Afghan media over the preceding decade, with media outlets that criticize the government regularly receiving threats. International Media Support, *Journalism in Afghanistan: Current and Post-2014 Threats and Journalist Safety Mechanisms*, October 2013, <http://www.mediasupport.org/wp-content/uploads/2013/12/afghanistan-safety-assessment-sept2013-ims.pdf>, p. 18.

²⁶⁷ Freedom House, *Freedom of the Press 2015 - Afghanistan*, 4 September 2015, <http://www.refworld.org/docid/55f001263d.html>.

²⁶⁸ According to a survey conducted by Nai Supporting Open Media in Afghanistan, which reached 335 journalists in 25 provinces, 40 per cent of journalists impose self-censorship. Nai Supporting Open Media in Afghanistan, *Media Watch Report, Monthly Report #124 September*, October 2015, <http://nai.org.af/files/documents/mw/Nai%20Monthly%20Report%20124%20English.pdf>. See also US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; Freedom House, *Freedom of the Press 2015 - Afghanistan*, 4 September 2015, <http://www.refworld.org/docid/55f001263d.html>; HRW, "Stop Reporting or We'll Kill Your Family": Threats to Media Freedom in Afghanistan, 21 January 2015, <http://www.refworld.org/docid/54c201034.html>, pp. 33-34.

²⁶⁹ See US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; HRW, "Stop Reporting or We'll Kill Your Family": Threats to Media Freedom in Afghanistan, 21 January 2015, <http://www.refworld.org/docid/54c201034.html>, p. 11.

²⁷⁰ The Afghan Journalists Safety Committee recorded 39 cases of threats and violence against journalists during the first half of 2015, out of which 28 cases were perpetrated by government officials. Afghan Journalists Safety Committee, *Six-month Report, 1 January - 30 June 2015*, 27 August 2015, <http://ajsc.af/wp-content/uploads/2015/08/AJSC-Six-month-Report-English.pdf>. In 2014 the Committee recorded eight killings of journalists, and 129 cases of violence against journalists, with government officials and security forces reported to be

harassment and threats.²⁷¹ The perpetrators of violence against journalists are reported to frequently enjoy impunity, and journalists accused the Government of failing to protect them.²⁷²

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

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

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

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

responsible for most of the attacks: Freedom House, *Freedom of the Press 2015 - Afghanistan*, 4 September 2015, <http://www.refworld.org/docid/55f001263d.html>.

²⁷¹ When the Taliban captured Kunduz in September 2015, Taliban fighters seized and shut down a radio station known for promoting women's rights, and also threatened its female journalists. Washington Post, *Afghan Radio Station Focused on Women's Rights is a Casualty of the Taliban*, 16 November 2015, https://www.washingtonpost.com/world/asia_pacific/an-afghan-womens-radio-station-becomes-a-taliban-casualty/2015/11/15/64f8eeac-7db6-11e5-bfb6-65300a5ff562_story.html. See also Freedom House, *Freedom of the Press 2015 - Afghanistan*, 4 September 2015, <http://www.refworld.org/docid/55f001263d.html>.

²⁷² Afghanistan is ranked as the 7th worst offender in the Committee to Protect Journalists' 2015 *Global Impunity Index*, having failed to hold perpetrators responsible for five targeted killings of journalists in the last decade. Committee to Protect Journalists, *Getting Away With Murder*, 8 October 2015, <https://cpj.org/reports/2015/10/impunity-index-getting-away-with-murder.php>. International Media Support stated in 2013 that perpetrators can target media without fear of state-enforced punishment. International Media Support, *Journalism in Afghanistan: Current and Post-2014 Threats and Journalist Safety Mechanisms*, October 2013, <http://www.mediasupport.org/wp-content/uploads/2013/12/afghanistan-safety-assessment-sept2013-ims.pdf>, p. 18.

²⁷³ Freedom House, *Freedom of the Press 2015 - Afghanistan*, 4 September 2015, <http://www.refworld.org/docid/55f001263d.html>; Reporters Without Borders, *Taliban and Islamic State Extend News "Black Holes" in Afghanistan*, 7 July 2015, <http://www.refworld.org/docid/559bcc96410.html>; HRW, "Stop Reporting or We'll Kill Your Family": Threats to Media Freedom in Afghanistan, 21 January 2015, <http://www.refworld.org/docid/54c201034.html>, pp. 35-38.

²⁷⁴ In January 2016, the Taliban claimed responsibility for a suicide attack against media workers in Kabul. Eight civilians were killed and 24 injured, many of them media workers. UNAMA, *UNAMA Condemns Suicide Attack Targeting Media in Kabul*, 21 January 2016, <http://unama.unmissions.org/unama-condemns-suicide-attack-targeting-media-kabul>. On 12 October 2015, the Taliban released a statement explicitly targeting Tolo and 1 TV media outlets as legitimate military targets. *Statement by the Military Commission of Islamic Emirate Concerning Intelligence TV Networks of Tolo and 1 TV*, 12 October 2015, <http://shahamat-english.com/statement-by-the-military-commission-of-islamic-emirate-concerning-intelligence-tv-networks-of-tolo-and-1-tv/>. See also Reporters Without Borders, *Taliban and Islamic State Treat Media as Targets*, 13 October 2015, <http://www.refworld.org/docid/5620b15340a.html>; New York Times, *Taliban Threats to Afghan Journalists Show Shift in Tactics*, 18 October 2015, <http://www.nytimes.com/2015/10/19/world/asia/taliban-threats-to-afghan-journalists-show-shift-in-tactics.html>.

²⁷⁵ A building in Jalalabad that houses Radio Safa, a local station, and the regional office of Radio Killid was attacked on 10 October 2015, following threatening phone calls that sought to force the radio station to report on ISIS activities in the region. Reporters Without Borders, *Taliban and Islamic State Treat Media as Targets*, 13 October 2015, <http://www.refworld.org/docid/5620b15340a.html>.

²⁷⁶ See UN Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926-S/2015/409, <http://www.refworld.org/docid/557abf904.html>, para. 27; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 18. In 2014, the UN documented 68 cases of child recruitment, of which 22 were verified (one case by the ANP, one case by the ALP and 20 cases by AGEs): UN Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926-S/2015/409, <http://www.refworld.org/docid/557abf904.html>, para. 27.

²⁷⁷ According to the AIHRC, the commission continues to receive reports of the use of child soldiers both by Afghan forces, in particular the ALP, and by AGEs: see New York Times, *Taliban Gun Down 10-Year-Old Militia Hero in Afghanistan*, 2 February 2016, <http://www.nytimes.com/2016/02/03/world/asia/afghanistan-taliban-child-soldiers.html>. Police forces and AGEs in Afghanistan are listed by the UN Security Council according to Resolution 1612 among parties that recruit or use children, kill or maim children, commit rape and other forms of sexual violence against children, or engage in attacks on schools and/or hospitals in situations of armed conflict. UN Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, <http://www.refworld.org/docid/557abf904.html>, p. 48. UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 18. Child Soldiers International reports that child recruitment by AGEs mostly affects the southern (Kandahar and Helmand) and eastern (Paktia, Khost and Paktika) provinces, because of the stronger

a) *Forced Recruitment by AGEs*

In areas where AGEs exercise effective control over territory and the population, they are reported to use a variety of mechanisms to recruit fighters, including recruitment mechanisms based on coercive strategies.²⁷⁸ Persons who resist recruitment, and their family members, are reportedly at risk of being killed or punished.²⁷⁹

AGEs are reported to continue to recruit children, both boys and girls, to carry out suicide attacks and as human shields,²⁸⁰ as well as to participate in active combat, to plant IEDs, to smuggle weapons and uniforms, and to act as spies, guards or scouts for reconnaissance.²⁸¹

presence of AGEs in these parts of the country. Child Soldiers International, *Briefing on the Situation of the Recruitment and Use of Children by Armed Forces and Insurgent Groups in Afghanistan to the UN Security Council Working Group on Children and Armed Conflict*, June 2015, http://www.child-soldiers.org/user_uploads/pdf/childsoldiersinternationalafghanistanbriefingjune2015final7404027.pdf, p. 11.

²⁷⁸ In April 2016, UNHCR noted in an update on population outflows from Afghanistan that “young men continue to be at substantial risk of recruitment.” United Nations in Afghanistan, *Population Movement Bulletin*, 14 April 2016, https://unama.unmissions.org/sites/default/files/un_afghanistan_-_population_movement_bulletin_-_issue_2_-_april_2016-final.pdf, p. 3. In both 2014 and 2015, IDPs reported that a fear of forced recruitment was one of the main drivers of internal displacement. In September 2015, forced recruitment practices were reported in Nangarhar province, particularly in areas where ISIS-affiliated groups have established their presence and influence. Between late 2014 and early 2015, AGEs had reportedly, through repeated warnings, forcibly recruited locals of several districts in Paktia province. In April 2015, in Maidan Wardak province the Taliban reportedly distributed night letters to encourage men to join them in their fight against the government. Forced recruitment by AGEs was also reported in several districts in Logar, Herat, Badghis, and Ghor provinces. See UNHCR’s monthly updates, *Afghanistan: Conflict-Induced Internal Displacement*, September 2015, <http://www.refworld.org/docid/565554b14.html>; July 2015, <http://www.refworld.org/docid/55efe7294.html>; April 2015, <http://www.refworld.org/docid/55641ca04.html>; February 2015, <http://www.refworld.org/docid/5513f90c4.html>; and December 2014, <http://www.refworld.org/docid/54b62f114.html>. According to a report in The World Post, “[ISIS] is actively trying to step up recruitment, in particular targeting young disenfranchised males in Achin District, occasionally through violent means and intimidation.” The World Post, *Dispatch From the Frontline: Fighting ISIS In Afghanistan*, 22 February 2016, http://www.huffingtonpost.com/franzstefan-gady/dispatch-from-the-frontline-fighting-isis_b_9237182.html. See also Khaama Press, *300,000 Children Face Uneducated Future Because of Daesh in Nangarhar*, 20 September 2015, <http://www.khaama.com/300000-school-children-face-uneducated-future-because-of-daesh-in-nangarhar-3925>. In October 2015, an Afghan MP was quoted in Tolo News expressing concern over the Taliban’s activities on the frontline in Kunduz and Badakhshan, noting that “Taliban militants have been weakened; they have turned towards children and locals. They push people to join the war by giving them money and using their force.” Tolo News, *Concerns Raised over Taliban’s Recruitment of Child Soldiers*, 28 October 2015, <http://www.tolonews.com/en/afghanistan/22099-concerns-raised-over-talibans-recruitment-of-child-soldiers>. During the siege of Kunduz in September 2015, the Taliban reportedly went door-to-door “taking young boys from every family as a form of forced recruitment.” Al Jazeera, *Afghan Taliban ‘Recruiting Boys’ from Kunduz Families*, 30 September 2015, <http://www.aljazeera.com/news/2015/09/afghan-taliban-recruiting-boys-kunduz-families-150930155157751.html>. The Taliban have also been reported to use starvation as a coercion tool by disrupting road access and thereby cutting food supply to targeted districts, forcing hungry residents to join the insurgency. International Crisis Group, *Afghanistan’s Insurgency after the Transition*, 12 May 2014, <http://www.refworld.org/docid/5371c4824.html>, p. 20. The deteriorating economic situation and high unemployment rates have also reportedly increased rates of recruitment to AGEs, especially among young people, who see no other choice than to join AGEs. See CNN, *Failing Afghan Economy Helping Taliban Return to Power*, 9 October 2015, <http://edition.cnn.com/2015/10/09/asia/afghanistan-kabul-taliban-robertson/>; Pahjwok Afghan News, *Unemployment Forces Kunduz Youth to Join Rebels’ Ranks*, 15 August 2015, <http://peace.pahjwok.com/en/peace-news/unemployment-forces-kunduz-youth-join-rebels%E2%80%99-ranks>. See also US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.

²⁷⁹ In a November 2014 article in the daily newspaper Gardab in Kandahar, NDS officials reportedly state that the Taliban offers different incentives to young people for joining the insurgency. Those who refuse the offer reportedly risk being killed. See Gardab article referenced in ACCORD, *Anfragebeantwortung zu Afghanistan: 1) Aktuelle Berichte über Zwangsrekrutierungen durch die Taliban in der Provinz Logar (Lugar); 2) Fälle von Zwangsrekrutierungen durch die Taliban in Afghanistan im Jahr 2014 [a-8939]*, 18 November 2014, http://www.ecoi.net/local_link/290739/411137_en.html. Some Taliban commanders and foot soldiers have reportedly joined the insurgency out of fear for repercussions against their families. Radio Free Europe/Radio Liberty, *Afghan Taliban Trades Ideology For Profiteering*, 5 November 2014, <http://gandhara.rferl.org/content/taliban-war-profiteering/26675311.html>.

²⁸⁰ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; Tolo News, *Daesh ‘Training’ Children In Nangarhar*, 26 February 2016, <http://www.tolonews.com/en/afghanistan/23963-daesh-training-children-in-nangarhar>; UN Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926–S/2015/409, <http://www.refworld.org/docid/557abf904.html>, para. 27; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 18. Between September 2010 and May 2015, twenty boys died carrying out suicide attacks. UN Secretary-General, *Report of the Secretary-General on Children and Armed Conflict in Afghanistan*, 15 May 2015, S/2015/336, <http://www.refworld.org/docid/55965b254.html>, para. 20. See also US Department of State, *2015 Trafficking in Persons Report - Afghanistan*, 27 July 2015, <http://www.refworld.org/docid/55b73c1e31.html>.

²⁸¹ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; UN Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926–S/2015/409, <http://www.refworld.org/docid/557abf904.html>, para. 27; Child Soldiers International, *Briefing on the Situation of the Recruitment and Use of Children by Armed Forces and Insurgent Groups in Afghanistan to the UN Security Council Working Group on Children and Armed Conflict*, June 2015, http://www.child-soldiers.org/user_uploads/pdf/childsoldiersinternationalafghanistanbriefingjune2015final7404027.pdf. AAN reports that in Khanabad, local AGEs force the population to provide a young member of each family to join the AGEs in return for protection. AAN, *Security in Kunduz Worsening Further: The case of Khanabad*, 28 October 2014, <https://www.afghanistan-analysts.org/security-in-kunduz-worsening-further-the-case-of-khanabad/>.

b) Forced and Underage Recruitment by Pro-Government Forces

In January 2011 the UN and the Government signed an action plan for the prevention of underage recruitment.²⁸² In July 2014 the Government endorsed a road map towards compliance with the action plan.²⁸³ In February 2015 President Ghani endorsed a law which had been passed by the Parliament and the Senate in 2014, criminalizing underage recruitment into the ANSF.²⁸⁴ Despite the Government's support for the action plan and the progress made thus far, challenges are reported to remain, including a lack of accountability for underage recruitment.²⁸⁵ In March 2016, the Special Representative of the Secretary-General for Children and Armed Conflict noted that while there had been substantial progress in implementing the action plan, the UN continued to document the recruitment and use of boys by the ALP and ANP, as well as some cases attributed to ANA.²⁸⁶

Pro-government armed groups have also been reported to force locals to send young men to join the fight against the Taliban and other AGEs.²⁸⁷

c) Summary

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

- ²⁸² UN Secretary-General, *Report of the Secretary-General on Children and Armed Conflict*, 15 May 2013, A/67/845-S/2013/245, <http://www.refworld.org/docid/51b9864e4.html>, para. 33; UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/728 – S/2012/133, 5 March 2012, <http://www.refworld.org/docid/4fbf60732.html>, p. 23. The action plan has annexes on the prevention of sexual violence and the killing and maiming of children. Three decrees to prevent underage recruitment and enhance related disciplinary measures within the ANSF have subsequently been issued by the Ministries of the Interior and Defence. Two decrees to raise awareness of the prohibition of child recruitment, torture and attacks on schools and hospitals in Islam have been issued by the Ulema Shura (Council of Clerics). *Ibid.* See also UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, para. 23. Afghanistan has acceded to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. The Protocol prohibits the compulsory recruitment of children (defined as persons under the age of 18) into a State's armed forces (Article 2). Voluntary recruitment of children above the age of 16 into national armed forces is allowed under certain conditions (Article 3), but children may not take direct part in hostilities (Article 1). The recruitment of children or their use in hostilities by non-State armed groups is prohibited in all circumstances (Article 4). Un General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, 25 May 2000, United Nations Treaty Series, Vol. 2173, p. 222; <http://www.refworld.org/docid/47fdfb180.html>.
- ²⁸³ UN Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926-S/2015/409, <http://www.refworld.org/docid/557abf904.html>, para. 38; Child Soldiers International, *Briefing on the Situation of the Recruitment and Use of Children by Armed Forces and Insurgent Groups in Afghanistan to the UN Security Council Working Group on Children and Armed Conflict*, June 2015, http://www.child-soldiers.org/user_uploads/pdf/childsoldiersinternationalafghanistanbriefingjune2015final7404027.pdf.
- ²⁸⁴ UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 19; UN Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926-S/2015/409, <http://www.refworld.org/docid/557abf904.html>, para. 38. See also Child Soldiers International, *Afghanistan: Amend Draft Law on Child Soldiers*, 11 November 2014, http://www.child-soldiers.org/news_reader.php?id=791.
- ²⁸⁵ Challenges reportedly include "poor socioeconomic conditions that result in families compelling their children to join the Afghan National Security Forces for financial reasons; lack of adequate capacity and/or information within the Afghan National Security Forces for assessing the age of children; lack of clear policy directives; widespread impunity and lack of accountability; limited availability of birth certificates; identity documents that are easily falsifiable." Concerns also remained over the informal use of children for security-related tasks by the ANSF, including the ANP and ALP. UN Secretary-General, *Report of the Secretary-General on Children and Armed Conflict in Afghanistan*, 15 May 2015, S/2015/336, <http://www.refworld.org/docid/55965b254.html>, paras 22, 24. See also UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General*, 1 September 2015, A/70/359-S/2015/684, <http://www.refworld.org/docid/55f677871e.html>, para. 28; UN Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926-S/2015/409, <http://www.refworld.org/docid/557abf904.html>, paras 27, 39; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, pp. 18-19. See also BBC, *Afghan Child Soldiers Fighting the Taliban*, 20 July 2015, <http://www.bbc.com/news/world-asia-33601761>.
- ²⁸⁶ UNAMA, *Two Years of 'Children, Not Soldiers' Campaign Bring Tangible Progress in Afghanistan*, 16 March 2016, <http://unama.unmissions.org/two-years-%E2%80%98children-not-soldiers%E2%80%99-campaign-bring-tangible-progress-afghanistan>.
- ²⁸⁷ See AAN, *The 2015 Insurgency in the North (3): The Fall and Recapture of Kunduz*, 16 October 2015, <https://www.afghanistan-analysts.org/the-2015-insurgency-in-the-north-3-the-fall-and-recapture-of-kunduz/>. In Kunduz province there have been reports of pro-government armed groups demanding one son from every family to join them in the fight against the Taliban. IRIN, *Abuses Rise along with Pro-Afghan Government Militias*, 7 September 2015, <http://www.refworld.org/docid/55ed72bc4.html>. See also AAN, *Security in Kunduz Worsening Further: The Case of Khanabad*, 28 October 2014, <https://www.afghanistan-analysts.org/security-in-kunduz-worsening-further-the-case-of-khanabad/>.

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

Asylum claims made by children need to be assessed carefully and in accordance with the UNHCR Guidelines on child asylum claims, including in relation to the examination of any exclusion considerations for former child soldiers.²⁸⁸ 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.²⁸⁹

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.²⁹⁰ The use of torture is criminalized in the Penal Code, while harsh punishment against children is prohibited in the Juvenile Code.²⁹¹

Despite these legal guarantees, concerns have been raised about the use of torture and cruel, inhuman or degrading treatment against detainees, especially conflict-related detainees accused of supporting AGEs, in detention facilities operated by the NDS, ANP, ANA and ALP.²⁹² In 2015 UNAMA reported that the use of torture was “systematic or regular and prevalent” in NDS facilities in four provinces, and “systematic” in ANP or ANBP detention facilities in three provinces.²⁹³ Among the detainees who were found to have been subjected to torture were children.²⁹⁴ UNAMA also reported

²⁸⁸ 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>.

²⁸⁹ 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.

²⁹⁰ Articles 27 and 29 of the Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>. Afghanistan has ratified the Convention Against Torture (CAT), but not its Optional Protocol which establishes a system of independent monitoring visits to detention centres. See <http://indicators.ohchr.org/> for ratification status. Afghanistan has also ratified the International Covenant on Civil and Political Rights (ICCPR), which provides that no one shall be subject to arbitrary arrest or detention (Article 9).

²⁹¹ UNAMA, *Update on the Treatment of Conflict Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129*, February 2015, <http://www.refworld.org/docid/54f06e814.html>, pp. 117-122.

²⁹² Between 1 February 2013 and 31 December 2014, UNAMA interviewed 790 pre-trial detainees and convicted prisoners, including 105 children, who were detained by the ANP, ANBP, ANA, ALP and NDS. UNAMA found credible evidence that 278 interviewees (35 per cent) had experienced torture or ill-treatment on arrest or in certain facilities of the NDS, ANP, ANA and ALP over the 23-month period. UNAMA, *Update on the Treatment of Conflict Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129*, February 2015, <http://www.refworld.org/docid/54f06e814.html>, p. 17. UNAMA noted that under the Status of Forces Agreement for the Resolute Support mission which started on 1 January 2015 foreign forces no longer have the right to inspect Afghan detention facilities. *Ibid.*, p. 25. UNAMA also received two “sufficiently credible and reliable accounts of torture” in US facilities in 2013 and 2014. *Ibid.*, p. 24. In February 2016, reporting on the period after the release of the February 2015 UNAMA report on the treatment of conflict-related detainees, UNAMA/ Office of the United Nations High Commissioner for Human Rights (OHCHR) found that “detainees continued to experience torture or ill-treatment at the time of arrest and during interrogation or detention at levels comparable to the findings documented in the February 2015 report. The majority of the cases related to National Directorate of Security facilities, although UNAMA/OHCHR also documented cases of ill-treatment or torture carried out by the Afghan Local Police, the Afghan National Police and the Afghan National Army.” UNAMA/OHCHR, *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Afghanistan and on the Achievements of Technical Assistance in the Field of Human Rights in 2015*, 11 February 2016, A/HRC/31/46, <http://www.refworld.org/docid/56f171fc4.html>, para. 51. In March 2016, a video surfaced that appeared to show the severe beating and abuse of a detainee by Afghan police. The Guardian, *Video Appears to Show Afghan Police Beating Detainee*, 9 March 2016, <http://www.theguardian.com/world/2016/mar/09/video-afghan-police-beating-detainee>.

²⁹³ UNAMA, *Update on the Treatment of Conflict Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129*, February 2015, <http://www.refworld.org/docid/54f06e814.html>, pp. 42, 54.

²⁹⁴ Twenty-five of the 161 detainees (16 per cent) who were found to have experienced torture by the NDS were children. In ANP and ANBP facilities, the victims in 16 of the 92 documented cases of torture (17 per cent) were children. UNAMA, *Update on the Treatment of Conflict Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129*, February 2015, <http://www.refworld.org/docid/54f06e814.html>, pp. 43, 54. In 2014, 258 boys were detained on national security charges, including for alleged support to AGEs. UN Secretary-General, *Report of the Secretary-General on children and armed conflict in Afghanistan*, 15 May

incidents of extrajudicial killings and enforced disappearances of detainees held by the ANP and ALP.²⁹⁵ Criminal courts reportedly routinely allow confessions obtained by means of torture to be used as evidence.²⁹⁶ UNAMA found that “impunity continues because there are still no consequences for the use of torture: perpetrators are not prosecuted and no disciplinary sanctions such as removal from duty or functions have been taken.”²⁹⁷

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

2015, S/2015/336, <http://www.refworld.org/docid/55965b254.html>, paras 25, 29. A January 2013 UNAMA report documented the illegal detention and torture of 80 children by the NDS, ANP and ALP for alleged national security crimes, including alleged suicide attacks. UNAMA, *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On*, 20 January 2013, <http://www.refworld.org/docid/50ffe6852.html>, pp. 33-34, 38-41, 46, 48, 51, 54. Detained children were reportedly typically denied basic rights and many aspects of due process, including the presumption of innocence, the right to be informed of charges, access to defence lawyers, and the right not to be forced to confess. Children in juvenile rehabilitation centres across the country reportedly lacked access to adequate food, health care and education. US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.

²⁹⁵ UNAMA, *Update on the Treatment of Conflict Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129*, February 2015, <http://www.refworld.org/docid/54f06e814.html>, pp. 22-23, 57-58, 65.

²⁹⁶ UNAMA, *Update on the Treatment of Conflict Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129*, February 2015, <http://www.refworld.org/docid/54f06e814.html>, p. 108.

²⁹⁷ UNAMA, *Update on the Treatment of Conflict Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129*, February 2015, <http://www.refworld.org/docid/54f06e814.html>, p. 109.

²⁹⁸ See for example UNAMA, *Update on the Treatment of Conflict Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129*, February 2015, <http://www.refworld.org/docid/54f06e814.html>, p. 58.

²⁹⁹ UNAMA/OHCHR notes that “provisions of the Criminal Procedure Code were already in breach of Afghanistan’s international obligations under the International Convention on Civil and Political Rights,” and “The legislative amendment introduced by the Presidential Decree represents an even more egregious violation of the relevant international standards and significantly increases the risk of ill-treatment and torture for those who remain in detention for extended periods without judicial oversight and access by monitors.” UNAMA/OHCHR, *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Afghanistan and on the Achievements of Technical Assistance in the Field of Human Rights in 2015*, 11 February 2016, A/HRC/31/46, <http://www.refworld.org/docid/56f171fc4.html>, paras. 52-54. According to AAN, the Annex allows the State to “detain, without trial, people who are strongly suspected of having committed a crime – and keep suspects it thinks may commit (again) acts of terrorism, or ‘crimes against internal and external security’ in the future after their release from detention, even when there is not enough evidence to launch an investigation.” AAN, *Casting a Very Wide Net: Did Ghani Just Authorise Interning Afghans Without Trial?*, 21 January 2016, <https://www.afghanistan-analysts.org/casting-a-very-wide-net-did-ghani-just-authorise-interning-afghans-without-trial/>. See also HRW, *Afghanistan: Reject Indefinite Detention Without Trial*, 15 November 2015, <http://www.refworld.org/docid/564b4a124.html>.

³⁰⁰ A new criminal procedure code came into effect on 5 June 2014, which provides for access to legal counsel and the use of warrants, and limits how long detainees can be held without charge. However, prosecutors reportedly often ignored limits on pre-trial detention, and prompt access to lawyers was reportedly rare. US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; UNAMA, *Update on the Treatment of Conflict Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129*, February 2015, <http://www.refworld.org/docid/54f06e814.html>, pp. 20, 29-30; Amnesty International, *Amnesty International Report 2014/15 - Afghanistan*, 25 February 2015, <http://www.refworld.org/docid/54f07e2215.html>.

³⁰¹ In 2015, UNAMA documented instances of ALP severely beating civilians who they accused of supporting AGEs or who resisted thefts by ALP officers. UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 70. In an interview with Al Jazeera, an ALP commander stated that torture and beatings of alleged “spies” are necessary methods in order to obtain confessions. Al Jazeera, *ISIL and the Taliban*, 1 November 2015, <http://www.aljazeera.com/programmes/specialseries/2015/11/islamic-state-isil-taliban-afghanistan-151101074041755.html>. See also HRW, *“Today We Shall All Die”: Afghanistan’s Strongmen and the Legacy of Impunity*, 3 March 2015, <http://www.refworld.org/docid/54f6c1e44.html>, pp. 42, 44. Local residents in Zhari district in Kandahar province stated that if a government soldier dies, government forces accuse the locals of supporting the Taliban and take revenge accordingly. Rahmatullah Amir, *Continuing Conflict, Continuing Displacement In Southern Afghanistan*, May 2014, <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/afghanistan.pdf>, p. 8.

³⁰² For example, a student whose father had been a government official during the Taliban rule was reported to have been arrested and detained by the police in early 2016 on suspicion of involvement with the Taliban. Two months later his body was found in Kandahar. Family members alleged that he had been tortured by the security forces. Los Angeles Times, *Another Mysterious Death in Kandahar, and Allegations of Official Torture*, 7 April 2016, <http://www.latimes.com/world/middleeast/la-fg-afghanistan-slain-student-20160407-story.html>. On 30 August 2015 a pro-government armed group reportedly entered a village in Pashtun Kot district, Faryab province, and killed two civilian men they accused of supporting local Taliban. UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 65. On 19 October 2013, in the Bala Buluk district of Farah province, four boys were reportedly executed by the ALP after being abducted and blamed for planting IEDs. UN Secretary-General,

In areas where armed groups affiliated to ISIS are present, civilians suspected of supporting the Taliban have reportedly been threatened and killed by such groups.³⁰³

In light of the foregoing, UNHCR considers that civilians suspected of supporting AGEs may be in need of international refugee protection on the ground of (imputed) political opinion or other relevant grounds, depending on their individual profile and circumstances of the case.

In view of the need to maintain the civilian and humanitarian character of asylum, former armed elements should only be considered as asylum-seekers if it has been established that they have genuinely and permanently renounced military activities.³⁰⁴ 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.³⁰⁵ 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.³⁰⁶

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.”³⁰⁷ However, the Constitution also declares that Islam is the official religion of the State³⁰⁸ and that “[n]o law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan.”³⁰⁹ 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.³¹⁰ Afghan jurists and government officials have been criticized for giving precedence to Islamic law over Afghanistan’s obligations under international human rights law,³¹¹ in

Report of the Secretary-General on Children and Armed Conflict in Afghanistan, 15 May 2015, S/2015/336, <http://www.refworld.org/docid/55965b254.html>, para. 42. See also HRW, “Today We Shall All Die”: Afghanistan’s Strongmen and the Legacy of Impunity, 3 March 2015, <http://www.refworld.org/docid/54f6c1e44.html>, p. 86.

³⁰³ In August 2015, a non-State armed group claiming affiliation to ISIS posted a video of an execution of ten hostages accused of being Taliban supporters. Houses of suspected Taliban loyalists were reportedly burned. Washington Post, *The Islamic State Is Making These Afghans Long for the Taliban*, 13 October 2015, https://www.washingtonpost.com/world/asia_pacific/a-new-age-of-brutality-how-islamic-state-rose-up-in-one-afghan-province/2015/10/13/a6dbed67-717b-41e3-87a5-01c81384f34c_story.html. On 19 June 2015, a group claiming affiliation to ISIS reportedly beheaded a tribal elder and leader of the local shura in Nangarhar province for allegedly assisting the Taliban. UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 67.

³⁰⁴ UNHCR Executive Committee, *Conclusion on the Civilian and Humanitarian Character of Asylum*, No. 94 (LIII) - 2002, 8 October 2002, <http://www.refworld.org/docid/3dafdd7c4.html>. For guidance on how to establish the genuineness and permanence of renunciation, see, by analogy, UNHCR, *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum*, September 2006, <http://www.refworld.org/docid/452b9bca2.html>.

³⁰⁵ 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.

³⁰⁶ 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.

³⁰⁷ Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>, Article 2.

³⁰⁸ Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>, Article 2.

³⁰⁹ Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>, Article 2. Article 149 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.”

³¹⁰ Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>, 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>.

³¹¹ Article 6 of the Constitution provides that “The State shall create a prosperous and progressive society based on [...] protection of human rights”, while Article 7 provides that “The United Nations Charter, inter-state agreements, as well as international treaties to which

situations where the Constitution's commitments to the two bodies of law are in conflict, in particular in relation to the rights of those Afghans who are not Sunni Muslims and in relation to the rights of women.³¹²

a) *Minority Religious Groups*

Non-Muslim minority groups, particularly Christian, Hindu, and Sikh groups, continue to suffer discrimination under the law.³¹³ As noted above, in situations where the Constitution and Afghanistan's codified laws do not provide guidance, the Constitution defers to Hanafi Sunni jurisprudence. This applies to all Afghan citizens, regardless of their religion. The only exception is for matters of personal law where all parties are Shi'ites, in which case the Shi'ite Personal Status Law applies. There is no separate law for other religious minorities. Non-Muslims can reportedly be married to each other only if they do not publicly acknowledge their non-Islamic beliefs.³¹⁴

The Penal Code addresses "crimes against religions" and states that a person who attacks a follower of any religion shall receive a short-term prison sentence of not less than three months and a fine.³¹⁵ Nevertheless, non-Muslim minority groups are reported to continue to suffer societal harassment and in some cases violence.³¹⁶ 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.³¹⁷

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>.

³¹² US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>; United States Commission on International Religious Freedom, *USCIRF Annual Report 2015 - Tier 2: Afghanistan*, 1 May 2015, <http://www.refworld.org/docid/554b355e20.html>. For further analysis of the situation of women in Afghanistan, see Section III.A.7. 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/4090f9794.html>.

³¹³ Freedom House, *Freedom in the World 2015 - Afghanistan*, 20 March 2015, <http://www.refworld.org/docid/55116f4111.html>; US Commission on International Religious Freedom, *USCIRF Annual Report 2015 - Tier 2: Afghanistan*, 1 May 2015, <http://www.refworld.org/docid/554b355e20.html>. While reliable data on religious demography is not available, estimates suggest that 80 per cent of the population is Sunni Muslim, 19 per cent Shi'ite Muslim, while 1 per cent belong to other religious groups. The US State Department notes that, "Sunni Muslims comprise 80 percent of the population and Shia Muslims make up about 19 percent of the population. The Shia population includes Ismailis and a majority of ethnic Hazaras. Other religious groups comprise the remaining 1 percent. Sikh and Hindu leaders estimate there are 600 Sikh and Hindu families totaling 3,000 individuals. A Sikh leader stated that 700 Sikh and Hindu individuals emigrated during the year to Europe and elsewhere. Reliable estimates of the Bahai and Christian communities are harder to make, because neither group practices openly. There are small numbers of practitioners of other religions, including one Jew." US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>. According to other figures, the Sikh population decreased dramatically from an estimated 100,000 persons in the 1990s to 2,500 persons today. Associated Press, *Afghanistan's Sikhs Feel Alienated, Pressured to Leave*, 10 June 2015, <http://bigstory.ap.org/article/a65f445cf281475a9f3ed0d47286cbb/afghanistans-sikhs-feel-alienated-pressured-leave>. According to a report by Dr A. Giustozzi dated 28 February 2015 and cited in a November 2015 UK Home Office report, there are approximately 130 Sikh families left in Kabul, some of which stated that the only reason they remained was because they were too poor to leave. United Kingdom: Home Office, *Country Information and Guidance - Afghanistan: Hindus and Sikhs*, November 2015, Version 1.0, <http://www.refworld.org/docid/5652e9de4.html>, para. 5.1.5. The US State Department noted in 2011 that most members of the non-Muslim communities in Afghanistan left the country during the civil war and the period of Taliban rule that followed, so that by 2001 these non-Muslim populations had been virtually eliminated. US Department of State, *2011 Report on International Religious Freedom - Afghanistan*, 30 July 2012, <http://www.refworld.org/docid/502105e25a.html>.

³¹⁴ US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>. The US State Department report notes that while a Muslim man may marry a Christian or Jewish woman (women from other religious minorities must first convert to Islam), a Muslim woman is not allowed to marry a non-Muslim man. A 2013 State Department report cited the AIHRC as saying that on several occasions marriages between Sunni and Shi'ite Muslims have been annulled as *haram*. US Department of State, *2012 Report on International Religious Freedom - Afghanistan*, 20 May 2013, <http://www.refworld.org/docid/519dd4ec77.html>.

³¹⁵ See Article 348 of the Penal Code, <http://www.refworld.org/docid/4c58395a2.html>.

³¹⁶ Freedom House *Freedom in the World 2015 - Afghanistan*, 20 March 2015, <http://www.refworld.org/docid/55116f4111.html>.

³¹⁷ The US Department of State had no records of ill-treatment against Christians for the year 2014; it noted, however, that the Christian community remained hidden out of fear of discrimination and persecution. There are no public places of worship for Christians in Afghanistan. US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>.

Sufis

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

Baha'is

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

Christians

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

Shi'ites

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

³¹⁸ UNAMA, *Afghanistan: Midyear Report 2015, Protection Of Civilians In Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 57.

³¹⁹ Bahai Awareness, *Fatwa of Ulema Council of Afghanistan*, August 2011, http://www.bahaiawareness.com/fatwas_afghanistan.html. See also, for example, US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>.

³²⁰ US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>; United States Commission on International Religious Freedom, *USCIRF Annual Report 2015 - Tier 2: Afghanistan*, 1 May 2015, <http://www.refworld.org/docid/554b355e20.html>.

³²¹ US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>; United States Commission on International Religious Freedom, *USCIRF Annual Report 2015 - Tier 2: Afghanistan*, 1 May 2015, <http://www.refworld.org/docid/554b355e20.html>; The New York Times, *A Christian Convert, on the Run in Afghanistan*, 21 June 2014, <http://www.nytimes.com/2014/06/22/world/asia/afghanistan-a-christian-convert-on-the-run.html>.

³²² US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>; United States Congressional Research Service, *Afghanistan: Politics, Elections, and Government Performance*, 17 September 2014, <http://www.refworld.org/docid/542d44fa4.html>.

³²³ US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>. The State Department reported that, "During a session of parliament in July 2013, four members of parliament called for the execution of converts to Christianity and the speaker of parliament's lower house stated that security officials should investigate the spread of Christianity in the country."

³²⁴ US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>; United States Commission on International Religious Freedom, *USCIRF Annual Report 2015 - Tier 2: Afghanistan*, 1 May 2015, <http://www.refworld.org/docid/554b355e20.html>; Reuters, *Kabul Police Chief Quits after Attack that Group Says Killed Three Staff*, 30 November 2014, <http://www.reuters.com/article/2014/12/01/us-afghanistan-attacks-idUSKCN0JE09L20141201#D5EW7JMScGtKEUY3.99>; UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2014*, July 2014, <http://www.refworld.org/docid/53bd394f4.html>; Al Jazeera, *Taliban Attacks Foreign Guesthouse in Kabul*, 29 March 2014, <http://www.aljazeera.com/news/asia/2014/03/taliban-attacks-foreign-guesthouse-kabul-2014328135116155781.html>; Reuters, *Foreigners Escape Taliban Siege in Kabul; Afghan Child Killed*, 29 March 2014, <http://in.reuters.com/article/2014/03/28/afghanistan-attacks-ngo-idINDEEA2R0AH20140328>. See also Amnesty International, *Afghanistan: Their Lives on the Line: Women Human Rights Defenders under Attack in Afghanistan*, 7 April 2015, ASA 11/1279/2015, <http://www.refworld.org/docid/55277f24.html>, p. 40.

³²⁵ 59 of Afghanistan's 249 Members of Parliament are Shi'ites. US Commission on International Religious Freedom, *USCIRF Annual Report 2012 - The Commission's Watch List: Afghanistan*, 20 March 2012, <http://www.refworld.org/docid/4f71a66d32.html>.

³²⁶ In October 2015 the US Department of State reported that, "While historically the minority Shia have faced discrimination from the majority Sunni population, observers stated that discrimination against the Shia significantly decreased, with no reported incidents in the capital and major outlying areas. Shia were represented in the government, holding major positions, and were free to participate fully in public life. There were reported incidents, however, of unofficial discrimination and poor treatment that varied by locality. For example in Herat province where there was a large Shia population and both Shia and Sunni leaders reported a high general degree of harmony, many young Herati Shia cited the low number of Shia in senior and middle-level government positions as a structural problem designed to limit Shia political influence in the province." US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>. See also United States Commission on International Religious Freedom, *USCIRF Annual Report 2015 - Tier 2: Afghanistan*, 1 May 2015, <http://www.refworld.org/docid/554b355e20.html>. The October 2014 US State Department report also notes that while four members of the Shi'ite Ismaili community served as Members of Parliament, some members of the Ismaili community complained of being marginalized from positions of political authority.

continues.³²⁷ Moreover, violent attacks by AGEs targeting the Shi'ite population continue to occur.³²⁸ It should be noted that in Afghanistan ethnicity and religion are often inextricably linked, especially in the case of the Hazaras, who are predominantly Shi'ites. As a result, it is not always possible to distinguish clearly between discrimination and ill-treatment on the ground of religion and discrimination and ill-treatment on the ground of ethnicity.³²⁹

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.³³⁰ 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.³³¹ Although the Sikh and Hindu communities are allowed to practise their religion publicly, they reportedly continue to face discrimination at the hands of the State, including when seeking political participation and government jobs, despite public statements by President Ghani to promote tolerance and increase their political representation.³³² They reportedly also continue to face societal discrimination and intimidation.³³³ Both communities report difficulties in carrying out funerals in accordance with their customs, due to harassment and discrimination.³³⁴ While the police are reported to provide protection

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

³²⁸ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html> and *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>; United States Commission on International Religious Freedom, *USCIRF Annual Report 2015 - Tier 2: Afghanistan*, 1 May 2015, <http://www.refworld.org/docid/554b355e20.html>; Freedom House, *Freedom in the World 2015 - Afghanistan*, 20 March 2015, <http://www.refworld.org/docid/55116f4111.html>. The year 2015 was marked by an increase in kidnappings and killings of Hazaras at the hand of AGEs or unknown assailants. For further information on these episodes see Section III.A.13.

³²⁹ For further analysis of the situation of members of ethnic minority groups, see Section III.A.13. In previous years there were reports of AGEs threatening and attacking Shi'ite religious leaders because of their links to the government and of their interpretation of Islam: see for example US Department of State, *2013 Report on International Religious Freedom - Afghanistan*, 28 July 2014, <http://www.refworld.org/docid/53d907b814.html>.

³³⁰ According to a report by Dr A. Giustozzi dated 28 February 2015 and cited in a November 2015 UK Home Office report, from 2004 onwards some Sikhs who left Afghanistan in the 1990s have returned to Afghanistan, because they "failed to settle successfully in their countries of immigration". However, unable to recover their properties and without access to livelihoods, many have no choice but to leave again. United Kingdom: Home Office, *Country Information and Guidance - Afghanistan: Hindus and Sikhs*, November 2015, Version 1.0, <http://www.refworld.org/docid/5652e9de4.html>, para. 5.1.7. According to some sources, the current number of Sikhs and Hindus in Afghanistan is estimated to be 360 to 600 families. See US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>; Al Jazeera, *Inside the Little-Known Kitchen of Afghanistan's Sikhs*, 9 January 2016, <http://www.aljazeera.com/programmes/ajeats/2016/01/afghanistan-sikhs-160104170656660.html>; United Kingdom: Home Office, *Country Information and Guidance - Afghanistan: Hindus and Sikhs*, November 2015, Version 1.0, <http://www.refworld.org/docid/5652e9de4.html>, para. 5.1.

³³¹ See The Wall Street Journal, *Facing Intolerance, Many Sikhs and Hindus Leave Afghanistan*, 12 January 2015, <http://www.wsj.com/articles/facing-intolerance-many-sikhs-and-hindus-leave-afghanistan-1421124144>; Radio Free Europe, *'When Are You Going Back?' Afghanistan's Sikhs, Strangers In Their Own Land*, 19 August 2014, <http://www.rferl.org/content/afghanistan-sikh-minority/26539541.html>. For further analysis of the shrinking population of Hindus and Sikhs in Afghanistan, see Roger Ballard (Centre for Applied South Asian Studies), *The History and Current Position of Afghanistan's Hindu and Sikh Population*, 2011, <http://www.casas.org.uk/papers/pdfpapers/afghansikhs.pdf>.

³³² One seat in the upper house of Parliament is reserved for the appointment of a Sikh or Hindu representative. In September 2013, then president Karzai issued a presidential decree reserving a seat in the lower house for a Sikh or Hindu in the next parliamentary elections. The lower house voted to reject the decree, but the upper house voted to approve it. The decree was sent to a joint committee; it was reported that by the end of 2014 final resolution remained pending. US Department of State, *2014 Country Reports on Human Rights Practices - Afghanistan*, 25 June 2015, <http://www.refworld.org/docid/559bd58728.html>; Radio Free Europe, *First Afghan Hindu Envoy Takes Pride in Serving His Country*, 15 May 2015, <http://gandhara.rferl.org/content/article/25386024.html>; Al Jazeera, *Afghanistan's Sikhs Face an Uncertain Future*, 23 February 2014, <http://www.aljazeera.com/indepth/features/2014/02/afghanistan-sikhs-face-an-uncertain-future-201422312395677867.html>.

³³³ US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>; Associated Press, *Afghanistan's Sikhs Feel Alienated, Pressured to Leave*, 10 June 2015, <http://bigstory.ap.org/article/a65f445cf281475a9f3ed0d47286cbbc/afghanistans-sikhs-feel-alienated-pressured-leave>; Al Jazeera, *Inside the Little-Known Kitchen of Afghanistan's Sikhs*, 9 January 2016, <http://www.aljazeera.com/programmes/ajeats/2016/01/afghanistan-sikhs-160104170656660.html>.

³³⁴ US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>; Associated Press, *Afghanistan's Sikhs Feel Alienated, Pressured to Leave*, 10 June 2015, <http://bigstory.ap.org/article/a65f445cf281475a9f3ed0d47286cbbc/afghanistans-sikhs-feel-alienated-pressured-leave>; Al Jazeera, *Afghanistan's Sikhs Face an Uncertain Future*, 23 February 2014, <http://www.aljazeera.com/indepth/features/2014/02/afghanistan-sikhs->

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

b) Conversion from Islam

Conversion from Islam is considered apostasy; under the courts' interpretation of Islamic law it is punishable by death.³³⁹ While Afghanistan's Penal Code does not explicitly mention apostasy as a crime and the Constitution provides that no deed shall be considered a crime unless defined as such by law, the Penal Code states that egregious crimes, including apostasy, should be punished in line with the Hanafi jurisprudence of Islamic law³⁴⁰ and should be handled by the Attorney General's office. Male citizens over age 18 or female citizens over age 16 of sound mind who convert from Islam and 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.³⁴¹

[face-an-uncertain-future-201422312395677867.html](http://www.refworld.org/docid/562105e015.html).

- ³³⁵ US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>. 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/docid/5641c7df4.html>. See also the evidence provided by Dr. Giustozzi to the Tribunal, quoted in the judgment at para. 39. Even though reportedly the authorities have provided a large area for Hindus and Sikhs at the Police District 21 area of Kabul city for the purposes of building residential units and a cremation ground, the area annexed to Kabul Municipality is not yet developed: United Kingdom: Home Office, *Country Information and Guidance - Afghanistan: Hindus and Sikhs*, November 2015, Version 1.0, <http://www.refworld.org/docid/5652e9de4.html>, para. 8.6.2.
- ³³⁶ Associated Press, *Afghanistan's Sikhs Feel Alienated, Pressured to Leave*, 10 June 2015, <http://bigstory.ap.org/article/a65f445cf281475a9f3ed0d47286cbcb/afghanistans-sikhs-feel-alienated-pressured-leave>; Al Jazeera, *Afghanistan's Sikhs Face an Uncertain Future*, 23 February 2014, <http://www.aljazeera.com/indepth/features/2014/02/afghanistan-sikhs-face-an-uncertain-future-201422312395677867.html>.
- ³³⁷ US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>.
- ³³⁸ Al Jazeera, *Afghanistan's Sikhs Face an Uncertain Future*, 23 February 2014, <http://www.aljazeera.com/indepth/features/2014/02/afghanistan-sikhs-face-an-uncertain-future-201422312395677867.html>. See also 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/docid/5641c7df4.html>, citing, at para. 51, a letter from the British Embassy in Kabul dated 29 December 2013. Note that while these sources report that the schools for Hindu and Sikh children are located in Kabul and Jalalabad (Nangarhar province), according to the US State Department the schools are located in Kabul, Helmand, and Ghazni provinces: US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>.
- ³³⁹ US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>. See also M. Knust Rassekh Afshar, "The Case of an Afghan Apostate – The Right to a Fair Trial Between Islamic Law and Human Rights in the Afghan Constitution", *Max Planck UNYB* 10 (2006), http://www.mpil.de/files/pdf3/mpunyb_13_knust1.pdf; AREU, *Afghanistan's Constitution Ten Years On: What Are the Issues?*, August 2014, 1416E, <http://www.refworld.org/docid/53fc4dd34.html>. In 2011-2012 the Pew Research Center conducted a survey in Muslim countries on religion, politics and culture. In Afghanistan, among the respondents who were of the opinion that the law applied in the country should be Sharia law (99 per cent), 79 per cent favoured the death penalty for those who abandon the Islamic faith. Pew Research Center, *The World's Muslims: Religion, Politics and Society*, 30 April 2013, <http://www.pewforum.org/files/2013/04/worlds-muslims-religion-politics-society-full-report.pdf>.
- ³⁴⁰ *Afghanistan: Penal Code*, 22 September 1976, <http://www.refworld.org/docid/4c58395a2.html>, Article 1; see also Library of Congress, *Laws Criminalizing Apostasy*, undated, <http://www.loc.gov/law/help/apostasy/>, accessed 8 February 2016.
- ³⁴¹ US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>. The US State Department report notes that converts from Islam may even face death by stoning, but by the end of 2014, there were no reported cases of national or local authorities imposing criminal penalties on converts from Islam. There were also no known cases of converts still in custody from previous years. See also New York Times, *A Christian Convert, on the Run in Afghanistan*, 21 June 2014, <http://www.nytimes.com/2014/06/22/world/asia/afghanistan-a-christian-convert-on-the-run.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/4afd6a8d2.html>. In 2014, an Afghan citizen was granted asylum in the United Kingdom for reasons of being an atheist. BBC, *Atheist Afghan Granted Religious Asylum in UK*, 14 January 2014, <http://www.bbc.com/news/uk-25715736>. For threats at the hand of family members see, for example, The New York Times, *A Christian Convert, on the Run in Afghanistan*, 21 June 2014,

Public opinion is reportedly hostile towards individuals and organizations that proselytize.³⁴² Lawyers who assist defendants accused of apostasy may reportedly themselves be charged with apostasy and may be at risk of death threats.³⁴³

c) Other Acts Contravening Sharia Law

Afghanistan's courts also rely on Islamic law in relation to blasphemy, as Afghanistan's laws are silent on the issue.³⁴⁴ 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.³⁴⁵

Furthermore, persons accused of committing crimes against Sharia law, such as apostasy, blasphemy, having consensual same-sex relations, or adultery (*zina*), are at risk not only of prosecution, but also of social rejection and violence at the hands of their families, other community members and the Taliban and other AGEs.³⁴⁶

d) Summary

Based on the preceding analysis, UNHCR considers that persons perceived as contravening Sharia law, including persons accused of blasphemy and converts from Islam, as well as members of minority religious groups, may be in need of international refugee protection on the ground of religion or other relevant grounds, depending on the individual circumstances of the case.³⁴⁷

<http://www.nytimes.com/2014/06/22/world/asia/afghanistan-a-christian-convert-on-the-run.html>; BBC, *Controversy of Apostasy in Afghanistan*, 14 January 2014, <http://www.bbc.com/news/world-asia-25732919>.

³⁴² US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>.

³⁴³ International Bar Association: Human Rights Institute, *The Rule of Law, Democracy and the Legal Profession in the Afghan Context: Challenges and Opportunities*, January 2014, <http://www.refworld.org/docid/532c10654.html>.

³⁴⁴ This can include anti-Islamic writings or speech, although the Constitution protects freedom of expression and the press. Chapter Eight of the Mass Media Law of 2006 prohibits the publication of matters contrary to the principles of Islam and offensive to other religions and sects. The English text of the law is available at: <http://www.refworld.org/docid/4a5712902.html>.

³⁴⁵ US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>; Germany: Federal Office for Migration and Asylum, *Information Centre Asylum and Migration Briefing Notes (27 October 2014)*, 27 October 2014, <http://www.refworld.org/docid/545b6c1d4.html>. An arrest warrant was issued against a journalist for an allegedly blasphemous article in The Afghanistan Express newspaper in October 2014. Although the editor apologized for the article, public protesters called on the government to punish the newspaper. See Khaama Press, *Afghanistan Issues Arrest Warrant over Blasphemous Article*, 21 October 2014, <http://www.khaama.com/afghanistan-issues-arrest-warrant-over-blasphemous-article-6859>; 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>.

³⁴⁶ In 2015, a woman was killed by a mob for allegedly burning a copy of the Koran. See Radio Free Europe / Radio Liberty, *Woman Killed in Kabul after Allegedly Burning a Koran*, 19 March 2015, <http://www.rferl.org/content/woman-killed-in-kabul-after-allegedly-burning-a-koran/26909733.html>; New York Times, *A Day After a Killing, Afghans React in Horror, but Some Show Approval*, 20 March 2015, <http://www.nytimes.com/2015/03/21/world/asia/horror-over-womans-lynching-in-afghanistan-but-some-support-too.html>; New York Times, *Woman Killed in Kabul Transformed From Pariah to Martyr*, 29 March 2015, <http://www.nytimes.com/2015/03/30/world/asia/farkhunda-woman-killed-in-kabul-transformed-from-pariah-to-martyr.html>. It should be noted that both men and women may be at risk on the grounds of accusations of engagement in "moral crimes", including adultery (*zina*) and other sexual relations outside wedlock. For further analysis of the treatment of women and men accused of moral crimes, please refer to Section III.A.8. For further analysis of the treatment of persons perceived as contravening Sharia law, please refer to Sections III.A.6 and III.A.12.

³⁴⁷ 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/4090f9794.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/4afd6a8d2.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.KS.A, Verwaltungsgericht (VG) Kassel, judgment of 27 July 2010, http://www.asyl.net/fileadmin/user_upload/dokumente/17462.pdf; and Case No. 7 K 746/09.F.A, Verwaltungsgericht (VG) Frankfurt/Main, Judgment of 11 February 2010, http://www.asyl.net/fileadmin/user_upload/dokumente/18127.pdf.

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

The Taliban have reportedly killed, attacked and threatened individuals and communities who are perceived to contravene the Taliban's interpretation of Islamic principles, norms and values.³⁴⁸

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

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

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

³⁴⁸ For analysis of the situation of religious leaders who are at risk from AGEs, see Section III.A.1.h. For analysis of the situation of women and men who are perceived to contravene social mores, see Section III.A.8. For analysis of the specific situation of individuals of diverse sexual orientations and/or gender identities, see Section III.A.12. Imams who advocate for perceived modern ideas, such as the use of contraception, reportedly receive death threats and are at risk of abductions from the Taliban. The Guardian, *Condoms and Conflict: Imams Defy Taliban to Spread Contraception*, 4 November 2015, <http://www.theguardian.com/world/2015/nov/04/afghanistan-imams-defy-taliban-spread-contraception-condoms>. On 11 December 2014 a suicide attack against the French Institute of Kabul caused 12 casualties (2 killed and 10 injured) during a theatre performance. The Taliban claimed responsibility stating the performance was targeted because it attempted "to humiliate Islamic values and spread propaganda about our jihadi operations." The Taliban also stated the attack was a warning to others organizing such events. UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 70. Some individuals who returned to Afghanistan after having lived in western countries as a refugee for a number of years reported difficulties due to the fact that they were perceived as having lapsed in their practice of Islam. A research project tracking the fate of young Afghans returned from the UK to Kabul found that a quarter of those tracked had experienced "harm or difficulties as a result of being viewed as 'Westernized outsiders'", which in some cases was reportedly due to a perceived lapse in their practice of Islam. Catherine Gladwell, *No Longer a Child: From the UK to Afghanistan*, September 2013, Forced Migration Review: Issue 44, <http://www.fmreview.org/en/detention.pdf>, p. 63.

³⁴⁹ Before and during the siege of Kunduz in September 2015, the Taliban reportedly publicly announced it would enforce a more tolerant style of governance. However, once the city was taken, Taliban officers reportedly hunted down people perceived to violate their interpretation of Islamic principles, norms and values. In particular, women living or working in women's shelters were reportedly targeted due to being perceived as 'immoral' by Taliban commanders. See Stratfor Global intelligence, *What the Battle of Kunduz Means for Afghanistan*, 15 October 2015, <https://www.stratfor.com/analysis/what-battle-kunduz-means-afghanistan>; New York Times, *Fear of Taliban Drives Women Out of Kunduz*, 14 October 2015, <http://www.nytimes.com/2015/10/15/world/asia/taliban-targeted-women-kunduz-afghanistan.html>; New York Times, *Taking Hold in Kunduz, Afghanistan, New Taliban Echoed the Old*, 1 October 2015, <http://www.nytimes.com/2015/10/02/world/asia/taking-hold-in-kunduz-afghanistan-new-taliban-echoed-the-old.html>. The Taliban were also reported to ban sports and impose restrictions on wearing sports uniforms in certain areas in Ghazni province; the Taliban denied the allegations. Pajhwok Afghan News, *Taliban Accused of Banning Sports in Some Areas of Ghazni*, 4 February 2016, <http://www.pajhwok.com/en/2016/02/04/taliban-accused-banning-sports-some-areas-ghazni>.

³⁵⁰ New York Times, *Taliban Present Gentler Face but Wield Iron Fist in Afghan District*, 14 August 2015, <http://www.nytimes.com/2015/08/15/world/asia/taliban-baghran-district-afghanistan.html>.

³⁵¹ New York Times, *Taliban Present Gentler Face but Wield Iron Fist in Afghan District*, 14 August 2015, <http://www.nytimes.com/2015/08/15/world/asia/taliban-baghran-district-afghanistan.html>.

³⁵² In February 2016, Tolo News reported on two incidents of the Taliban meting out punishments for incidents where women were accused of going against Islamic values by communicating or associating with men who were strangers. Tolo News, *Taliban Lashes Afghan Woman after Being Out with Relative*, 11 February 2016, <http://www.tolonews.com/en/afghanistan/23732-taliban-lashes-afghan-woman-after-being-out-with-relative>.

³⁵³ Washington Post, *The Islamic State Is Making these Afghans Long for the Taliban*, 13 October 2015, https://www.washingtonpost.com/world/asia_pacific/a-new-age-of-brutality-how-islamic-state-rose-up-in-one-afghan-province/2015/10/13/a6d6ed67-717b-41e3-87a5-01c81384f34c_story.html; Voice of America, *How Islamic State Got a Foothold in Eastern Afghanistan*, 2 November 2015, <http://www.voanews.com/content/how-islamic-state-got-a-foothold-in-eastern-afghanistan/3032761.html>. According to UNAMA, the abduction and intimidation of health care workers by groups affiliated with ISIS may have stemmed from a belief that vaccination is "anti-islamic." UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 21.

³⁵⁴ UNHCR, *Afghanistan: Conflict-Induced Internal Displacement Monthly Update*, October 2015, <http://www.refworld.org/docid/568d016f4.html>; UNHCR, *Afghanistan: Conflict-Induced Internal Displacement Monthly Update*, September 2015, <http://www.refworld.org/docid/565554b14.html>.

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

7. Women with Certain Profiles or in Specific Circumstances³⁵⁵

Since 2001, the Government has taken important steps to improve the situation of women in the country, including the incorporation of international standards for the protection of women's rights into national legislation, notably through the adoption of the Law on Elimination of Violence against Women (EVAW law);³⁵⁶ the adoption of measures to increase women's political participation;³⁵⁷ and the establishment of a Ministry for Women's Affairs.³⁵⁸

However, improvements in the situation of women and girls have reportedly remained marginal and Afghanistan continues to be considered a "very dangerous" country for women and girls.³⁵⁹ The

³⁵⁵ For further guidance on claims for international protection by women, see UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01, <http://www.refworld.org/docid/3d36f1c64.html>; and UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women*, 5 November 2014, CEDAW/C/GC/32, <http://www.refworld.org/docid/54620fb54.html>.

³⁵⁶ The Constitution of Afghanistan guarantees equal rights to women and men; see Article 22 of the Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>. In addition, the 2009 EVAW Law criminalizes various forms of violence against women. The text of the law in English is available at <http://www.refworld.org/docid/5486d1a34.html>. Afghanistan ratified the Convention on the Elimination of all Forms of Discrimination Against Women in 2003. In 2011 the Government completed its first report to CEDAW, which was considered at the Committee's 55th Session in July 2012. The Committee's *Concluding Observations on the Combined Initial and Second Periodic Reports of Afghanistan*, 23 July 2013, CEDAW/C/AFG/CO/1-2, can be found at <http://www.refworld.org/docid/51ff5ac94.html>. The Government's report and related documents are available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws55.htm>. See also UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General*, 27 February 2015, A/69/801-S/2015/151, <http://www.refworld.org/docid/556585104.html>. The Government also adopted a National Action Plan for the Women of Afghanistan (NAPWA), 2008-2018, <http://mowa.gov.af/en/page/6686>, and, on 30 June 2015, a National Action Plan on Security Council Resolution 1325 (2000) on Women and Peace and Security for 2015-2022. UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General*, 1 September 2015, A/70/359-S/2015/684, <http://www.refworld.org/docid/55f677871e.html>, para. 29.

³⁵⁷ The 2014 Presidential elections saw an increase in female participation compared to the previous elections of 2009: in the first round of April 2014, 36 per cent of women voted and in the second round the participation was 38 per cent. US Department of State, *2014 Country Reports on Human Rights Practices - Afghanistan*, 25 June 2015, <http://www.refworld.org/docid/559bd58728.html>. Observers noted obstacles to women's participation during the 2014 elections, such as security threats, lack of female staff or female police officers in women-only polling stations, and also cultural and traditional factors. Free and Fair Election Forum of Afghanistan, *2014 Elections Observation Report*, 2014, <http://www.fefao.org/New-Site/English/images/Reports/Election-2014-English.zip>, pp. 37-38. See also Freedom House, *Freedom in the World 2015 - Afghanistan*, 20 March 2015, <http://www.refworld.org/docid/55116f4111.html>. UNAMA noted that some election promises regarding the improvement of women's rights through the provision of concrete opportunities for women to influence the political agenda at higher levels had yet to be realized. 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. 7. The presence of women in political roles is stronger than has previously been the case: for example, women hold 27 per cent of the seats in the National Assembly. However, the new Election Law of August 2013 reduced the quota of seats reserved for female candidates in the Provincial Councils from 25 to 20 per cent. *Afghanistan: Law No. 1112 of 2013, Election Law*, 6 August 2013, <http://www.refworld.org/docid/54467d784.html>. In April 2015, four women were appointed as ministers. UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, para. 58. Women constitute 24 per cent of participants in the local Community Development Councils. Inter-Parliamentary Union, *Women in Politics: 2015*, 1 January 2015, http://www.ipu.org/pdf/publications/wmmmap15_en.pdf. However, as of August 2014, only eight out of the 70 members of the HPC were women. US Department of State, *2014 Country Reports on Human Rights Practices - Afghanistan*, 25 June 2015, <http://www.refworld.org/docid/559bd58728.html>. According to Oxfam, the role of women, especially in the context of the peace negotiations, has seen few improvements. This is particularly the case for women in rural areas. Oxfam, *Behind Closed Doors - The Risk of Denying Women a Voice in Determining Afghanistan's Future*, 24 November 2014, <https://www.oxfam.org/en/research/behind-closed-doors#sthash.Cppmtefn.dpuf>; see also HRW, *Afghanistan: Accept Full Role for Women in Talks*, 27 September 2015, <https://www.hrw.org/news/2015/09/27/afghanistan-accept-full-role-women-talks>.

³⁵⁸ The Ministry for Women's Affairs (MoWA) was established in 2001, shortly after the fall of the Taliban and in accordance with the Bonn Agreement. For more information on the mandate and activities of the Ministry, see <http://www.mowa.gov.af/en>. All of the 34 provinces have a Department of Women's Affairs (DoWA): these provincial DoWA report to the MoWA. Women can present their complaints to the local DoWA or to the Department of *Huqooq*, which operates under the Ministry of Justice. See UNAMA, *A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan*, December 2013, <http://www.refworld.org/docid/52a6dff4.html>, p. 3.

³⁵⁹ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>. See also UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, para. 11. UNAMA reported a rise in conflict-related violence that affected women and children in particular: the 1,246 women civilian casualties in 2015 represent a 37 per cent increase compared to 2014. UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 13-16. See also UNAMA, *Justice through the Eyes of Afghan Women: Cases of*

deterioration of the security situation in some parts of the country has undone some of the earlier progress in relation to women's human rights.³⁶⁰ Deep-rooted discrimination against women remains endemic.³⁶¹ Violence against women and girls remains widespread and is reported to be on the rise;³⁶² impunity in relation to such violence is reportedly common.³⁶³ Women are said to continue to face serious challenges to the full enjoyment of their economic, social and cultural rights.³⁶⁴ Despite advances, poverty, illiteracy, and poor health care continue to affect women disproportionately.³⁶⁵

Observers have noted that the implementation of legislation to protect women's rights remains slow.³⁶⁶ This includes in particular the implementation of the EVAW law. The law, promulgated in

Violence against Women Addressed through Mediation and Court Adjudication, April 2015, <http://www.refworld.org/docid/55814b3c4.html>, pp. 7-9. According to the AIHRC, "[v]iolence against women is the most serious human rights violation in Afghanistan". AIHRC, *Elimination of Violence against Women 1394*, 30 November 2015, <http://www.aihrc.org.af/home/research-reports/5170>. See also Associated Press, *For Afghan Women, Violence Remains Entrenched Despite Gains*, 7 April 2015, <http://www.csmonitor.com/World/Middle-East/2015/0407/For-Afghan-women-violence-remains-entrenched-despite-gains-video>.

³⁶⁰ UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Afghanistan and on the Achievements of Technical Assistance in the Field of Human Rights in 2013*, 10 January 2014, A/HRC/25/41, <http://www.refworld.org/docid/52e109fa4.html>, p. 1 (Summary). For example, UNAMA reported on the use of violence against women and restrictions on their liberties in Kunduz. UNAMA, *Afghanistan: Human Rights and Protection of Civilians in Armed Conflict Special Report on Kunduz Province*, December 2015, <http://www.refworld.org/docid/566fd0e64.html>, pp. 14-15; see also AIHRC, *The Report on the Investigation of Human Rights and Humanitarian Rights Situation in Kunduz Province Armed Conflict*, 17 October 2015, http://www.aihrc.org.af/media/files/Konoz_English.pdf, p. 12.

³⁶¹ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; UN General Assembly, *The situation in Afghanistan: Resolution Adopted by the General Assembly*, 23 December 2014, A/RES/69/18, <http://www.refworld.org/docid/54a66ebc4.html>, para. 45; US Department of Defense, *Report on Progress Towards Security and Stability in Afghanistan*, October 2014, http://www.defense.gov/Portals/1/Documents/pubs/Oct2014_Report_Final.pdf, p. 91; UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Afghanistan and on the Achievements of Technical Assistance in the Field of human rights in 2013*, 10 January 2014, A/HRC/25/41, <http://www.refworld.org/docid/52e109fa4.html>, p.2 (Summary) and para. 3. Policewomen serving in the ANP are reported to be at risk of murder; sexual harassment and abuse at the hands of their colleagues, including rape; and general discrimination. New York Times, *Afghan Policewomen Struggle Against Culture*, 1 March 2015, <http://www.nytimes.com/2015/03/02/world/asia/afghan-policewomen-struggle-against-culture.html>; New York Times, *Afghan Policewomen Say Sexual Harassment Is Rife*, 16 September 2013, <http://www.nytimes.com/2013/09/17/world/asia/afghan-policewomen-report-high-levels-of-sexual-harassment.html>.

³⁶² According to the AIHRC, 162 women were killed in the year 1393 (21 March 2014 to 20 March 2015). The number of killings in the first six months of the year 1394 doubled compared to the first six months of the year 1393. AIHRC, *Elimination of Violence against Women 1394*, 30 November 2015, <http://www.aihrc.org.af/home/research-reports/5170>. See also US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; AREU, *The Other Side of Gender Inequality: Men and Masculinities in Afghanistan*, January 2016, <http://www.refworld.org/docid/56a093534.html>, p. 46; UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General*, 10 June 2015, A/69/929 – S/2015/422, <http://www.refworld.org/docid/558284aa4.html>, para. 70.

³⁶³ According to the AIHRC, the "culture of impunity" is one of the most important underlying causes of violence against women in Afghanistan. AIHRC, *Elimination of Violence against Women 1394*, 30 November 2015, <http://www.aihrc.org.af/home/research-reports/5170>. See also US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; New York Times, *Flawed Justice After a Mob Killed an Afghan Woman*, 26 December 2015, <http://www.nytimes.com/2015/12/27/world/asia/flawed-justice-after-a-mob-killed-an-afghan-woman.html>; Orzala Ashraf Nemat, *Farkhunda Paid for Afghanistan's Culture of Impunity*, 25 March 2015, <https://www.opendemocracy.net/5050/orzala-ashraf-nemat/farkhunda-paid-for-afghanistan-s-culture-of-impunity>; AAN, *Shame and Impunity: Is violence against Women Becoming More Brutal?*, 30 November 2014, <https://www.afghanistan-analysts.org/shame-and-impunity-is-domestic-violence-becoming-more-brutal/>.

³⁶⁴ UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, paras 9, 56; UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 14. Gender equality continues to be a major challenge. UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General*, 1 September 2015, A/70/359–S/2015/684, <http://www.refworld.org/docid/55f677871e.html>, para. 27. See also NRC/IDMC, *Strengthening Displaced Women's Housing, Land and Property Rights in Afghanistan*, November 2014, <http://www.refworld.org/docid/5486c4684.html>.

³⁶⁵ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, para. 56. The Afghanistan Human Rights and Democracy Organization (AHRDO) links many forms of violence against women to poverty. AHRDO, *Women in the Eyes of Men*, February 2015, <http://www.baag.org.uk/resources/30>, pp. 7, 11. See also Institute for War and Peace Reporting, *Afghanistan: "Honour" Rules Deny Care to Mothers and Babies*, 22 October 2015, ARR Issue 525, <http://www.refworld.org/docid/564b572f4.html>.

³⁶⁶ For example, in November 2014, the Special Rapporteur on violence against women, its causes and consequences "highlighted the absence of comprehensive and coherent data collection [on violence against women], as well as the lack of effective interpretation and implementation of laws and resources to support shelters as a protective remedy, which includes a requirement to tackle negative perceptions of those facilities." UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General*, 9 December 2014, A/69/647-S/2014/876, <http://www.refworld.org/docid/549808194.html>, para. 34. In what threatened to be a reversal of previous progress made, in early 2014 both houses of Parliament voted on a new draft Criminal Procedure Code that included provisions to bar the testimony of relatives in rape cases. The amendments were later withdrawn to reinstate

August 2009, criminalizes 22 acts of violence and harmful traditional practices against women, including child marriage, forced marriage and acts of violence against women such as rape and domestic violence; it also specifies punishments for perpetrators.³⁶⁷ The authorities are reported to lack the political will to implement the law, and reportedly do not enforce it in full, particularly in the rural areas.³⁶⁸ The vast majority of cases, including instances of serious crimes against women, are still being mediated by traditional dispute resolution mechanisms rather than prosecuted as required by the law.³⁶⁹ UNAMA reports that both the ANP and prosecutors' offices continue to refer numerous cases, including serious crimes, to *jirgas* and *shuras* for advice or resolution, thereby undermining the implementation of the EAW law and reinforcing harmful traditional practices.³⁷⁰ Decisions of these mechanisms place women and girls at risk of further victimization and ostracism.³⁷¹

The Shi'ite Personal Status Law,³⁷² which regulates family law matters such as marriage, divorce and inheritance rights for members of the Shi'ite community, includes a number of provisions that discriminate against women, notably in relation to guardianship, inheritance, under-age marriages, and limitations on movements outside the home.³⁷³

While the human rights concerns identified in this section affect women and girls across the country, the situation in areas under the effective control of AGEs is reported to be of particular concern. In areas under their control, AGEs are reported to have severely curtailed the rights of girls and women,

the possibility for women to testify. UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General*, 27 February 2015, A/69/801-S/2015/151, <http://www.refworld.org/docid/556585104.html>, p. 29.

³⁶⁷ Law on Elimination of Violence Against Women (2009), <http://www.refworld.org/docid/5486d1a34.html>. The law was enacted under a presidential decree in 2009. Efforts by the National Assembly to enact the EAW law in December 2010 and in May 2013 failed due to opposition from Islamic conservatives. See US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; 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. 11; Congressional Research Service, *Afghanistan: Politics, Elections, and Government Performance*, 12 January 2015, <http://www.fas.org/spp/crs/row/RS21922.pdf>, p. 53.

³⁶⁸ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; AIHRC, *Elimination of Violence against Women 1394*, 30 November 2015, <http://www.aihrc.org.af/home/research-reports/5170>; UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, paras 64-65. "According to the information gathered, UNAMA observes that three out of ten sentences ordered by the courts appear to have been interpreted leniently by judges and not in compliance with the EAW law." 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. 18.

³⁶⁹ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; 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. 17; MoWA, *First Report on the Implementation of the Elimination of Violence against Women (EAW) Law in Afghanistan*, January 2014, http://mowa.gov.af/Content/files/EAW%20Law%20Report_Final_English_17%20%20March%202014.pdf, pp. 31-32. According to UNAMA, women's preferences for mediation to address their cases is reportedly influenced by a variety of factors, such as the deficiencies of the criminal justice system in processing their claims, including allegations of corruption, abuse of power, and lack of professionalism. The prevalence of mediation practices is also linked to a swifter processing of the cases, financial constraints and the perception of an increased level of acceptance in accordance with assigned gender roles and cultural acceptance. Mediation reportedly occurs in the absence of any standardized approach and oversight mechanisms. UNAMA has also documented diverse and arbitrary methodologies, documentation practices, and follow-up mechanisms adopted which lead to weaker protection of women survivors' rights. 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>, pp. 2-3.

³⁷⁰ 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>, pp. 14, 22-23; UNAMA, *A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan*, December 2013, <http://www.refworld.org/docid/52a6fdff4.html>, p. 5. See also UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, para. 63.

³⁷¹ UNAMA notes that as a result of the lack of due oversight by the entity that refers the case to a traditional dispute resolution mechanism, such as the provincial department of women's affairs, the ANP, or prosecutors, women often remain at risk of recurrent violence when they returned to their families following such mediation. UNAMA, *A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan*, December 2013, <http://www.refworld.org/docid/52a6fdff4.html>, p. 4.

³⁷² Shi'ite Personal Status Law, March 2009, <http://www.refworld.org/docid/4a24ed5b2.html>. The law was adopted pursuant to Article 131 of the Constitution of Afghanistan.

³⁷³ The controversial provision requiring a wife to provide for the sexual enjoyment of her husband was removed from the Law following domestic and international pressure. However, Afghan legal experts are of the view that Article 162 of the amended Law could be used by a husband to effectively deny maintenance to a wife if she refuses him what he perceives as his conjugal rights; see UN Committee on Economic, Social and Cultural Rights (CESCR), *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Afghanistan*, E/C.12/AFG/CO/2-4, 7 June 2010, <http://www.refworld.org/docid/4c1732dc2.html>. See also NRC/IDMC, *Strengthening Displaced Women's Housing, Land and Property Rights in Afghanistan*, November 2014, <http://www.refworld.org/docid/5486c4684.html>, pp. 47-48.

including their freedom of movement and political participation.³⁷⁴ Moreover, in areas under the effective control of AGEs women are likely to face particular difficulties in accessing justice and obtaining effective remedies for any violations of their rights. Indeed, the parallel justice structures operated by the AGEs in areas under their control are reported to routinely violate women's rights.³⁷⁵

a) Sexual and Gender-Based Violence

Sexual and gender-based violence against women in Afghanistan reportedly remains widespread.³⁷⁶ Such violence includes "honour killings", abduction, rape, forced abortion and domestic violence.³⁷⁷ As sexual acts committed outside marriage are widely seen in Afghan society to dishonour families, victims of rape outside marriage are at risk of ostracism, forced abortions, imprisonment, or even death.³⁷⁸ Societal taboos and fear of stigmatization and reprisals, including at the hands of their own community and family members, often deter survivors from reporting sexual and gender-based violence.³⁷⁹ At the same time, incidents of self-immolation as a result of domestic violence continued to be reported.³⁸⁰

Government authorities continue to refer most complaints of domestic violence to traditional dispute-resolution mechanisms.³⁸¹ Women and girls who flee their homes due to abuse or threats of forced marriage are often themselves accused of vaguely defined or even undefined "moral crimes", including adultery (*zina*), or "running away from home".³⁸² Men responsible for the domestic violence

³⁷⁴ UNAMA, *Afghanistan: Human Rights and Protection of Civilians in Armed Conflict Special Report on Kunduz Province*, December 2015, <http://www.refworld.org/docid/566fd0e64.html>, pp. 14-15; AIHRC, *The Report on the Investigation of Human Rights and Humanitarian Rights Situation in Kunduz Province Armed Conflict*, 17 October 2015, http://www.aihrc.org.af/media/files/Kondozi_English.pdf, p. 12; UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, para. 56. See also The Guardian, *Afghanistan's Women Risk Their Lives to Demand Equal Rights and Protection*, 25 November 2015, <http://www.theguardian.com/global-development/2015/nov/25/afghanistan-women-risk-lives-demand-equal-rights-protection>.

³⁷⁵ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 14. For further discussion of the parallel justice structures operated by the Taliban, see Section II.C.1.c.

³⁷⁶ UN Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, para. 13. See also US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.

³⁷⁷ "Sexual assault is the most serious and concerning sexual violence in Afghanistan. In most cases, sexual assault is combined with other types of violence, which usually ends up with the death of the victim." AIHRC, *Elimination of Violence against Women 1394*, 30 November 2015, <http://www.aihrc.org.af/home/research-reports/5170>. See also, for example, New York Times, *Afghan Woman's Nose Is Cut Off by Her Husband, Officials Say*, 19 January 2016, <http://www.nytimes.com/2016/01/20/world/asia/afghan-womans-nose-is-cut-off-by-her-husband-officials-say.html>; AREU, *The Other Side of Gender Inequality: Men and Masculinities in Afghanistan*, January 2016, available at: <http://www.refworld.org/docid/56a093534.html>, pp. 39-43.

³⁷⁸ See, for example, HRW, *Afghanistan: End 'Moral Crimes' Prosecutions*, June 2014, <http://www.hrw.org/news/2014/06/23/afghanistan-end-moral-crimes-prosecutions>.

³⁷⁹ AIHRC, *Elimination of Violence against Women 1394*, 30 November 2015, <http://www.aihrc.org.af/home/research-reports/5170>; see also UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, paras 30, 65.

³⁸⁰ The UNFPA Country Representative in Afghanistan noted that, "The majority of reported cases of suicide and suicide attempts in Afghanistan are women". She also stated, "Gender-based violence is among the main causes for women's suicides and self-immolation. According to research, the most common reason for self-immolation is forced or child marriage." Ministry of Public Health, *Ministry of Women's Affairs and UN Call for Efforts to Strengthen Suicide Prevention in Afghanistan*, 10 September 2014, <http://moph.gov.af/en/news/ministry-of-public-health-ministry-of-womens-affairs-and-un-call-for-efforts-to-strengthen-suicide-prevention-in-afghanistan>. See also 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>; UNFPA, *Afghanistan State of Youth*, 2014, <http://countryoffice.unfpa.org/filemanager/files/afghanistan/2014/reports/unfpaovreportv333e.pdf>, p. 44. The Asia Foundation's 2015 Afghanistan Survey found that 13 per cent of respondents identified domestic violence as the biggest problem faced by women in Afghanistan. This is the highest recorded by the survey since 2006. Women were more likely to mention domestic violence as a problem compared to men, with only eight per cent of male respondents indicating it as such. Asia Foundation, *Afghanistan in 2015: A Survey of the Afghan People*, November 2015, <http://asiafoundation.org/resources/pdfs/Afghanistanin2015.pdf>, pp. 26-28.

³⁸¹ 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>, pp. 22-23. The lack of access to effective forms of justice and remedies for victims results in turn in sexual violence remaining largely unaddressed by either law enforcement agencies or society. UNAMA observed that the lack of specific civil remedies (e.g. protection and restraining orders), "de facto exposes victims to further violence". 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>, pp. 12, 28, 32-33. See also UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, paras 65-69. The Special Rapporteur notes that criminal justice system continues to be undermined by corruption and a general mistrust in its efficiency and effectiveness. *Ibid.*, para. 67.

³⁸² UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, paras 23-24. *Zina* (sexual

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

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

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

b) Harmful Traditional Practices

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

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

³⁸³ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; AIHRC, *Elimination of Violence against Women 1394*, 30 November 2015, <http://www.refworld.org/docid/5694bfa04.html>; 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. 29. See also for example NYT, *Rebelling 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.

³⁸⁴ UNAMA, *Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication*, April 2015, <http://www.refworld.org/docid/55814b3c4.html>, p. 32. See also Section III.A.8.

³⁸⁵ New York Times, *Afghan Policewomen Struggle against Culture*, 1 March 2015, <http://www.nytimes.com/2015/03/02/world/asia/afghan-policewomen-struggle-against-culture.html>.

³⁸⁶ 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. 9; Amnesty International, *Afghanistan: Their Lives on the Line: Women Human Rights Defenders under Attack in Afghanistan*, 7 April 2015, ASA 11/1279/2015, <http://www.refworld.org/docid/55277ff24.html>, pp. 28-35; New York Times, *Afghan Policewomen Struggle against Culture*, 1 March 2015, <http://www.nytimes.com/2015/03/02/world/asia/afghan-policewomen-struggle-against-culture.html>; UNAMA, *A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan*, December 2013, <http://www.refworld.org/docid/52a6fdff4.html>, para. 5.4.

³⁸⁷ Amnesty International, *Afghanistan: Their Lives on the Line: Women Human Rights Defenders under Attack in Afghanistan*, 7 April 2015, ASA 11/1279/2015, <http://www.refworld.org/docid/55277ff24.html>, pp. 28-35.

³⁸⁸ AIHRC, *The Situation of Human Rights in Afghanistan in 1393*, 11 August 2015, <http://www.refworld.org/docid/5694bc384.html>, pp. 31-32; UN Secretary-General, *Conflict-related Sexual Violence: Report of the Secretary-General*, 23 March 2015, S/2015/203, <http://www.refworld.org/docid/5536100a4.html>, para. 12; UN Secretary-General, *Sexual Violence in Conflict – Report of the Secretary-General*, A/67/792–S/2013/149, 14 March 2013, <http://www.refworld.org/docid/5167bd0f4.html>, para. 16.

³⁸⁹ See AIHRC, *Elimination of Violence against Women 1394*, 30 November 2015, <http://www.aihrc.org.af/home/research-reports/5170>; UNAMA, *A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan*, December 2013, <http://www.refworld.org/docid/52a6fdff4.html>.

³⁹⁰ Specific concerns have been expressed in relation to the Shi’ite Personal Status Law. The law was adopted pursuant to Article 131 of the Constitution of Afghanistan and regulates family law matters (e.g. marriage, divorce and inheritance rights) of the Shi’ite community in Afghanistan: Shi’ite Personal Status Law, March 2009, <http://www.refworld.org/docid/4a24ed5b2.html>. While the law was welcomed by some prominent Shi’ites and Shi’ite groups for officially recognizing Shi’ite jurisprudence, the law in its initial form was the subject of domestic and international criticism for its failure to protect women’s rights. The criticisms led to amendments of the law, but the law retains some of the contentious provisions, including discriminatory provisions regarding guardianship, inheritance, under-age marriages, and limitations on movements outside the home. The controversial provision requiring a wife to provide for the sexual enjoyment of her husband was removed. However, Afghan legal experts are of the view that Article 162 of the amended Law could be used by a husband to effectively deny maintenance to a wife if she refuses him what he perceives as his conjugal rights; see UN CESCR, *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Afghanistan*, E/C.12/AFG/CO/2-4, 7 June 2010, <http://www.refworld.org/docid/4c1732dc2.html>. The 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, *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Afghanistan and on the Achievements of Technical Assistance in the Field of Human Rights*, A/HRC/13/62, 11 January 2010, <http://www.refworld.org/docid/4bc2c8d62.html>, paras 4 and 21-23.

practices disproportionately affect women and girls. Such practices include various forms of forced marriages,³⁹¹ including child marriages,³⁹² forced isolation in the home; and “honour killings”.³⁹³ 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;³⁹⁴
- (ii) *baad dadan*, a tribal form of dispute-settling in which the offending family offers a girl for marriage into the “wronged” family, for instance to settle a blood debt;³⁹⁵
- (iii) *baadal*, where two families exchange their daughters in order to minimize marriage costs;³⁹⁶
- (iv) the coercion of widows into marrying a man from their deceased husband’s family.³⁹⁷

³⁹¹ The Asia Foundation found in its 2014 survey that seven per cent of respondents identified forced marriages/dowry as the most serious problem facing women in Afghanistan. Asia Foundation, *Afghanistan in 2014: A Survey of the Afghan People*, 2014, <http://asiafoundation.org/publications/pdf/1425>, pp. 26-28. The AIHRC estimates that between 60 and 80 per cent of all marriages in Afghanistan are forced. UN Population Fund, *Escaping Child Marriage in Afghanistan*, 4 October 2012, <http://www.refworld.org/docid/5124f78d2.html>. See also US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; The Guardian, ‘I Just Want to Go to School’: How Afghan Law Continues to Fail Child Brides, 11 May 2015, <http://www.theguardian.com/global-development/2015/may/11/afghanistan-child-brides-want-to-go-to-school>; New York Times, *Afghan Policewomen Struggle against Culture*, 1 May 2015, <http://www.nytimes.com/2015/03/02/world/asia/afghan-policewomen-struggle-against-culture.html>.

³⁹² Although reliable data are difficult to obtain, surveys indicate that 15 per cent of women are married by age 15, and 46 per cent of women are married by age 18. Under Afghan law, the minimum age for marriage is 16 for girls and 18 for boys. UN Population Fund, *Escaping Child Marriage in Afghanistan*, 4 October 2012, <http://www.refworld.org/docid/5124f78d2.html>. In a survey conducted by the AIHRC, 7.7 per cent of the interviewees (391 of 5081 individuals) stated that their daughters were married before the age of 16, while 1.9 per cent (93 interviewees) stated that their sons got married under the age of 18. AIHRC, *The Situation of Human Rights in Afghanistan in 1393*, 2014, http://www.aihrc.org.af/media/files/Research%20Reports/english/English_Situation%20of%20human%20rights%20in%201393.pdf. See also US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, para. 14. For the effects on girls of child marriage, including early childbearing, see UNICEF, *Children and Women in Afghanistan: A Situation Analysis 2014*, November 2014, http://www.unicef.org/afghanistan/SitAn_-_Long_Report-small_size.pdf, pp. 23, 25. The Juvenile Code of 2005 fails to address the issue of child marriage. *Ibid.*, p. 39. Displaced girls are particularly vulnerable to this practice. See NRC/IDMC, *Listening to Women and Girls Displaced to Urban Afghanistan*, 26 March 2015, <http://www.refworld.org/docid/5513bec24.html>, pp. 13-14.

³⁹³ The US Department of State reported in April 2016 that honour killings had continued in 2015, although accurate statistics were difficult to obtain. US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>. See also UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, para. 19. Cases of honour killings are reported to be on the rise. NYT, *A Thin Line of Defense Against ‘Honor Killings’*, 2 March 2015, <http://www.nytimes.com/2015/03/03/world/asia/afghanistan-a-thin-line-of-defense-against-honor-killings.html>. For example, in early 2014, a woman named Amina was reportedly killed by unknown assailants after leaving a women’s shelter where she had sought refuge to escape a marriage imposed by her family. New York Times, *In Spite of the Law, Afghan ‘Honor Killings’ of Women Continue*, 3 May 2014, <http://www.nytimes.com/2014/05/04/world/asia/in-spite-of-the-law-afghan-honor-killings-of-women-continue.html>. In May 2014, a ten-year-old girl received death threats after being raped by a mullah. Amnesty International, *Afghanistan: 10-Year Old Rape Survivor Faces ‘Honour’ Killing*, 9 October 2014, <http://www.refworld.org/docid/5437cf6c4.html>.

³⁹⁴ UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, para. 56. Opium-farming families are reported to sell their children, especially girls, to settle debts with opium traffickers. US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.

³⁹⁵ In 2014 the AIHRC expressed its concern regarding the persistence of harmful traditional practices such as *baad*, which according to the AIHRC was on the rise. US Department of State, *2014 Country Reports on Human Rights Practices - Afghanistan*, 25 June 2015, <http://www.refworld.org/docid/559bd58728.html>. A 2014 study conducted by the Civil and Liberal Initiative for Peace (CLIP) found that receiving a girl in compensation was perceived to be more psychologically satisfying than receiving money or other forms of financial retribution. In addition, poor families may have no other means to settle a dispute than offering their daughters. See CLIP, *Assessment of Practice of BAD and its Negative Social Implication in Afghanistan*, August 2014, <http://openasia.org/en/g/wp-content/uploads/2015/01/Research-Draft-21-Oct-2014-3-1.pdf>, p. 27. See also for example New York Times, *Bartered Away at Age 5, Now Trying to Escape to a Life She Chooses*, 19 October 2014, <http://www.nytimes.com/2014/10/20/world/asia/times-video-presents-to-kill-a-sparrow.html>.

³⁹⁶ For in-depth information on marriage practices in Afghanistan, see AIHRC, *Situation of Economic and Social Rights in Afghanistan: Fifth Report*, November/December 2011, <http://www.refworld.org/docid/511e58cf0.html>, Part 3; Landinfo, *Afghanistan: Marriage*, 19 May 2011, <http://www.refworld.org/docid/512258e82.html>; AREU, *Decisions, Desires and Diversity: Marriage Practices in Afghanistan*, February 2009, <http://www.refworld.org/docid/4992cc722.html>; and Women and Children Legal Research Foundation, *Early Marriage in Afghanistan*, 2008, http://www.wclrf.org/English/eng_pages/Researches/Early%20Marrige%20with%20cover.pdf. See also NRC/IDMC, *Strengthening Displaced Women’s Housing, Land and Property Rights in Afghanistan*, November 2014, <http://www.refworld.org/docid/5486c4684.html>.

³⁹⁷ 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: Midyear Report 2015, Protection Of Civilians In Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 18; New York Times, *Afghan Policewomen Struggle against Culture*, 1 May 2015, <http://www.nytimes.com/2015/03/02/world/asia/afghan-policewomen-struggle-against-culture.html>; UNAMA, *Afghanistan: Annual Report*

Economic insecurity and ongoing conflict, related displacement, loss of assets and the impoverishment of the family perpetuate the problem of child marriages, with the practice often seen as the only means of survival for the girl and her family.³⁹⁸

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

c) Summary

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

- a) Survivors and those at risk of sexual and gender-based violence;
- b) Survivors and those at risk of harmful traditional practices; and
- c) Women perceived as contravening social mores (see Section III.A.8).

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

8. Women and Men Who Are Perceived as Contravening Social Mores⁴⁰⁰

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

2014, *Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, pp. 15-16; NRC/IDMC, *Strengthening Displaced Women's Housing, Land and Property Rights in Afghanistan*, November 2014, <http://www.refworld.org/docid/5486c4684.html>; Landinfo, *Afghanistan: Marriage*, 19 May 2011, <http://www.refworld.org/docid/512258e82.html>, pp. 15-16. 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.

³⁹⁸ UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, para. 15. The US Department of State noted that the custom of bride money motivated poor families to pledge daughters as young as six or seven years old, with the understanding that the actual marriage would be delayed until the child reached puberty. However, reports indicated that this delay was rarely observed and that young girls were sexually violated not only by the groom but also by older men in the family, particularly if the groom was also a child. There were reports that young girls who were married between the ages of nine and 11 attempted self-immolation. US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.

³⁹⁹ *Baad* is a criminal offence under article 517 of the 1976 Afghan Penal Code, but the article only applies to widows and women above the age of 18. Under the Penal Code, prison sentences for *baad* cannot exceed two years. The penal code provisions against *baad* were supplemented by the Law on Elimination of Violence against Women law, which extends the scope of the crime of offering women for marriage to girls under the age of 18 and increases potential prison sentences for *baad* to up to 10 years. The law also widens the scope of those who could be considered complicit in the crime.

⁴⁰⁰ For analysis of the situation of individuals who are perceived as contravening AGEs' interpretation of Islamic principles, norms and values, see Section III.A.6. For analysis of the specific situation of individuals of diverse sexual orientations and/or gender identities, see Section III.A.12. For analysis of the situation of women in the public sphere, see Section III.A.1.i. For more information on the situation of women, see Section III.A.7.

⁴⁰¹ United Kingdom: Foreign and Commonwealth Office, *Human Rights and Democracy Report - Afghanistan*, 12 March 2015, <http://www.refworld.org/docid/551a53045e.html>; UN CESCR, *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Afghanistan*, E/C.12/AFG/CO/2-4, 7 June 2010, <http://www.refworld.org/docid/4ef1fb5e2.html>.

⁴⁰² US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.

⁴⁰³ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; New York Times, *Afghan Policewomen Struggle Against Culture*, 1 March 2015, <http://www.nytimes.com/2015/03/02/world/asia/afghan-policewomen-struggle-against-culture.html>. According to research conducted by UNAMA in 2009, "women who appear in public on their own put their reputation and their safety at risk. Mullahs consulted during the research for this report referred to Islamic tenets to justify their perspective that a woman can only appear in public when accompanied by a male relative chaperone namely, a mahram. This interpretation of Islam is common in Afghanistan, although Sharia specialists consulted in the context of this research disagree that religion imposes the need for a male chaperone, provided that certain rules regarding the hijab

Women without male support and protection, including widows, are at particular risk. They generally lack the means of survival, given existing social norms imposing restrictions on women living alone, including limitations on their freedom of movement and on their ability to earn a living.⁴⁰⁴ Detention for breaches of customary or Sharia law is reported to disproportionately affect women and girls,⁴⁰⁵ including detention on the ground of perceived “moral crimes” such as being improperly unaccompanied,⁴⁰⁶ refusing marriage,⁴⁰⁷ engaging in sexual intercourse outside of marriage (which is considered adultery)⁴⁰⁸ or “running away from home”⁴⁰⁹ (including in situations of domestic violence).⁴¹⁰ Over half of the girls and women detained in the country have been charged with “moral

(Islamic veil) are respected.” See UNAMA, *Silence is Violence: End the Abuse of Women in Afghanistan*, 8 July 2009, p. 10, <http://www.refworld.org/docid/4a548f532.html>.

⁴⁰⁴ UNAMA, *Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication*, April 2015, <http://www.refworld.org/docid/55814b3c4.html>, p. 32; NRC/IDMC, *Strengthening Displaced Women's Housing, Land and Property Rights in Afghanistan*, November 2014, <http://www.refworld.org/docid/5486c4684.html>. According to the USIP, traditional customs regarding women's movements and low employment levels mean that women simply cannot survive independently within Afghanistan. USIP, quoted in Civil-Military Fusion Centre, *The Peace Process and Afghanistan's Women*, April 2012, <http://www.operationspaix.net/DATA/DOCUMENT/7025~v~The Peace Process and Afghanistan s Women Part II .pdf>, p. 6. In *N v. Sweden*, the European Court of Human Rights noted that women were at a particularly heightened risk of ill-treatment in Afghanistan if they were perceived as not conforming to the gender roles ascribed to them by society, tradition or the legal system. The mere fact that the applicant had lived in Sweden might well be perceived as having crossed the line of acceptable behaviour. The fact that she wanted to divorce her husband, and in any event did not want to live with him any longer, might result in serious life-threatening repercussions upon her return to Afghanistan. Reports had further shown that a high proportion of Afghan women were affected by domestic violence, acts which the authorities saw as legitimate and therefore did not prosecute. Unaccompanied women, or women without a male “tutor”, faced continuous severe limitations to having a personal or professional life, and social exclusion. They also often plainly lacked the means for survival if not protected by a male relative. Consequently, the Court found that if N. were deported to Afghanistan, Sweden would be in violation of Article 3 of ECHR. European Court of Human Rights, *N v. Sweden*, Application no. 23505/09, 20 July 2010, <http://www.refworld.org/docid/4c4d4e4e2.html>. See also *RRT Case No. 1005628* [2010] RRTA 822, Refugee Review Tribunal of Australia, 21 September 2010, <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/RRTA/2010/822.html>, where the Refugee Review Tribunal found that the appellant, a widow with no members of her family remaining in Afghanistan, was a member of the particular social group of elderly Afghan women without male protection.

⁴⁰⁵ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, para. 23.

⁴⁰⁶ “Improper accompaniment” is considered a crime according to Hanafi jurisprudence. Women have been detained, indicted and convicted for being in the company of a man without proper accompaniment, or *Khelwat-esahiha*; see UNAMA, *Arbitrary Detention in Afghanistan: A Call For Action, Volume I - Overview and Recommendations*, January 2009, <http://www.refworld.org/docid/49d07f272.html>, p. 7.

⁴⁰⁷ UNAMA, *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, 9 December 2010, <http://www.refworld.org/docid/4d00c4e82.html>.

⁴⁰⁸ According to UNAMA, “*zina*, adultery, is a *Huduud* crime under Islamic law, but if not proven as a *hudd* crime, it is dealt as a *tazeeri* crime under the Afghan Penal Code; it is essentially the crime of sexual intercourse outside of marriage”. UNAMA, *Still a Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan*, December 2012, <http://www.refworld.org/docid/50c72e0d2.html>, p. 22. Adultery is a crime under the law of Afghanistan: Penal Code, <http://www.refworld.org/docid/4c58395a2.html>, Article 427(1). Both married and unmarried women may be accused and convicted of the crime of adultery. “Virginity tests” represent a common practice and can constitute evidence particularly when a woman is accused of a “moral crime”; if a bride is found not to be a virgin, she may face serious consequences, including detention for adultery, maiming or death. See Radio Free Europe / Radio Free Liberty, *Virginity or Death for Afghan Brides*, 6 December 2015, <http://www.rferl.org/content/afghanistan-virgin-brides-punishment/27409971.html>; UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, para. 25; AIHRC, *Forced Gynecological Exams As Sexual Harassment and Human Rights Violation*, 5 December 2015, <http://www.aihrc.org.af/media/files/Forced%20Gynecological%20Exams%20-%20English.pdf>.

⁴⁰⁹ Running away from home is stigmatized in Afghanistan, but is not a crime under the Penal Code or Sharia Law and thus lacks a precise definition. It is understood to mean the action of running away, with no intent to return home, abandoning family members without the permission of parents or legal custodians; see UNAMA, *Still a Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan*, December 2012, <http://www.refworld.org/docid/50c72e0d2.html>, pp. 3-4; UN Women, *UN Women in Afghanistan Welcomes Government Statements Confirming that “Running Away” Is Not a Crime under Afghan Law*, 3 October 2012, <http://www.unwomen.org/2012/10/un-women-in-afghanistan-welcomes-government-statements-confirming-that-running-away-is-not-a-crime-under-afghan-law/>; AIHRC, *Report on the Situation of Economic and Social Rights in Afghanistan - IV*, December 2009, <http://www.refworld.org/docid/4b3b2df72.html>, p. 58. In its response to the UN Human Rights Council, the Afghan delegation confirmed that “running away from home” is not a crime, unless crimes were associated with that act. UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Afghanistan*, 4 April 2014, A/HRC/26/4, <http://www.refworld.org/docid/539064f14.html>, para. 130.

⁴¹⁰ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; UN Secretary-General, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, 27 February 2015, A/69/801-S/2015/151, <http://www.refworld.org/docid/556585104.html>, para. 26. In August 2010, the High Council of the Supreme Court instructed prosecutors on how to handle “runaway” cases, by invoking article 130 of the Constitution (Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>). According to the instruction, courts should assess whether women who have run away are single or married, the cause and motive for running away and the place to which the woman has run. If a woman has run away to escape harassment by family members and goes to a relative's house, the house of a legitimate mahram (unmarriageable kin) or if she seeks help

crimes”.⁴¹¹ Since accusations of adultery and other “moral crimes” may elicit “honour killings”,⁴¹² in some instances the authorities are reported to have sought to justify the detention of women accused of such acts as a protective measure.⁴¹³

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.⁴¹⁴

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.⁴¹⁵

from the authorities, then this shall not be regarded as a crime under Sharia law. However, according to the instruction, if a woman goes to a stranger’s house, even if it is to escape ill-treatment at home, she exposes herself to crimes such as “adultery and other associated offences”, which are considered illegal under Sharia law. UNAMA, *Still a Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan*, December 2012, <http://www.refworld.org/docid/50c72e0d2.html>, p. 22. A copy of the Supreme Court decree (in Dari), dated 1 August 2010, is on record with UNHCR. UNAMA noted that while the instruction was initially viewed as a way to stop the common practice of arresting girls who had run away by qualifying that a woman who flees to a relative’s house or a justice institution should not be arrested, in practice the instruction was in fact used to legitimize a traditional practice that restricts women’s freedom of movement. *Ibid.*, pp. 22-23. Later instructions on the correct handling of “runaway” cases have been issued by the Attorney General’s Office, which requested units for the elimination of violence against women to issue instructions to all prosecution offices not to press charges against women for “running away” or “attempted zina” (“attempted adultery”), as these are not actual codified crimes under Afghan law. In December 2012 the Supreme Court sent a letter to the Attorney General’s Office stating that running away from home to escape domestic violence and seeking assistance from justice institutions, legal aid organizations or relatives was not a crime and should not be prosecuted. UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, para. 38. The practice of arresting women who run away from home has nevertheless persisted; see for example HRW, *Afghanistan: End ‘Moral Crimes’ Prosecutions*, 23 June 2014, <https://www.hrw.org/news/2014/06/23/afghanistan-end-moral-crimes-prosecutions>. Human Rights Watch had previously noted that in light of the discrimination at the hands of law enforcement officials faced by women who seek protection and/or access to justice, seeking government assistance is an unsafe and unfeasible option for most women and girls who are victims of domestic violence or harmful traditional practices. HRW, “I Had to Run Away”: *The Imprisonment of Women for ‘Moral Crimes’ in Afghanistan*, March 2012, <http://www.refworld.org/docid/4f787d142.html>, p. 5. An absence of female police interrogators, lawyers and prosecutors may pose a further obstacle to access to justice for women accused of moral crimes. Institute for War and Peace Reporting, *Lack of Female Lawyers in Eastern Afghanistan*, 5 April 2012, <http://www.refworld.org/docid/4f82f00c2.html>.

⁴¹¹ Following Presidential decree No. 39 of 2 January 2015, at least 144 women and girls detained for moral crimes were released. UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General*, 27 February 2015, A/69/801-S/2015/151, <http://www.refworld.org/docid/556585104.html>, para. 26. In May 2015, the Special Rapporteur on violence against women reported that 428 women (58 per cent of all women imprisoned across Afghanistan) were detained on “moral crimes” charges. UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, para. 23.

⁴¹² See for example Radio Free Europe, *Virginity Or Death For Afghan Brides*, 6 December 2015, <http://www.rferl.org/content/afghanistan-virgin-brides-punishment/27409971.html>; New York Times, *In Spite of the Law, Afghan ‘Honor Killings’ of Women Continue*, 3 May 2014, <http://www.nytimes.com/2014/05/04/world/asia/in-spite-of-the-law-afghan-honor-killings-of-women-continue.html>; New York Times, *In Afghanistan, Women Betrayed*, 10 December 2013, <http://www.nytimes.com/2013/12/11/opinion/in-afghanistan-women-betrayed.html>. For more information about the prevalence of “honour killings” in Afghanistan, see Section III.A.7.

⁴¹³ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>. In 2014 a woman who had run away to avoid marriage was killed by her family upon return, despite assurances she would not be harmed. *Ibid.* Women released from prison are often unable to go home, either because their families refused to accept them, or because the women themselves fear that they will face violence and/or be forced into marriages on their return home. UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, para. 45; see also New York Times, *A Thin Line of Defense Against ‘Honor Killings’*, 2 March 2015, <http://www.nytimes.com/2015/03/03/world/asia/afghanistan-a-thin-line-of-defense-against-honor-killings.html>.

⁴¹⁴ For example, in October 2015 in the village of Ghalmin in Ghor province, a man was lashed and his fiancé was stoned to death after having been accused of adultery for having sex before marriage; in September 2015 another couple had reportedly each received 100 lashes following the same accusation. Al Jazeera, *Afghan Woman stoned to death for ‘adultery’*, 4 November 2015, <http://www.aljazeera.com/news/2015/11/afghan-woman-stoned-death-adultery-151104040814183.html>. The Governor of the province reportedly defended such punishments as being in line with Islamic law. Institute for War and Peace Reporting, *Summary Courts Deal Out Brutal Justice in Afghanistan’s Ghor Province*, 20 November 2015, <http://www.refworld.org/docid/565f6aca3965.html>. The New York Times covered the story of a young Afghan couple, Zakia and Mohammad Ali, who eloped to escape both families’ disapproval of their union and who were threatened with death by the girl’s family. Mohammad Ali was later arrested on charges of kidnapping. See New York Times, *For Afghan Lovers, Joy Is Brief, Ending in Arrest*, 7 June 2014, <http://www.nytimes.com/2014/06/08/world/asia/for-afghan-lovers-joy-is-brief-ending-in-arrest.html>; *2 Star-Crossed Afghans Cling to Love, Even at Risk of Death*, 9 March 2014, <http://www.nytimes.com/2014/03/10/world/asia/2-star-crossed-afghans-cling-to-love-even-at-risk-of-death.html>; *Afghan Newlyweds, Facing Threats, Find Brief Respite in Mountains*, 21 April 2014, <http://www.nytimes.com/2014/04/22/world/asia/afghan-couple-find-idyllic-hide-out-in-mountains-but-not-for-long.html>.

⁴¹⁵ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, pp. 14, 50; Radio Free Europe / Radio Liberty, *Virginity or Death for Afghan Brides*, 6 December 2015, <http://www.rferl.org/content/afghanistan-virgin-brides-punishment/27409971.html>; Al Jazeera, *Afghan Woman Stoned to Death for ‘Adultery’*, 4 November 2015, <http://www.aljazeera.com/news/2015/11/afghan-woman-stoned-death-adultery->

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 grounds of religion, their imputed political opinion, membership of a particular social group, or other relevant grounds.

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

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

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

10. Children with Certain Profiles or in Specific Circumstances⁴¹⁷

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

151104040814183.html. For further information about public executions of women accused of immoral behaviour by the Taliban, see the discussion on honour killings in Section III.A.7.

⁴¹⁶ The US Department of State noted that, "Society and even their own families mistreated persons with disabilities, since there was a common perception persons had disabilities because they or their parents had "offended God."" US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>. Disability World reported that, "The low profile of mental health issues in Afghanistan is mainly due to negative public perception and stigma of those who are mentally ill. There is stigma towards mental illness, often perceived as being punishment of sin. Many families conceal the presence of mentally ill members to protect the family reputation and marriage prospects for other siblings. Mentally ill people are therefore often kept away from sight and remain an invisible group among the already excluded disabled population." Disability World, *Applying the Minority Perspective to Disability in Afghanistan*, February 2005, http://www.disabilityworld.org/12-02_05/il/afghanistan.shtml. UNICEF noted that, "Children with disabilities also suffer from societal and government-based discrimination that greatly impedes their potential. Lack of access to appropriate health and education facilities, and weak understanding of disability rights, compound the challenges affecting the survival and development of children with disabilities. The existing structures cover only a fraction of the needs and are largely concentrated in a few urban centres. As a result, the vast majority of children with disabilities remain locked up at home, in the care of their mother, who may be completely overwhelmed by their needs." UNICEF, *Children and Women in Afghanistan: A Situation Analysis 2014*, November 2014, <http://www.unicef.org/afghanistan/SitAn - Long Report- small size .pdf>, p. 34.

⁴¹⁷ For guidance on claims for international protection by 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*, 22 December 2009, HCR/GIP/09/08, <http://www.refworld.org/docid/4b2f4f6d2.html>; see also UN Committee on the Rights of the Child (CRC), *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, <http://www.refworld.org/docid/42dd174b4.html>.

⁴¹⁸ See in particular the profiles for men of fighting age and children in the context of underage and forced recruitment (Section III.A.3); civilians suspected of supporting AGEs (Section III.A.4); members of minority religious groups and persons perceived as contravening Sharia law (Section III.A.5); persons perceived as contravening AGEs' interpretation of Islamic principles, norms and values (Section III.A.6); women (Section III.A.7); survivors of trafficking and individuals at risk of trafficking (Section III.A.11); individuals of diverse sexual orientations and gender identities (Section III.A.12); members of minority ethnic groups (Section III.A.13); and individuals involved in blood feuds (Section III.A.14).

⁴¹⁹ In compliance with the Convention on the Rights of the Child, which Afghanistan ratified in 1994, The Juvenile Code of 2005 recognizes international standards on child protection and emphasizes children's right to proper care, guidance, protection and the opportunity for social reintegration. It increased the age of criminal responsibility from 7 to 12 years and laid out alternatives to detention. However, UNICEF notes that while the Code was developed to protect the interests of children, it fails to redress the situation of children who are victims of sexual abuse, exploitation or forced marriage. See UNICEF, *Children and Women in Afghanistan: A Situation Analysis 2014*, November 2014, <http://www.unicef.org/afghanistan/SitAn - Long Report- small size .pdf>, p. 39. In the first six months of 2015, 4,824 child protection cases, particularly related to rape, sexual abuse, physical abuse, child marriage, separated children, child trafficking, child kidnapping, drug abuse, children in conflict with the law and children affected by armed conflict, were reported to the Child Protection Action Network (CPAN), a network of government, non-governmental and civil society organizations working in the area of child protection in collaboration with the Ministry of Labor, Social Affairs, Martyrs & Disabled. Between 2007 and 2014, 18,304 cases were reported to the CPAN. See UNICEF, *Child Notice Afghanistan*, 2015, <http://www.refworld.org/docid/566e68344.html>, pp. 55-56.

a) *Bonded or Hazardous Child Labour*

Under the Labour Law children younger than 14 are prohibited from working under any circumstance. Children between the ages of 15 and 18 may engage in “light work” for up to 35 hours per week, but may not be employed in work activities likely to threaten their health or cause disability. Despite this, child labour reportedly remains widespread.⁴²⁰ 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,⁴²¹ the use of children in illicit activities including the drug trade, as well as the use of children in prostitution.⁴²² Children are reportedly also engaged in hazardous work likely to harm their health, safety or morals.⁴²³ Poor institutional capacity reportedly remains a serious impediment to effective enforcement of the Labour Law, including inadequate resources for inspections and the enforcement of sanctions for violations.⁴²⁴ In addition, the authorities’ capacity to enforce the Labour Law’s provisions in relation to children is reported to be further limited by the fact that fewer than 10 per cent of children are reported to have formal birth registrations.

Street children are among the most exposed and vulnerable groups in Afghanistan, with little or no access to government services. Poverty and food shortages are reported to be key reasons for families to send their children on to the streets to beg for food and money.⁴²⁵

b) *Violence against Children, including Sexual and Gender-Based Violence*⁴²⁶

Child abuse is reported to be widespread, with the number of reported cases on the rise.⁴²⁷ Common forms of abuse include physical violence, sexual abuse, abandonment and general neglect.⁴²⁸ Some

⁴²⁰ US Department of Labor, *2014 Findings on the Worst Forms of Child Labor - Afghanistan*, 30 September 2015, <http://www.refworld.org/docid/560e3e180.html>; UNICEF, *Children and Women in Afghanistan: A Situation Analysis 2014*, November 2014, http://www.unicef.org/afghanistan/SitAn_-_Long_Report_-_small_size_.pdf, p. 42. The Ministry of Labor, Social Affairs, Martyrs & Disabled released a list of hazardous occupations in which children cannot be engaged, such as begging and garbage collection; work in blast furnaces, waste-processing plants, and large slaughterhouses; work with hospital waste; drug-related work; security guard services; and work related to war. However, enforcement of the Labour Law was reported to be weak, due to a lack of institutional capacity on the part of the government, and because fewer than 10 per cent of children had formal birth registrations, limiting authorities’ ability to enforce the law. US Department of Labor, *ibid.*, and US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>. Estimates of the total number of child labourers vary. According to UNICEF estimates, at least 25 per cent of children between the age of 6 and 17 undertook some form of work. Los Angeles Times, *In Afghanistan, Childhood Is Often a Full-Time Job*, 19 April 2014, <http://www.latimes.com/world/la-fg-afghanistan-child-workers-20140420-dto.htmlstory.html>. In 2013, the AIHRC found that over 50 per cent of the children who took part in a study were likely to be engaged in some sort of paid work. AIHRC, *Children’s Situation Summary Report*, 14 December 2013, <http://www.aihrc.org.af/home/research-reports/2115>. The Afghanistan Multiple Indicator Cluster Survey 2010-2011 found that 27 per cent of children aged 5-11 years were involved in child labour activities, and 22 per cent of children aged 12-14 years. Total child labour for children aged 5-14 was 23 per cent for girls and 28 per cent for boys. Central Statistics Organisation and UNICEF, *Afghanistan Multiple Indicator Cluster Survey 2010-2011*, June 2012, p. 127. Children of widowed women are particularly exposed to underage labour. UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 3.

⁴²¹ The practice of bonded labour allows for men, women and children to work as a means to pay for debt or to settle grievances. The debt can continue from generation to generation, with children forced to work to pay off their parents’ debt. US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; US Department of State, *2015 Trafficking in Persons Report - Afghanistan*, 27 July 2015, <http://www.refworld.org/docid/55b73c1e31.html>.

⁴²² A spokesman for the Ministry of Interior was quoted saying that many street children are engaged in robbery, theft and drug smuggling, and represent a security challenge. Institute for War and Peace Reporting, *Afghanistan’s Working Children*, 19 August 2015, ARR Issue 520, <http://go.iwpr.net/1hMbXGQ>. For further analysis on the use of children in illicit activities, including the drug trade and child prostitution, see Section III.A.11.

⁴²³ For example, some sectors of child labour were reported to expose children to landmines. US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>. Children are also reported to be working in brick kilns in Afghanistan, where they are exposed to serious health hazards. UNICEF and International Labour Organization, *Breaking the Mould: Occupational Safety Hazards Faced by Children Working in Brick Kilns in Afghanistan*, 2015, http://www.ilo.org/ipcc/Informationresources/WCMS_IPEC_PUB_25295/lang--en/index.htm.

⁴²⁴ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; US Department of Labor, *2014 Findings on the Worst Forms of Child Labor - Afghanistan*, 30 September 2015, <http://www.refworld.org/docid/560e3e180.html>.

⁴²⁵ While reliable figures on the number of street children are not available, the Ministry of Labor, Social Affairs, Martyrs, and Disabled estimated that there are around six million street children in Afghanistan. However, no new survey was undertaken by the National Census Directorate. Some children were also reported to belong to begging rings. US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>. Estimates for the total number of children working in Kabul’s streets range from 50,000 to 60,000. Assessment Capacities Project (ACAPS), *Afghanistan: Conflict and Displacement*, 10 October 2012, http://www.acaps.org/resourcescats/downloader/afghanistan_conflict_and_displacement. Street children who work as vendors are particularly vulnerable to suicide attacks; see for example <http://www.skateistan.org/blog/tragic-loss>.

⁴²⁶ For further analysis on the situation of girls subject to harmful traditional practices and sexual and gender-based violence, see Section III.A.7.

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

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

- ⁴²⁷ AIHRC, *The Situation of Human Rights in Afghanistan in 1393*, 11 August 2015, <http://www.refworld.org/docid/5694bc384.html>, pp. 5, 35-36. UNICEF noted that cases of sexual violence against children are usually underreported. See UNICEF, *Child Notice Afghanistan*, 2015, <http://www.refworld.org/docid/566e68344.html>, p. 55.
- ⁴²⁸ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.
- ⁴²⁹ The Afghanistan Multiple Indicator Cluster Survey 2010-2011 found that 74 per cent of children aged 2-14 years were subjected to at least one form of psychological or physical punishment by their mothers/caretakers or other household members, while 38 per cent of children were subjected to severe physical punishment. Central Statistics Organisation and UNICEF, *Afghanistan Multiple Indicator Cluster Survey 2010-2011*, June 2012, pp. 129-131. The US Department of State noted furthermore that, outside the domestic sphere, corporal punishment in schools, rehabilitation centres, and other public institutions remained common, even though it was against the law. US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.
- ⁴³⁰ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>. In 2012, the AIHRC noted that in 80 per cent of the cases of sexual assault registered by the Commission the survivors were teenage girls under the age of 18. Inter Press Service, *Violence Against Women on the Rise*, 5 October 2012, <http://www.ipsnews.net/2012/12/violence-against-afghan-women-on-the-rise/>.
- ⁴³¹ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.
- ⁴³² UNAMA reported on four cases of sexual violence against children by ALP members and one case perpetrated by a member of a Pro-Government armed group in 2014. UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 18; New York Times, *U.S. Soldiers Told to Ignore Sexual Abuse of Boys by Afghan Allies*, 20 September 2015, <http://nyti.ms/1V3hPb4>; US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>. The UN Secretary-General noted that some boys held in detention on charges relating to national security reported sexual violence or threats of sexual violence upon arrest by the ANSF or in detention. UN Secretary-General, *Report of the Secretary-General on Children and Armed Conflict in Afghanistan*, 15 May 2015, S/2015/336, <http://www.refworld.org/docid/55965b254.html>, para. 37.
- ⁴³³ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; UN Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, 15 May 2014, A/68/878-S/2014/339, <http://www.refworld.org/docid/53b3b7654.html>, paras 23, 26.
- ⁴³⁴ AIHRC, *Causes and Consequences of Bacha Bazi in Afghanistan*, August 2014, <http://www.aihrc.org.af/home/research-reports/3324>. See also US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>. The US Department of State noted that credible statistics on the number of boys affected are difficult to obtain, due to the fact that the subject remains a source of shame. The US Department of State noted that some victims of this practice were referred to juvenile rehabilitation centres on criminal charges. US Department of State, *2015 Trafficking in Persons Report - Afghanistan*, 27 July 2015, <http://www.refworld.org/docid/55b73ce31.html>. The US Department of State also reported that children may be sold into prostitution by their own families. US Department of State, *2015 Trafficking in Persons Report - Afghanistan*, 27 July 2015, <http://www.refworld.org/docid/55b73ce31.html>. According to UNICEF, boys face a higher risk of child trafficking for sexual exploitation and forced labour than girls. UNICEF, *Child Notice Afghanistan*, 2015, <http://www.refworld.org/docid/566e68344.html>, pp. 16, 69. UNAMA received multiple reports of pro-Government armed groups engaging in *bacha bazi* practices. UNAMA, *Afghanistan: Midyear Report 2015, Protection Of Civilians In Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 76. The risk of falling victim to the practice of *bacha bazi* may motivate boys to flee the country. See UNHCR, *Why Do Children Undertake the Unaccompanied Journey?*, December 2014, PDES/2014/03, <http://www.refworld.org/docid/54994d984.html>, p. 13.
- ⁴³⁵ Institute for War and Peace Reporting, *Afghans Condemn Abuse of "Dancing Boys"*, 17 September 2015, <http://www.refworld.org/docid/55fbc2372e.html>; US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>. See also Section III.A.11.
- ⁴³⁶ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; New York Times, *U.S. Soldiers Told to Ignore Sexual Abuse of Boys by Afghan Allies*, 20 September 2015, <http://nyti.ms/1V3hPb4>; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, pp. 17-18. In March 2015 a local police member in Laghman Province was sentenced to 10 years of imprisonment for sexual assault and attempted rape of a seven-year-old boy. UN Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926-S/2015/409, <http://www.refworld.org/docid/557abf904.html>, para. 32. The US Department of State noted that “Some law enforcement officials, prosecutors, and judges accept bribes from or use their relationships with perpetrators of *bacha baazi* to allow them to escape punishment”. US Department of State, *2015 Trafficking in Persons Report - Afghanistan*, 27 July 2015, <http://www.refworld.org/docid/55b73ce31.html>.

family and to be in need of punishment.⁴³⁷ Some children were reportedly imprisoned as a family proxy for the actual perpetrator.⁴³⁸

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,⁴³⁹ as well as about the quality of education on offer.⁴⁴⁰ School attendance by girls continued to be substantially lower than for boys.⁴⁴¹ High levels of insecurity are a major factor in hampering access to education.⁴⁴² The reported use of schools for military purposes by both AGEs and pro-government forces poses further concerns.⁴⁴³

⁴³⁷ For example, Human Rights Watch reported on the case of a 13-year-old boy who was convicted on “moral crimes” charges after having been accused of having sex with two adult men in a park. He was sentenced to one year in juvenile detention. HRW, *Afghanistan: Don’t Prosecute Sexually Assaulted Children*, 10 February 2013, <http://www.refworld.org/docid/511a0ac941e.html>. See also US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.

⁴³⁸ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.

⁴³⁹ NPR, *Afghan Schools: Is The Success Story Exaggerated?*, 18 June 2014, <http://www.npr.org/sections/thetwo-way/2015/06/18/415353782/afghan-schools-is-the-success-story-exaggerated>; BuzzFeed, *Ghost Students, Ghost Teachers, Ghost Schools*, 9 July 2015, <http://www.buzzfeed.com/azmatkhan/the-big-lie-that-helped-justify-americas-war-in-afghanistan>.

⁴⁴⁰ See for example AAN, *Too Few, Badly Paid And Unmotivated: The Teacher Crisis and the Quality of Education in Afghanistan*, 22 August 2015, <https://www.afghanistan-analysts.org/too-few-badly-paid-and-unmotivated-the-teacher-crisis-and-the-quality-of-education-in-afghanistan-2/>.

⁴⁴¹ According to statistics provided by the Ministry of Education, out of the total number of 9.1 million schoolchildren, 3.5 million (39 per cent) were female. US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>. See also UNICEF, *Improving Children’s Lives Transforming the Future*, September 2014, <http://generation25.org/wp-content/uploads/2014/09/Improving-Children-s-Lives-Transforming-the-Future.pdf>, p. 50. According to UNESCO, *Education for All Global Monitoring Report (EFAGMR) 2013/4, Teaching and Learning: Achieving Quality for All Afghanistan: Fact Sheet*, 2014, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ED/GMR/pdf/Afghanistan_Factsheet.pdf. According to UNICEF, 42.7 per cent (equal to 4.2 million children) of primary school-age children are out of school. UNICEF also noted that in this age range, around 50 per cent more girls than boys are out of school. UNICEF, *Educate All Girls and Boys in South Asia*, August 2015, http://www.unicef.org/education/files/EducateAllGirlsandBoys-UNICEF_ROSA.pdf.

⁴⁴² In 2015, UNAMA and UNICEF documented 132 conflict-related incidents affecting education and education-related personnel, an 86 per cent increase compared to the same period in 2014 and a 110 per cent increase compared to 2013. The incidents were reported to significantly impact the availability, access and quality of education, as more than 369 schools closed partially or completely affecting at least 139,048 students (65,057 boys and 73,991 girls) and 600 teachers. UNAMA, *Education and Healthcare At Risk: Key Trends and Incidents Affecting Children’s Access to Healthcare and Education In Afghanistan*, 18 April 2016, https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf, p. 6. In July 2015, one hundred schools were closed down for security reasons in Helmand province. Tolo News, *Security Threats Cause over 100 Helmand Schools to Close*, 24 July 2015, <http://www.tolonews.com/en/afghanistan/20585-security-threats-cause-over-100-helmand-schools-to-close>. In September 2015 it was reported that 58 schools in Nangarhar province were either shut down by armed groups affiliated to ISIS, or had to be closed due to security threats posed by these groups, leaving 300,000 children without access to education. Khaama Press, *300,000 Children Face Uneducated Future Because of Daesh in Nangarhar*, 20 September 2015, <http://www.khaama.com/300000-school-children-face-uneducated-future-because-of-daesh-in-nangarhar-3925>. During the siege of Kunduz, over 330,000 students were affected by the closure of 497 schools; furthermore, the Taliban used four schools and the ANSF used one school for military purposes. UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 10 December 2015, A/70/601–S/2015/942, <http://www.refworld.org/docid/5672ac7c4.html>, para. 34. At the end of 2015, in Helmand province 150 schools were closed, impeding access to education to 100,000 children. IRIN, *School Closures Fuel Taliban Recruitment*, 16 December 2015, <http://www.refworld.org/docid/569412eb6d2b.html>. According to the US Department of State, a Representative from the Ministry of Education estimated in May 2014 that approximately 150,000 schoolchildren in insecure areas did not have access to education. US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>. The UN Secretary-General reported that in 2014 at least 469 schools remained closed for reason of insecurity. UN Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926–S/2015/409, <http://www.refworld.org/docid/557abf904.html>, para. 33.

⁴⁴³ In 2015, 35 schools (compared to 12 schools in 2014 and ten schools in 2013) were reportedly used for military purposes for a cumulative total of 1,311 days. The military use of schools was reported to vary from a few days to months, and to have impeded access to education for at least 8,905 students (5,614 boys and 3,291 girls). UNAMA, *Education and Healthcare At Risk: Key Trends and Incidents Affecting Children’s Access to Healthcare and Education In Afghanistan*, 18 April 2016, https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf, p. 19. See also UN Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926–S/2015/409, <http://www.refworld.org/docid/557abf904.html>, para. 35. The militarization of schools in situations of conflict can amount to persecution within Article 1(A)(2) of the 1951 Convention. See UNHCR, *Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence; Roundtable 13 and 14 September 2012, Cape Town, South Africa*, 20 December 2012, <http://www.refworld.org/docid/50d32e5e2.html>, para. 11; and see also UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <http://www.refworld.org/docid/4b2f4f6d2.html>, para. 36.

AGEs are also reported to continue to carry out direct attacks against schools, teachers and students,⁴⁴⁴ especially in relation to education for girls.⁴⁴⁵ While the majority of reported attacks are attributed to the Taliban, groups affiliated to ISIS are also reported to forcibly close schools and to threaten and intimidate teachers.⁴⁴⁶ Other obstacles to girls' education in particular included poverty, early and forced marriage, lack of family support, lack of female teachers, and long distances to the nearest school.⁴⁴⁷

d) *Abductions, Punishments and Reprisals by the ANSF and AGEs*

The ANSF and AGEs are reported to abduct children for various purposes, including reprisals and punishment of the victim's family members.⁴⁴⁸ Children are also reported to be abducted, and subsequently to be executed, maimed or raped, on the basis of accusations of having assisted the opposing party.⁴⁴⁹

⁴⁴⁴ The UN Secretary-General reported that in 2014, 163 attacks against schools were verified, including 28 incidents where IEDs were placed inside school premises. The vast majority of the attacks were carried out by AGEs and included the burning of schools, targeted killings of teachers and staff, armed attacks on education facilities, occupation of schools and intimidation and closure of schools, particularly girls' schools. UN Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926-S/2015/409, <http://www.refworld.org/docid/557abf904.html>, para. 33. Between 1 April and 30 June 2015, the country task force on monitoring and reporting on children and armed conflict verified 33 (out of 52 reported) attacks by AGEs involving actions against educational premises and staff, including the burning of schools, targeted killings and abductions. In the previous three-month period, 15 incidents were reported out of which three incidents were verified. UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General*, 1 September 2015, A/70/359-S/2015/684, <http://www.refworld.org/docid/55f67781e.html>, para. 28. The Taliban are listed as a party to the conflict responsible for specific grave violations against children in the UN Secretary-General's Report on Children and Armed Conflict for 2015. The violations include recruitment and use of children, killing and maiming of children, and attacks against schools and/or hospitals. UN Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926-S/2015/409, <http://www.refworld.org/docid/557abf904.html>, p. 48.

⁴⁴⁵ In 2015, UNAMA and UNICEF documented 19 incidents where AGEs directly or indirectly limited girls' access to education. UNAMA, *Education and Healthcare At Risk: Key Trends and Incidents Affecting Children's Access to Healthcare and Education In Afghanistan*, 18 April 2016, https://unama.unmissions.org/sites/default/files/education_and_healthcare_at_risk.pdf, p. 8. The Taliban particularly targets girls' education by, for example, distributing leaflets with serious threats against students and intimidating female teachers. UN Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926-S/2015/409, <http://www.refworld.org/docid/557abf904.html>, para. 33. In July 2014, the Head of the Herat Education Department announced that all schools in Shindand district of Herat province would remain closed for girls, thus depriving nearly 40,000 girls from education, because of Taliban pamphlets threatening to burn down schools and commit suicide attacks if girls continued to attend school. Tolo News, *Insecurities in Shindand Result in Closing of Girls Schools*, 21 July 2014, <http://www.tolonews.com/en/afghanistan/15664-insecurities-in-shindand-result-in-closing-of-girls-schools>. In March 2014 an expert from the AAN, Claudio Franco, was quoted as saying, "[In the Pashtun belt in particular] there have been attempts by the Taliban to curtail or pre-empt girls' education, and these attempts have been largely successful. The local populace is very often sympathetic towards this kind of stance, simply because of an instinctive, well-rooted conservatism. [...] As a consequence, there have been attacks on girls travelling to and from school, or on teachers and/or administrators who did not comply with this ban." Al Jazeera, *Can Madrassas Help Developing Countries?*, 13 March 2014, <http://www.aljazeera.com/indepth/features/2014/03/can-madrassas-help-developing-countries-20143613421527815.html>. In some areas of the country, such as Kunduz province, the number of girls attending private madrassas (religious schools), where only a strict interpretation of Islam is taught, is reportedly increasing. Al Jazeera, *The Girls of the Taliban*, 24 December 2014, <http://www.aljazeera.com/programmes/specialseries/2014/12/girls-taliban-2014121716718177928.html>. In late August/early September 2015, hundreds of schoolgirls were hospitalized in Herat province for gas poisoning, after having inhaled toxic fumes. No group claimed responsibility for the incidents, but authorities suspected that they were deliberately caused. CNN, *Hundreds of Girls Hospitalized due to Mysterious Gas at School*, 4 September 2015, <http://edition.cnn.com/2015/09/03/asia/afghanistan-gas-illnesses/>; BBC, *Afghanistan Probes 'Poisoning' of 600 Herat Schoolgirls*, 8 September 2015, <http://www.bbc.com/news/world-asia-34186904>. In July 2015, assailants threw acid in the faces of three teenage girls on their way to school in Herat province, telling the girls that this was punishment for going to school. CNN, *ibid.*

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

⁴⁴⁷ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>. For further information on the practice of early and forced marriage in Afghanistan, see Section III.A.7. According to the World Bank, in 2014, 32 per cent of teachers were female. Trading Economics, *Primary Education - Teachers (% female) in Afghanistan*, <http://www.tradingeconomics.com/afghanistan/primary-education-teachers-percent-female-wb-data.html>.

⁴⁴⁸ UN Secretary-General, *Report of the Secretary-General on Children and Armed Conflict in Afghanistan*, 15 May 2015, S/2015/336, <http://www.refworld.org/docid/55965b254.html>, paras 40-42; UNAMA, *Afghanistan: Midyear Report 2015, Protection Of Civilians In Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 20.

⁴⁴⁹ UN Secretary-General, *Report of the Secretary-General on Children and Armed Conflict in Afghanistan*, 15 May 2015, S/2015/336,

e) Summary

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

- a) Children from areas where either AGEs or elements of the ANSF use underage recruitment;⁴⁵⁰
- b) Children from social milieus where bonded or hazardous child labour is practised;
- c) Survivors and those at risk of violence against children (including sexual and gender-based violence), including children from social milieus where such violence is practised;
- d) School-age children, particularly girls;⁴⁵¹ and
- e) Children against whose parents the ANSF or AGEs are seeking to exact reprisals, and children who are accused by the ANSF or AGEs or having assisted the opposing party.

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

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

11. Survivors of Trafficking or Bonded Labour and Persons at Risk of Being Trafficked or 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.⁴⁵³ Afghans who fall victim to trafficking are reportedly trafficked within Afghanistan and to the Middle East, Europe, and South Asia,⁴⁵⁴ but trafficking within Afghanistan is reported to be more prevalent than transnational trafficking.⁴⁵⁵ The majority of Afghans who fall victim to trafficking are reported to be children. They may be trafficked for the purposes of labour exploitation, in sectors of the economy such as agriculture, brick making, mining, construction, carpet weaving, domestic work and services industries. They may also be exploited in illicit sectors of the economy, such as drug smuggling and production, other criminal activities, forced combat and other forms of violence, and begging. Children may also be trafficked

<http://www.refworld.org/docid/55965b254.html>, paras 40-42; UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Afghanistan and on the Achievements of Technical Assistance in the Field of Human Rights in 2013*, 10 January 2014, A/HRC/25/41, <http://www.refworld.org/docid/52e109fa4.html>, para. 27.

⁴⁵⁰ For further analysis on the issue of under-age recruitment, see Section III.A.3.

⁴⁵¹ 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, <http://www.refworld.org/docid/4b2f4f6d2.html>, paras 34-36; UNHCR, *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, <http://www.refworld.org/docid/3d36f23f4.html>.

⁴⁵² 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>.

⁴⁵³ US Department of Labor, *2014 Findings on the Worst Forms of Child Labor - Afghanistan*, 30 September 2015, <http://www.refworld.org/docid/560e3e180.html>; US Department of State, *2015 Trafficking in Persons Report - Afghanistan*, 27 July 2015, <http://www.refworld.org/docid/55b73c1e31.html>; Samuel Hall Consulting, *Old Practice, New Chains: Modern Slavery in Afghanistan*, 2013, <https://www.iom.int/files/live/sites/iom/files/Country/docs/IOM-Afghanistan-CT-Report-2014.pdf>; Hagar International, *Forgotten No More: Male Child Trafficking In Afghanistan*, October 2013, <http://hagarinternational.org/international/files/20140403-Forgotten-No-More1.pdf>.

⁴⁵⁴ US Department of State, *2015 Trafficking in Persons Report - Afghanistan*, 27 July 2015, <http://www.refworld.org/docid/55b73c1e31.html>; Samuel Hall Consulting, *Old Practice, New Chains: Modern Slavery in Afghanistan*, 2013, <https://www.iom.int/files/live/sites/iom/files/Country/docs/IOM-Afghanistan-CT-Report-2014.pdf>, p. 32.

⁴⁵⁵ US Department of State, *2015 Trafficking in Persons Report - Afghanistan*, 27 July 2015, <http://www.refworld.org/docid/55b73c1e31.html>. A survey of survivors of trafficking carried out by Samuel Hall Consulting in 2013 found that 54 out of 80 respondents had been trafficked internally, many within their own province. Samuel Hall Consulting, *Old Practice, New Chains: Modern Slavery in Afghanistan*, 2013, <https://www.iom.int/files/live/sites/iom/files/Country/docs/IOM-Afghanistan-CT-Report-2014.pdf>, p. 27. The AIHRC has reported that 60 per cent of trafficking in Afghanistan is internal. AIHRC, *Summary Report on Investigation of Causes and Factors of Trafficking in Women and Children*, July 2011, <http://www.refworld.org/docid/4e1d57012.html>.

for the purposes of sexual exploitation and forced marriage.⁴⁵⁶ 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.⁴⁵⁷ Children are reportedly sometimes sold by their families for financial gain or to settle debts.⁴⁵⁸ 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.⁴⁵⁹ Some Afghan families, including children, are reported to be trapped in cycles of bonded labour, including in brick-making factories.⁴⁶⁰

In 2008 the Government adopted an anti-trafficking law.⁴⁶¹ While efforts to enforce the law have reportedly been modest, there reportedly continues to be a lack of awareness and understanding of trafficking among law enforcement and judicial officials.⁴⁶² Corruption and lack of political will to hold perpetrators accountable are also reported, and government employees have reportedly been accused of complicity in human trafficking.⁴⁶³ 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”.⁴⁶⁴

⁴⁵⁶ Samuel Hall Consulting, *Old Practice, New Chains: Modern Slavery in Afghanistan*, 2013, <https://www.iom.int/files/live/sites/iom/files/Country/docs/IOM-Afghanistan-CT-Report-2014.pdf>, p. 32.

⁴⁵⁷ US Department of State, *2015 Trafficking in Persons Report - Afghanistan*, 27 July 2015, <http://www.refworld.org/docid/55b73c1e31.html>; AIHRC, *Causes and Consequences of Bacha Bazi in Afghanistan*, August 2014, <http://www.aihrc.org.af/home/research-reports/3324>; Samuel Hall Consulting, *Old Practice, New Chains: Modern Slavery in Afghanistan*, 2013, <https://www.iom.int/files/live/sites/iom/files/Country/docs/IOM-Afghanistan-CT-Report-2014.pdf>, p. 49; Hagar International, *Forgotten No More: Male Child Trafficking In Afghanistan*, October 2013, <http://hagarinternational.org/international/files/20140403-Forgotten-No-More1.pdf>, p. 40; Foreign Policy, *Bacha Bazi: An Afghan Tragedy*, 28 October 2013, <http://foreignpolicy.com/2013/10/28/bacha-bazi-an-afghan-tragedy/>.

⁴⁵⁸ US Department of State, *2015 Trafficking in Persons Report - Afghanistan*, 27 July 2015, <http://www.refworld.org/docid/55b73c1e31.html>; Samuel Hall Consulting, *Old Practice, New Chains: Modern Slavery in Afghanistan*, 2013, <https://www.iom.int/files/live/sites/iom/files/Country/docs/IOM-Afghanistan-CT-Report-2014.pdf>, p. 51. Opium-farmers whose crops are destroyed reportedly sometimes choose to sell their daughters to pay back loans to traffickers. The Atlantic, *In Afghanistan, Fathers Barter Daughters to Settle Drug Debts*, 31 July 2013, <http://www.theatlantic.com/international/archive/2013/07/in-afghanistan-fathers-barter-daughters-to-settle-drug-debts/278217/>.

⁴⁵⁹ US Department of State, *2015 Trafficking in Persons Report - Afghanistan*, 27 July 2015, <http://www.refworld.org/docid/55b73c1e31.html>; Samuel Hall Consulting, *Old Practice, New Chains: Modern Slavery in Afghanistan*, 2013, <https://www.iom.int/files/live/sites/iom/files/Country/docs/IOM-Afghanistan-CT-Report-2014.pdf>, p. 49;

⁴⁶⁰ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; US Department of State, *2015 Trafficking in Persons Report - Afghanistan*, 27 July 2015, <http://www.refworld.org/docid/55b73c1e31.html>. Many such workers are reported to incur injuries and health problems due to poor working conditions, and subsequent loans taken up to cover missed payments and medical expenses create further bondage to the employer. ILO, *Breaking the Mould: Occupational Safety Hazards Faced by Children Working in Brick Kilns in Afghanistan*, 13 April 2015, <http://www.ilo.org/ipeinfo/product/download.do?type=document&id=25295>.

⁴⁶¹ Forced labour is prohibited under Article 49 of the Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>. On 14 July 2008, the Law on Countering Abduction and Human Trafficking/Smuggling was endorsed by President Karzai and published in the official gazette. See AIHRC, *Report on the Situation of Economic and Social Rights in Afghanistan - IV*, December 2009, <http://www.refworld.org/docid/4b3b2df72.html>, p. 47. The Law, along with Article 516 of the Penal Code, prescribes between eight and 15 years' imprisonment for labour trafficking. The Law on Elimination of Violence Against Women provides for a maximum sentence of 15 years' imprisonment for forced prostitution of women.

⁴⁶² The High Commission for Combating Crimes of Abduction and Human Trafficking/Smuggling envisioned under the 2008 law was inaugurated in January 2012. While the Commission reportedly has made modest improvements in prosecuting offenders and in preventing trafficking, it is reportedly constrained by a lack of implementation of decisions and directives. See US Department of State, *2015 Trafficking in Persons Report - Afghanistan*, 27 July 2015, <http://www.refworld.org/docid/55b73c1e31.html>; Samuel Hall Consulting, *Old Practice, New Chains: Modern Slavery in Afghanistan*, 2013, <https://www.iom.int/files/live/sites/iom/files/Country/docs/IOM-Afghanistan-CT-Report-2014.pdf>, p. 74; US Department of State, *2012 Trafficking in Persons Report - Afghanistan*, 19 June 2012, <http://www.refworld.org/docid/4fe30cea3c.html>. Ambiguity around the Dari term for trafficking has reportedly led to confusion around trafficking concepts and undermined the effectiveness of the law. Samuel Hall Consulting, *ibid.*, p. 10. A defence lawyer from the Afghan Independent Bar Association observed during a National Human Trafficking Seminar in Kabul in January 2014 that the law on human trafficking is not implemented correctly and that women victims of trafficking are not properly assisted by the police and the courts. European Union Police Mission in Afghanistan, *National Human Trafficking Seminar*, 23 January 2014, <http://www.eupol-afg.eu/node/52>.

⁴⁶³ According to the AIHRC, perpetrators of *bacha bazi* can pay bribes or use their connection with officials to avoid prosecution. In some cases officials of the police, judiciary and justice departments are reported to be accomplices to *bacha bazi*. AIHRC, *Causes and Consequences of Bacha Bazi in Afghanistan*, August 2014, <http://www.aihrc.org.af/home/research-reports/3324>, pp. 63-64. See also US Department of State, *2015 Trafficking in Persons Report - Afghanistan*, 27 July 2015, <http://www.refworld.org/docid/55b73c1e31.html>; Afghan Zariza, *Scourge of Human Trafficking and Modern-Day Slavery in Afghanistan*, 23 November 2013, <http://www.afghanzariza.com/2014/11/23/scourge-of-human-trafficking-and-modern-day-slavery-in-afghanistan>.

⁴⁶⁴ US Department of State, *2015 Trafficking in Persons Report - Afghanistan*, 27 July 2015, <http://www.refworld.org/docid/55b73c1e31.html>; Samuel Hall Consulting, *Old Practice, New Chains: Modern Slavery in Afghanistan*, 2013, <https://www.iom.int/files/live/sites/iom/files/Country/docs/IOM-Afghanistan-CT-Report-2014.pdf>, p. 64.

In light of the foregoing, UNHCR considers that people, especially women and children, in particular social-economic circumstances that create vulnerabilities to trafficking or bonded labour, may be in need of international refugee protection on the grounds of their membership of a particular social group or other relevant grounds, depending on the individual circumstances of the case. This includes 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.⁴⁶⁵

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

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

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

⁴⁶⁵ UNHCR, *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, 7 April 2006, HCR/GIP/06/07, <http://www.refworld.org/docid/443679fa4.html>.

⁴⁶⁶ Article 427 of the Penal Code of Afghanistan, 7 October 1976. The English text of the Penal Code is available at <http://www.refworld.org/docid/4c58395a2.html>. During the Universal Periodic Review for Afghanistan in 2014, Afghanistan did not accept a recommendation from Norway to “ensure non-discrimination on the basis of sexual orientation and gender identity and repeal the provisions of the penal code which criminalise sexual relations between consenting adults of the same sex.” See UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Afghanistan*, 4 April 2014, <http://www.refworld.org/docid/539064f14.html>; UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Afghanistan Addendum*, 16 June 2014, <http://www.refworld.org/docid/5671934a4.html>. See also US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; International Lesbian, Gay, Bisexual, Trans and Intersex Association, *State-Sponsored Homophobia – A World Survey of Laws Prohibiting Same Sex Activity between Consenting Adults*, May 2015, http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf, p. 69; Swedish International Development Cooperation Agency (SIDA), *The Rights of LGBTI Persons in Afghanistan*, November 2014, <http://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/lgbti/rights-of-lgbt-persons-afghanistan.pdf>. It should also be noted that in certain segments of Afghan society, sexual acts between men are reportedly not uncommon. However, men are reported to make a distinction between engaging in sexual acts with other men and feeling love for another man, the latter of which is considered a sin in Islam and punishable under Sharia law. See, for example, Afghanistan Human Terrain Team, *Pashtun Sexuality: Research Update and Findings (Unclassified)*, 2009, <http://info.publicintelligence.net/HTT-PashtunSexuality.pdf>; Shivananda Khan, *Everybody Knows, But Nobody Knows: Desk Review of Current Literature on HIV and Male-Male Sexualities, Behaviours and Sexual Exploitation in Afghanistan* (London: Naz Foundation International), September 2008, http://www.aidsdatahub.org/dmdocuments/Everybody_knows_but_nobody_knows_Afghan_Review.pdf.pdf, pp. 22, 29; and Shivananda Khan, *Rapid Assessment of Male Vulnerabilities to HIV and Sexual Exploitation in Afghanistan* (London: Naz Foundation International), 30 March 2009, http://www.aidsdatahub.org/dmdocuments/Rapid_Assessment_of_Male_Vulnerabilities_to_HIV_and_Sexual_Exploitation_in_Afghanistan_2009.pdf.pdf, pp. 17, 63.

⁴⁶⁷ International Lesbian, Gay, Bisexual, Trans and Intersex Association, *State-Sponsored Homophobia – A World Survey of Laws Prohibiting Same Sex Activity between Consenting Adults*, May 2015, http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf, p. 69. See also UNICEF, *Child Notice Afghanistan*, November 2015, <http://www.refworld.org/docid/566e68344.html>, p. 36.

⁴⁶⁸ According to telephone and face-to-face interviews with approximately 1,000 adults in Afghanistan, aged 15 and older, conducted by Gallup in 2009 and 2013, 89 per cent of respondents said Afghanistan is “not a good place to live for gay or lesbian people.” Gallup, *Nearly 3 in 10 Worldwide See Their Areas as Good for Gays*, 27 August 2014, <http://www.gallup.com/poll/175520/nearly-worldwide-areas-good-gays.aspx>. According to the third Global AIDS Response Progress Report submitted by the Government of Afghanistan to UNAIDS, little is known about the size of the population of Afghan men who have sex with men (MSM), in part because of “high stigma and discrimination” against this population. Ministry of Public Health of Islamic Republic of Afghanistan - National AIDS Control Program (NACP), *Country Progress Report 2014: Afghanistan*, 31 March 2014, http://www.unaids.org/sites/default/files/country/documents/AFG_narrative_report_2014.pdf, p. 13. See also US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.

⁴⁶⁹ Members of a group affiliated to ISIS reportedly executed a teenage boy after accusing him of being gay. The boy had reportedly been raped by an ISIS commander. Khaama Press, *ISIS Throw Teen Boy Off a Roof for Being Gay But Spares His Alleged Rapist*, 4 January 2016, <http://www.khaama.com/isis-throw-teen-boy-off-a-roof-for-being-gay-but-spare-his-alleged-rapist-1920>. UNAMA reported that on 14 August 2015, a parallel justice ‘court’ sentenced two men and a 17-year-old boy to execution by wall-toppling for homosexuality. The falling wall killed the two men and injured the boy, who they allowed to live. UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 51. See also US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>. For further analysis of the situation of individuals perceived as contravening Sharia law, see Section III.A.5. For further analysis of the situation of individuals perceived as contravening the Taliban’s interpretation of Islamic principles, norms and values, see Section III.A.6.

officers also allegedly rob and rape gay men.⁴⁷⁰ Organizations dedicated to the protection of the rights of persons of diverse sexual orientations reportedly remain underground.⁴⁷¹

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

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

It should be borne in mind that individuals of diverse sexual orientations and/or gender identities cannot be expected to change or conceal their identity in order to avoid persecution.⁴⁷² 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.⁴⁷³

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.⁴⁷⁴ As a result

⁴⁷⁰ See US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; Freedom House, *Freedom in the World 2015 - Afghanistan*, 20 March 2015, <http://www.refworld.org/docid/55116f4111.html>.

⁴⁷¹ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.

⁴⁷² 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/527b94b14.html>.

⁴⁷³ For further guidance on applications for refugee status from individuals of diverse sexual orientations and/or gender identities, see UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, <http://www.refworld.org/docid/50348afc2.html>. See also Court of Justice of the European Union, *A, B, C v. Staatssecretaris van Veiligheid en Justitie*, C-148/13 to C-150/13, 2 December 2014, <http://www.refworld.org/docid/547d943da.html>.

⁴⁷⁴ Maley, William, *The Afghan Wars*, 2002, New York, Palgrave Macmillan, pp. 8-9: "The population of Afghanistan has never been counted in a complete census, but the results of a partial census in 1979, adjusted to take account of other relevant data, suggested a population of approximately 13.05 million, including around 800,000 nomads (Eighmy, 1990: 10). This population was in no sense 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 *qawm*, or 'network'), with porous and flexible boundaries. One scholar even went so far as to dub Afghanistan a 'Nation of Minorities' (Jawad, 1992). Ethnicity, religion, occupation, and gender have historically offered to Afghans a range of bases upon which they may seek to identify with their fellows, and while some of these are effectively ascriptive – that is, unchangeable, or changeable only at enormous social cost – the relative emphasis given to one over another is frequently a matter of strategic choice. (...) Afghanistan is first of all a multiethnic country." As noted by William Maley, quoted above, no population census has been conducted 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 32.6 million. See US Central Intelligence Agency, *CIA Factbook: Afghanistan*, <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html>. The CIA Factbook notes that "current statistical data on the sensitive subject of ethnicity in Afghanistan is not available, and ethnicity data from small samples of respondents to opinion polls are not a reliable alternative". *Ibid.* See also Civil-Military Fusion Centre, *Afghanistan Ethnic Groups: A Brief Investigation*, August 2011, <http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation>. Out of the 9,586 Afghans residing in all 34 provinces who were interviewed for the purposes of its 2015 survey, the Asia Foundation reported that 40 per cent defined themselves as Pashtuns, 34 per cent as Tajik, 11 per cent as Hazara, eight per cent as Uzbeks, and two per cent as Turkmen. Other groups (one per cent or less of responses) include Arab and Baloch groups. See Asia Foundation, *Afghanistan in 2015: A Survey of the Afghan People*, November 2015, <http://asiafoundation.org/resources/pdfs/Afghanistanin2015.pdf>, pp. 166-167. A detailed map showing the geographic distribution of Afghanistan's ethnic groups can be found in Congressional Research Service, *Afghanistan: Post-Taliban Governance, Security, and U.S. Policy*, 22 December 2015, <http://www.fas.org/sgp/crs/row/RL30588.pdf>, p. 75. Figure 2: "Map of Afghan Ethnicities". The Constitution of Afghanistan provides that, "The nation of Afghanistan shall be comprised of Pashtun, Tajik, Hazara, Uzbek, Turkman, Baluch, Pachaia,

of a variety of historical population movements, both forced and voluntary, some members of ethnic groups now reside outside areas where they traditionally represented a majority.⁴⁷⁵ 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.⁴⁷⁶ 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.⁴⁷⁷

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.⁴⁷⁸ 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.⁴⁷⁹

Ethnic divisions in Afghanistan remain strong. The Peoples under Threat Index compiled by Minority Rights Group International lists Afghanistan as the fourth most dangerous country in the world for ethnic minorities, especially because of targeted attacks against individuals based on their ethnicity and religion. The index refers specifically to the Hazaras, Pashtuns, Tajiks, Uzbeks, Turkmen and Baluchis as ethnic minorities at risk in Afghanistan.⁴⁸⁰

Nuristani, Ayrnaq, Arab, Qirghiz, Qizilbash, Gujur, Brahui and other tribes." Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>, Article 4.

⁴⁷⁵ 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 pasture 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.

⁴⁷⁶ 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. IDMC, *Afghanistan: Durable Solutions Far From Reach Amid Escalating Conflict*, 16 April 2012, <http://www.refworld.org/docid/511e50cd2.html>; Minority Rights Group International, *Pashtuns*, undated; page accessed 8 March 2016, <http://minorityrights.org/minorities/pashtuns/>; HRW, *Paying for the Taliban's Crimes: Abuses Against Ethnic Pashtuns in Northern Afghanistan*, 9 April 2002, <http://www.refworld.org/docid/3cb2ad007.html>. See also Country of Origin Research and Information (CORI), *Afghanistan: COI Relating to Pashtuns*, 20 January 2015, <http://www.refworld.org/docid/54f9c87e4.html>; Secure Livelihoods Research Consortium (Adam Pain), *Livelihoods, Basic Services and Social Protection in Afghanistan*, July 2012, <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7718.pdf>, p. 4. The International Crisis Group notes that the underrepresentation in the security forces of certain majority ethnic groups creates tensions among the population. International Crisis Group, *The Future of the Afghan Local Police*, 4 June 2015, <http://www.refworld.org/docid/55702a544.html>, pp. 15-16.

⁴⁷⁷ See for example CORI, *Afghanistan: COI Relating to Pashtuns*, 20 January 2015, <http://www.refworld.org/docid/54f9c87e4.html>; Minority Rights Group International, *Afghanistan – Pashtuns*, undated, page accessed 8 March 2016, <http://minorityrights.org/minorities/pashtuns/>; Civil-Military Fusion Centre, *Afghanistan Ethnic Groups: A Brief Investigation*, August 2011, <http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation>; Tribal Analysis Center, *Pashtun Tribal Dynamics*, October 2009, <http://www.tribalanalysiscenter.com/PDF-TAC/Pashtun%20Tribal%20Dynamics.pdf>.

⁴⁷⁸ See for example US Department of State 2014 *Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>; Civil-Military Fusion Centre, *Afghanistan Ethnic Groups: A Brief Investigation*, August 2011, <http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation>.

⁴⁷⁹ See, for example, Congressional Research Service, *Afghanistan: Politics, Elections, and Government Performance*, 12 January 2015, <http://www.fas.org/sgp/crs/row/RS21922.pdf>, p. 2; International Crisis Group, *Afghanistan's Political Transition*, 16 October 2014, <http://www.refworld.org/docid/543f9dfc4.html>, p. 26. Further analysis of corresponding risk profiles can be found in Sections III.A.1 and III.A.5.

⁴⁸⁰ Minority Rights Group International, *Peoples Under Threat 2015*, undated, page accessed 8 March 2016, <http://peoplesunderthreat.org/countries/afghanistan/>. It should be noted that not all observers agree on the classification of certain violent incidents as being ethnically motivated. Thus the Congressional Research Service states, "There have been few incidents of ethnic-based violence since the fall of the Taliban, but clashes sometimes do result from jealousies and historic disputes between the different ethnic communities. All ethnic groups are represented at all levels of the central government and each group has a large measure of control over how government programs are implemented in their geographic regions. Although Afghanistan's President has the power to appoint provincial and district governors, in practice there is an informal understanding not to appoint governors of a different ethnicity than the

The Constitution guarantees “equality among all ethnic groups and tribes”.⁴⁸¹ However, members of certain ethnic groups have complained of discrimination by the State, including in the form of unequal access to local government jobs in areas where they were in the minority.⁴⁸²

a) *Kuchis*

Nomadic people in Afghanistan are commonly known as Kuchis; they form a marginalized group.⁴⁸³ The majority of Kuchis are ethnic Pashtuns.⁴⁸⁴ 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.⁴⁸⁵ 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.⁴⁸⁶ 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).⁴⁸⁷ However, the Afghanistan Independent Human Rights Commission (AIHRC) reports that the Government has seldom acted on its pledges to build mobile schools and clinics for Kuchis. As a result, literacy rates among nomadic Kuchis are reported to be among the lowest in the world.⁴⁸⁸ Kuchis also have very limited access to health facilities.⁴⁸⁹

majority of residents of particular provinces.” Congressional Research Service, *Afghanistan: Politics, Elections, and Government Performance*, 12 January 2015, <http://www.fas.org/sgp/crs/row/RS21922.pdf>, p. 2.

⁴⁸¹ Article 6 of the Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>.

⁴⁸² US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>. See also Minority Rights Group International, *Afghanistan – Governance*, undated; page accessed 8 March 2016, <http://minorityrights.org/country/afghanistan/>.

⁴⁸³ In recognition of this fact, ten seats in the lower house of the national assembly are reserved for Kuchis and two seats in the upper house. AAN, *New Building, Old MPs: A Guide to the Afghan Parliament*, 4 February 2016, <https://www.afghanistan-analysts.org/new-building-old-mps-a-guide-to-the-afghan-parliament/>. AREU notes that, “The provision for Kuchi has been hotly contested among parliamentarians since the 2005 elections.” AREU, *The A to Z Guide to Assistance in Afghanistan*, 2015, <http://www.refworld.org/docid/5507ebe94.html>, p. 76.

⁴⁸⁴ Minorities of Kuchi are Aimaq, Baluch, Arabs, Kirghiz, Turkmen and Uzbeks. Richard Tapper, “Who are the Kuchi? Nomad Self-Identities in Afghanistan”, *Journal of the Royal Anthropological Institute (N.S.)* Vol. 14, 2008, pp. 97-116, http://www.nomadsed.de/fileadmin/user_upload/redakteure/Dateien_Intern/Archiv_AG_1/Tapper_Kuchi_2008.pdf, pp. 99-100.

⁴⁸⁵ Samuel Hall Consulting, *State of Afghan Cities 2015 – Vol. 1*, September 2015, http://samuelhall.org/wp-content/uploads/2015/09/State-of-Afghan-Cities-2015-Volume_1.pdf, p. 21; Minority Rights Group International, *Kuchis*, undated; page accessed 8 March 2016, <http://minorityrights.org/minorities/kuchis/>; AIHRC, *Fifth Report: Situation of Economic and Social Rights in Afghanistan*, December 2011, <http://www.refworld.org/docid/511e58cf0.html>, p. 114; Civil-Military Fusion Centre, *Afghanistan Ethnic Groups: A Brief Investigation*, August 2011, <http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation>, p. 3.

⁴⁸⁶ There are no reliable statistics for the total number of Kuchis in Afghanistan; estimates range from 1.5 million people to 2-3 million. AIHRC, *Fifth Report: Situation of Economic and Social Rights in Afghanistan*, December 2011, <http://www.refworld.org/docid/511e58cf0.html>, p. 113; Civil-Military Fusion Centre, *Afghanistan Ethnic Groups: A Brief Investigation*, August 2011, <http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation>, p. 3. The AIHRC reported that over 80 per cent of Kuchis have permanently settled in towns or villages, while close to 18 per cent is semi-nomadic: they have settled but still move with their animals at certain times of the year. Only about two per cent of Kuchis are still fully nomadic, with no permanent place of residence. AIHRC, *ibid*. Many are settling in the areas around large cities, especially Kabul. Kuchis who have settled reportedly lack access to services, including drinking water, and are negatively perceived by the local population. Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2015 - Afghanistan*, 2 July 2015, <http://www.refworld.org/docid/55a4fa6915.html>; AAN, *The Social Wandering of the Afghan Kuchi*, November 2013, http://www.afghanistan-analysts.org/wp-content/uploads/2013/11/20131125_FFoschini-Kuchis.pdf. Many of these settlements occur in so-called “irregular residential areas” that are unsuitable for human habitation due to lack of urban planning or characteristics of the land. Samuel Hall Consulting, *State of Afghan Cities 2015 – Vol. 1*, September 2015, http://samuelhall.org/wp-content/uploads/2015/09/State-of-Afghan-Cities-2015-Volume_1.pdf, p. 76. In July 2015, in Logar, six people were injured in violent clashes over land between Kuchis and villagers. Germany: Federal Office for Migration and Asylum, *Information Centre Asylum and Migration Briefing Notes*, 27 July 2015, <http://www.refworld.org/docid/55b15dc64.html>. For a photo essay on Kuchis and the places where they settle, see Radio Free Europe / Radio Liberty, *Afghanistan's Kuchi Nomads Forced To Settle*, 18 September 2015, <http://gandhara.rferl.mobi/a/afghanistan-society-nomads/27256004.html>.

⁴⁸⁷ Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>, Articles 14 and 44. The AIHRC reported that a decree issued by President Karzai in 1387 (2008-2009) on the settlement of Kuchis has not been implemented.

⁴⁸⁸ AIHRC, *Fifth Report: Situation of Economic and Social Rights in Afghanistan*, December 2011, <http://www.refworld.org/docid/511e58cf0.html>, p. 115. The CRC reported concerns over access to education for Kuchi children. CRC, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Convention on the Rights of the Child: Concluding Observations: Afghanistan*, 8 April 2011, CRC/C/AFG/CO/1, <http://www.refworld.org/docid/4dc7bd492.html>, p. 61. See also AAN, *The Social Wandering of the Afghan Kuchi*, November 2013, http://www.afghanistan-analysts.org/wp-content/uploads/2013/11/20131125_FFoschini-Kuchis.pdf, p. 14.

⁴⁸⁹ As a result, vaccination rates for Kuchi children are much lower than for other groups of children, whether urban or rural. The AIHRC reported in 2011 that only 17 per cent of Kuchi women have access to prenatal care. AIHRC, *Fifth Report: Situation of Economic and Social Rights in Afghanistan*, December 2011, <http://www.refworld.org/docid/511e58cf0.html>, p. 114.

b) *Hazaras*

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

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.⁴⁹³ Institutional discrimination reportedly forms a major obstacle for members of these communities, with the Ministry of Interior reportedly refusing to consider members of the Jogi and Mosuli ethnic groups as nationals of Afghanistan. This in turn means that they are not issued with the nationality card, the *tazkira*. As a result, they are reported to have limited access to social services, government schools, employment and land ownership.⁴⁹⁴

⁴⁹⁰ US Department of State, *2015 Country Reports on Human Rights Practices - Afghanistan*, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2015 - Afghanistan*, 2 July 2015, <http://www.refworld.org/docid/55a4fa6915.html>; Freedom House, *Freedom in the World 2015 - Afghanistan*, 20 March 2015, <http://www.refworld.org/docid/55116f4111.html>.

⁴⁹¹ Congressional Research Service, *Afghanistan: Politics, Elections, and Government Performance*, 12 January 2015, <http://www.fas.org/sgp/crs/row/RS21922.pdf>, p. 3. See also New York Times, *Taliban Are Said to Target Hazaras to Try to Match ISIS' Brutality*, 22 April 2015, <http://nyti.ms/1yRjE63>; Ireland: Refugee Documentation Centre, *Afghanistan: Information on the Hazara*, 22 January 2014, <http://www.refworld.org/docid/52fe0ba04.html>, p. 1.

⁴⁹² See UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 49; Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2015 - Afghanistan*, 2 July 2015, <http://www.refworld.org/docid/55a4fa6915.html>; US Department of State, *2014 Report on International Religious Freedom - Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>. In 2015, a rise in kidnappings of Hazaras, especially while travelling, was reported. In early 2015, it was reported that dozens of Hazara men and boys had been kidnapped by ISIS militants under the command of two former Taliban leaders, although no group has claimed responsibility for the kidnapping. Radio Free Europe / Radio Liberty, *Afghan Shi'ite Community Leader Says IS Militants Involved in Kidnappings*, 22 April 2015, <http://www.rferl.org/content/afghanistan-islamic-state-kidnapped-hazaras/26938544.html>; AFP, *Fears Stalk Afghan Minorities after Rare Attacks*, 17 March 2015, <http://reliefweb.int/report/afghanistan/fears-stalk-afghan-minorities-after-rare-attacks>. In August 2015, three Hazara men were kidnapped and killed in Nawur district. Radio Free Europe / Radio Liberty, *At Least Eight Hazaras Kidnapped, Four Killed in Afghanistan*, 13 August 2015, <http://www.refworld.org/docid/55ee96a92b.html>. In September 2015, 13 Hazara men travelling on a bus were shot dead by unknown gunmen, allegedly Taliban, in Balkh Province. Radio Free Europe / Radio Liberty, *Thirteen Men Pulled from Vehicles, Shot Dead by Gunmen in Afghanistan*, 5 September 2015, <http://www.refworld.org/docid/561d040f15.html>. In November 2015, seven Hazaras, including two women and one child, were abducted and later beheaded in Zabul province. Initial reports indicated ISIS militants as perpetrators of these acts, although the NDS later labelled these allegations as "Taliban propaganda"; other reports indicated Islamic Movement of Uzbekistan (IMU) members as responsible for this act. This episode sparked protests in Kabul and other cities, where Afghans of different ethnicities demanded improved security measures. See New York Times, *Protests across Afghanistan Demanding Better Security*, 12 November 2015, <http://www.nytimes.com/aponline/2015/11/12/world/asia/ap-as-afghanistan.html>; Reuters, *Hazara Take Protests to Kabul as Afghan Sectarian Fears Rise*, 10 November 2015, <http://in.reuters.com/article/2015/11/10/afghanistan-taliban-idINKCN0SZ19720151110>; AAN, *The 'Zabul Seven' Protests: Who Speaks for the Victims?*, 12 November 2015, <https://www.afghanistan-analysts.org/the-zabul-seven-protests-who-speaks-for-the-victims/>; HRW, *Dispatches: Afghan Killings Highlight Risks to Ethnic Hazaras*, 13 November 2015, <https://www.hrw.org/news/2015/11/13/dispatches-afghan-killings-highlight-risks-ethnic-hazaras>; AFP, *Massive Protest in Kabul over Decapitation of Shiite Hazaras*, 11 November 2015, <http://news.yahoo.com/massive-protest-kabul-over-decapitation-shiite-hazaras-082707341.html>. Also in November 2015, between 14 and 30 Hazaras were kidnapped while travelling by bus in Zabul province. According to the local authorities, the kidnappings followed a dispute over sheep with the Taliban; however, no group claimed responsibility for the attack. New York Times, *Afghan Kidnappers Prey on Hazaras*, 21 November 2015, <http://www.nytimes.com/2015/11/22/world/asia/kidnappings-escalate-in-afghanistan.html>; Free Radio Liberty, *Taliban Kidnapped Hazaras for 'Stealing Sheep'*, 21 November 2015, <http://www.rferl.org/content/afghanistan-hazaras-kidnapped/27378820.html>. See also Pajhwok, *Kidnapped Passengers in Good Health: Official*, 25 November 2015, <http://www.pajhwok.com/en/2015/11/25/kidnapped-passengers-good-health-official>. The Minority Rights Group International notes that, "This violence on the main roadway [between Kabul and Hazarajat in the centre of the country] has further isolated and thereby stalled the development of Hazarajat, which requires labour and materials from Kabul to build facilities such as schools and clinics. Both these factors have contributed to the high numbers of Hazara currently residing in Kabul, with many concentrated in one overcrowded area, Dasht-e-Barchi." Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2015 - Afghanistan*, 2 July 2015, <http://www.refworld.org/docid/55a4fa6915.html>.

⁴⁹³ Radio Free Europe / Radio Liberty, *Afghanistan's Marginalized Minority Fights Stateless Status*, July 2015, <http://gandhara.rferl.mobi/a/27100409.html>; Samuel Hall Consulting, *Jogi and Chori Frosh Communities: A Story of Marginalization* (for UNICEF), November 2011, <http://samuelhall.org/REPORTS/JOGI%20and%20CHORI%20FROSH%20Communities.pdf>, p. 15.

⁴⁹⁴ The Mosulis, who are part of the larger Jat nomadic group, are reported to be denied identity documentation by the Government. Radio Free Europe / Radio Liberty, *Afghanistan's Marginalized Minority Fights Stateless Status*, July 2015, <http://gandhara.rferl.mobi/a/27100409.html>. The Jogi, Jat, Gorbat and Chori Frosh "suffer from severe social, economic and political barriers constraining access to education and

d) Land Disputes with an Ethnic or Tribal Dimension

Land ownership is in many cases difficult to establish and, as a result, land disputes are common in Afghanistan; they frequently turn violent.⁴⁹⁵ Land grabbing is reportedly widespread, reportedly often involving powerful actors with connections to the Government, as well as public officials.⁴⁹⁶ All land registration, distribution and dispute resolution mechanisms, whether formal or informal, are reported to be afflicted by corruption.⁴⁹⁷

Conflicts about land ownership and land use rights often have an ethnic dimension, in part as a result of population movements.⁴⁹⁸ Afghans who seek to reclaim their land after returning home from displacement may be particularly vulnerable to land disputes with an ethnic dimension.⁴⁹⁹

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- employment.” ILO, *Afghanistan: Time to Move to Sustainable Jobs: Study on the State of Employment in Afghanistan*, May 2012, <http://www.refworld.org/docid/5124c39f2.html>, p. 7. See also UNICEF, *Child Notice Afghanistan*, November 2015, <http://www.refworld.org/docid/566e68344.html>, para. 56; Samuel Hall Consulting, *Jogi and Chori Frosh Communities: A Story of Marginalization* (for UNICEF), November 2011, <http://samuelhall.org/REPORTS/JOGI%20and%20CHORI%20FROSH%20Communities.pdf>. The total number of Jogi, Jat, Gorbati 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 (Gorbati); ILO, *Afghanistan: Time to Move to Sustainable Jobs: Study on the State of Employment in Afghanistan*, May 2012, <http://www.refworld.org/docid/5124c39f2.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://samuelhall.org/wp-content/uploads/2015/09/State-of-Afghan-Cities-2015-Volume_1.pdf, p. 21; see also Humanitarian Policy Group, *Sanctuary in the City? Urban Displacement and Vulnerability in Kabul*, June 2012, <http://www.odi.org.uk/resources/docs/7722.pdf>, p. 7; Afghan Civil Society Forum, *The Jogi People*, 2010, http://www.acsf.af/english/index.php?option=com_content&view=article&id=23:jogi-people&catid=9:articles&Itemid=14; and Institute for War and Peace Reporting, *Gypsies Demand their Rights*, 22 June 2009, <http://www.refworld.org/docid/4a3b58f01e.html>. 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>.
- ⁴⁹⁵ UNAMA, *The Stolen Lands of Afghanistan and its People – The Legal Framework*, March 2014, https://unama.unmissions.org/Portals/UNAMA/UNAMA_RoL_Unit_Part_1_Legal_Framework_Final-2.pdf, p. 10; Civil-Military Fusion Centre, *From Dispute to Resolution: Managing Land in Afghanistan*, October 2011, https://www.cimicweb.org/cmo/afg/Documents/Governance/Afghanistan_Land_Dispute_Resolution.pdf.
- ⁴⁹⁶ Radio Free Europe / Radio Liberty, *Afghanistan's Ghani Calls For 'Holy War' Against Corruption*, 1 September 2015, <http://www.rferl.org/content/afghanistan-ghani-holy-war-corruption/27220357.html>; Congressional Research Service, *Afghanistan: Politics, Elections, and Government Performance*, 12 January 2015, <http://www.fas.org/spp/crs/row/RS21922.pdf>, pp. 12, 16, 39; Independent Joint Anti-Corruption Monitoring and Evaluation Committee, *Report of the Public Inquiry into Land Usurpation*, November 2014, http://www.mec.af/files/2014_11_01_Final_Report_of_the_Public_Inquiry_Into_Land_Usurpation_ENGLISH.pdf, p. 27; UNAMA, *The Stolen Lands of Afghanistan and its People – The Legal Framework*, March 2014, https://unama.unmissions.org/Portals/UNAMA/UNAMA_RoL_Unit_Part_1_Legal_Framework_Final-2.pdf, p. 10. According to UNAMA, powerful individuals, including public officials, reportedly sold for personal profit land allocated for refugees and IDPs. UNAMA, *ibid.*, p. 30. The Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC, an independent anti-corruption mechanism established by the government and the international community in 2010) reported in November 2014 that, according to the Arazi, the Afghanistan Land Authority, over 1.2 million acres of land had been usurped across Afghanistan in the last 30 years. Independent Joint Anti-Corruption Monitoring and Evaluation Committee, *Report of the Public Inquiry into Land Usurpation*, November 2014, http://www.mec.af/files/2014_11_01_Final_Report_of_the_Public_Inquiry_Into_Land_Usurpation_ENGLISH.pdf, p. 49. The United States Institute of Peace noted that, “Conflicts over land are widespread in Afghanistan after decades of war, failed governance, population displacement and agricultural mismanagement. Warlords, insurgents, and government authorities continue to take advantage of the chaos to seize property they want.” United States Institute of Peace, *Afghanistan Land Conflicts Pit Nomads Against Villagers, Power Brokers Against Each Other*, 21 February 2013, <http://reliefweb.int/report/afghanistan/afghanistan-land-conflicts-pit-nomads-against-villagers-power-brokers-against>.
- ⁴⁹⁷ Independent Joint Anti-Corruption Monitoring and Evaluation Committee, *Report of the Public Inquiry into Land Usurpation*, November 2014, http://www.mec.af/files/2014_11_01_Final_Report_of_the_Public_Inquiry_Into_Land_Usurpation_ENGLISH.pdf, pp. 32-38; Independent Joint Anti-Corruption Monitoring and Evaluation Committee, *VCA Report on the Process of Land Distribution for Repatriations and Displaced People*, October 2013, <http://www.mec.af/files/VCAReportLanddistribution.pdf>; AREU, *Land, People, and the State in Afghanistan: 2002 – 2012*, February 2013, <http://www.areu.org.af/EditionDetails.aspx?EditionId=622&ContentId=7&ParentId=7>, p. 92. In the 2015 “Survey of the Afghan People”, 24.3 per cent of the respondent indicated corruption as one of the two biggest problems facing Afghanistan as a whole. The Asia Foundation, *A Survey of the Afghan People – Afghanistan in 2015*, <http://asiafoundation.org/resources/pdfs/Afghanistanin2015.pdf>, pp. 22, 97-101.
- ⁴⁹⁸ The causes of some of the conflicts about land go back to the deliberate efforts in the 19th and early 20th century by Afghanistan’s Pashtun 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 Beshud 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.cpaug.org.af/images/publications/CPAU%20Report%20-%20Fractured%20Relationships.pdf>. See also for example Minority Rights Group International, *State of the World’s Minorities and Indigenous Peoples 2015 - Afghanistan*, 2 July 2015, <http://www.refworld.org/docid/55a4fa6915.html>. The International Crisis Group noted in a 2009 report: “as Afghans attempt to resettle in their home provinces or migrate to the country’s more secure and economically productive zones, land disputes risk sparking deep-rooted tribal, ethnic or sectarian violence.” International Crisis Group, *Afghanistan: What Now for Refugees*, 31 August 2009, <http://www.refworld.org/docid/4a9b95512.html>, page i. See also AREU, *Land Conflict in Afghanistan: Building Capacity to Address*

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.⁵⁰⁰ 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.⁵⁰¹

e) *Summary*

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

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

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

14. Individuals Involved in Blood Feuds

In general, a blood feud involves the members of one family killing members of another family in retaliatory acts of vengeance which are carried out according to an ancient code of honour and behaviour.⁵⁰² 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

Vulnerability, April 2009, <http://www.refworld.org/docid/4ebabd582.html>; Freedom House, *Freedom in the World 2015 - Afghanistan*, 20 March 2015, <http://www.refworld.org/docid/55116f4111.html>.

⁴⁹⁹ According to the NRC/IDMC, "Due to the security situation, many displaced groups have lost access to their places of origin and lands, which complicates the process of claiming their rights. Furthermore, refugee-returnees and IDPs prefer secure locations where they are able to make a living and where other essential services and opportunities are available". NRC/IDMC, *Strengthening Displaced Women's Housing, Land and Property Rights in Afghanistan*, November 2014, <http://www.refworld.org/docid/5486c4684.html>, p. 27. Many families of Pashtun origin who settled in parts of the north in the early parts of the twentieth century fled during the time of the Russian occupation of Afghanistan as indigenous Uzbek, Turkmen and Hazara communities rebelled against Pashtun occupation and dominance, including in terms of controlling rights to pastures. Upon their return to their home areas in the north after several decades in displacement, they have reportedly found their homes and lands occupied, mostly by Uzbek militias. AREU, *Land Governance at the Crossroads: A Review of Afghanistan's Proposed New Land Management Law*, October 2012, <http://www.areu.org.af/ResearchProjectDetails.aspx?ContentId=2&ParentId=2&ResearchProjectId=16>, pp. 15; Brookings-Bern Project on Internal Displacement, *Beyond the Blanket: Towards More Effective Protection for Internally Displaced Persons in Southern Afghanistan*, May 2010, <http://www.refworld.org/docid/4c3d8cab2.html>; NRC/IDMC, *Internal Displacement: Global Overview of Trends and Developments in 2009 - Afghanistan*, 17 May 2010, <http://www.refworld.org/docid/4bf252560.html>; Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Afghanistan: Pashtuns*, 2008, <http://www.refworld.org/docid/49749d6745.html>; IRIN, *Ethnic Antagonism Spurs Land Disputes in North*, 11 September 2008, <http://www.irinnews.org/Report/80289/AFGHANISTAN-Ethnic-antagonism-spurs-land-disputes-in-north>; HRW, *Paying for the Taliban's Crimes: Abuses Against Ethnic Pashtuns in Northern Afghanistan*, 9 April 2002, <http://www.refworld.org/docid/3cb2ad007.html>.

⁵⁰⁰ Pajhwok, *Kochi-Hazara Dispute in Wardak Politicised: Mohammadi*, 28 July 2015, <http://www.pajhwok.com/en/2015/07/28/kochi-hazara-dispute-wardak-politicised-mohammadi>; Pajhwok, *Urgent Steps Needed to Resolve Kuchi-Hazara Conflict*, 24 June 2015, <http://archive.pajhwok.com/en/2015/06/24/urgent-steps-needed-resolve-kuchi-hazara-conflict>; Pajhwok, *5 Killed, 3 Wounded in Maidan Wardak Clash*, 12 July 2014, <http://archive.pajhwok.com/en/2014/07/12/5-killed-3-wounded-maidan-wardak-clash>. The Kuchis maintain that decrees issued by the Rahman regime at the end of the 19th century means they are entitled to use certain tracts of land as farmland and summer pastures. The Hazaras contest this, arguing that the decrees are invalid. Landinfo, *The Conflict between Hazaras and Kuchis in the Beshud Districts of Wardak Province*, 6 June 2011, <http://www.refworld.org/docid/5124c5142.html>. Similar episodes occur in other areas, see for example: Associated Press, *Coalition Strike Kills 3 Armed Afghan Villagers*, 26 December 2014, <http://news.yahoo.com/3-afghans-said-dead-foreign-forces-air-strike-124344606.html>.

⁵⁰¹ See, for example, Pajhwok, *2 Dead as Hazara-Kuchi Feud Resurfaces in Wardak*, 22 June 2015, <http://archive.pajhwok.com/en/2015/06/22/2-dead-hazara-kuchi-feud-resurfaces-wardak>; Pajhwok, *Urgent Steps Needed to Resolve Kuchi-Hazara Conflict*, 24 June 2015, <http://archive.pajhwok.com/en/2015/06/24/urgent-steps-needed-resolve-kuchi-hazara-conflict>.

⁵⁰² 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>.

groups.⁵⁰³ 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.⁵⁰⁴ Blood feuds may give rise to long cycles of retaliatory violence and revenge.⁵⁰⁵ Under Pashtunwali, in principle revenge must be taken against the offender, but under certain circumstances the offender's brother or other patrilineal kin may become the target for revenge. In general, revenge is not reported to be exacted against women and children.⁵⁰⁶ 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.⁵⁰⁷ 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.⁵⁰⁸

In light of the foregoing, UNHCR considers that persons involved in a blood feud may, depending on the circumstances of the individual case, be in need of international refugee protection on account of membership of a particular social group or other relevant grounds.⁵⁰⁹ Claims by persons involved in blood feuds may, however, give rise to the need to examine possible exclusion from refugee status. Depending on the specific circumstances of the case, family members, partners or other dependants of individuals involved in blood feuds may also be in need of international protection on the basis of their association with individuals at risk.

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

Afghans continue to be concerned about widespread corruption, racketeering and extortion.⁵¹⁰ Afghan security forces are reported to operate illegal checkpoints and to extort money and goods from

⁵⁰³ 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 *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. See also CORI, *Thematic Report Afghanistan: Blood Feuds*, February 2014, <http://www.refworld.org/docid/53199ef64.html>.

⁵⁰⁴ Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, <http://www.refworld.org/docid/5124c6512.html>, p. 13. In April 2015, two brothers died after a home in Qadis district of Badghis was stormed by armed persons believed to be the militant commander Mullah Mohammad Hassan and his men. The motive was said to be a family dispute and a local confirmed the existence of a long-standing family feud. Pajhwok News, *Two Brothers Dead in Family Feud in Badghis*, 20 April 2015, <http://www.pajhwok.com/en/2015/04/20-2-brothers-dead-family-feud-badghis>. In September 2014, in Laghman province, two men (father and son) were killed by two ALP members, because family members of the victims had allegedly killed relatives of one of the ALP members. UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 82. Blood feuds may also be triggered, or fueled, by business rivalries: see for example AAN, *Finding Business Opportunity in Conflict: Shopkeepers, Taleban and the Political Economy of Andar District*, 2 December 2015, <https://www.afghanistan-analysts.org/finding-business-opportunity-in-conflict-shopkeepers-taleban-and-the-political-economy-of-andar-district/>.

⁵⁰⁵ See for example Zeerak Fahim, *Foreign Hands Fuel Nuristan Tribal Feud*, Pajhwok News, 9 March 2015, <http://www.pajhwok.com/en/2015/03/10/foreign-hands-fuel-nuristan-tribal-feud-governor>, concerning a blood feud that lasted 16 years and killed 400 people.

⁵⁰⁶ Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, <http://www.refworld.org/docid/5124c6512.html>, p. 10.

⁵⁰⁷ Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, <http://www.refworld.org/docid/5124c6512.html>, p. 10.

⁵⁰⁸ Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, <http://www.refworld.org/docid/5124c6512.html>, p. 9.

⁵⁰⁹ For further guidance 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>; and UNHCR, *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, <http://www.refworld.org/docid/3d36f23f4.html>.

⁵¹⁰ In the 2015 edition of the annual *Survey of the Afghan People* (for which 9,586 Afghans were interviewed in June 2015), 89.9 per cent of respondents stated that corruption was a problem in their daily life, while 24.3 per cent of respondents stated that corruption was one of the two biggest problems affecting the country. The Asia Foundation, *Afghanistan in 2015*, November 2015,

travellers.⁵¹¹ The ALP in many areas are reported to demand payment of informal taxes and to use violence at police checkpoints against persons who have not paid.⁵¹² Pro-government forces, including in particular the ALP, are reported to engage in rent-seeking behaviour, for example by detaining individuals on the basis of alleged relations with the Taliban and releasing them only after extorting payments from the detainee.⁵¹³ Civilians are also reported to be asked for bribes by corrections and detention officials in order to be released from prison after having served their sentence.⁵¹⁴

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

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

<http://asiafoundation.org/resources/pdfs/Afghanistanin2015.pdf>, pp. 10, 22. Two thirds of respondents stated that they feared for their personal safety (the highest rate since 2006), with 18.2 per cent of respondents stating that they or a family member suffered from violence or crime in the past year, including in the form of racketeering or extortion. The Asia Foundation, *ibid.*, p. 33, 39.

⁵¹¹ US Department of State, 2015 Country Reports on Human Rights Practices - Afghanistan, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.

⁵¹² US Department of State, 2015 Country Reports on Human Rights Practices - Afghanistan, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; on allegations of extortion by the ANP and informal taxes by the border police, see also AREU, “90% Real” – *The Rise and Fall of a Rentier Economy: Stories from Kandahar, Afghanistan*, Working Paper 38, November 2015, <http://www.refworld.org/docid/564983154.html>.

⁵¹³ AAN, *Finding Business Opportunity in Conflict: Shopkeepers, Taleban and the Political Economy of Andar District*, 2 December 2015, <https://www.afghanistan-analysts.org/finding-business-opportunity-in-conflict-shopkeepers-taleban-and-the-political-economy-of-andar-district/>.

⁵¹⁴ US Department of State, 2015 Country Reports on Human Rights Practices - Afghanistan, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>.

⁵¹⁵ UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 73.

⁵¹⁶ UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 76.

⁵¹⁷ AAN, *The 2015 Insurgency in the North (3): The Fall and Recapture of Kunduz*, 16 October 2015, <https://www.afghanistan-analysts.org/the-2015-insurgency-in-the-north-3-the-fall-and-recapture-of-kunduz/>.

⁵¹⁸ US Department of State, 2015 Country Reports on Human Rights Practices - Afghanistan, 13 April 2016, <http://www.refworld.org/docid/5711040d4.html>; AAN, *Finding Business Opportunity in Conflict: Shopkeepers, Taleban and the Political Economy of Andar District*, 2 December 2015, <https://www.afghanistan-analysts.org/finding-business-opportunity-in-conflict-shopkeepers-taleban-and-the-political-economy-of-andar-district/>; AAN, *The 2015 Insurgency in the North (3): The Fall and Recapture of Kunduz*, 16 October 2015, <https://www.afghanistan-analysts.org/the-2015-insurgency-in-the-north-3-the-fall-and-recapture-of-kunduz/>; UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 60.

⁵¹⁹ UN Security Council, *Report of the Analytical Support and Sanctions Monitoring Team on Specific Cases of Cooperation between Organized Crime Syndicates and Individuals, Groups, Undertakings and Entities Eligible for Listing under Paragraph 1 of Security Council Resolution 2160 (2014)*, S/2015/79, 2 February 2015, <http://reliefweb.int/report/afghanistan/report-analytical-support-and-sanctions-monitoring-team-specific-cases>.

⁵²⁰ UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 59. In 2015, UNAMA documented 410 abduction incidents, almost all of which were carried out by AGEs. These 410 incidents resulted in 172 civilian casualties (145 deaths and 27 injured), marking a 39 per cent increase in the number of such incidents and a 112 per cent increase in casualties compared to 2014. UNAMA noted that both the number of abductions and the number of resulting civilian casualties were the highest recorded by UNAMA since it started documenting such incidents systematically in 2009. UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 49. Respondents to the 2015 edition of the annual *Survey of the Afghan People* (for which 9,586 Afghans were interviewed in June 2015) also indicated that kidnappings posed a significant security concern, with seven per cent of respondents choosing “kidnapping” as the most important type of violence or crime that they or a member of their family experienced in the past year, with a further six per cent choosing kidnapping as the second most important type of violence or crime that they or a member of their family experienced in the past year. The Asia Foundation, *A Survey of the Afghan People: Afghanistan in 2015*, November 2015, <http://asiafoundation.org/resources/pdfs/Afghanistanin2015.pdf>, p. 189.

forces members.”⁵²¹ UNAMA noted that a significant number of kidnapping victims are Hazaras.⁵²² However, in other cases the primary reason for the kidnappings is reported to be financial gain,⁵²³ with businessmen and other individuals who have or who are perceived to have financial means the main targets.⁵²⁴ According to UNAMA, victims of abductions released by AGEs continue to be contacted by their former captors with demands for money or other forms of support.⁵²⁵

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);⁵²⁶ or on the basis of their race/ethnicity or their religion,⁵²⁷ the individual concerned may, depending on the individual circumstances of the case, be in need of international protection on these grounds. In other cases, a person at risk of kidnapping for ransom may be found to be targeted as a member of a particular social group, and may, depending on the individual circumstances of the case, be in need of international protection on this basis.

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

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

A detailed analytical framework for assessing the availability of an internal flight or relocation alternative (IFA/IRA), sometimes also referred to as internal protection alternative,⁵²⁸ 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.*⁵²⁹

An assessment of the possibility of relocation requires an assessment of the relevance as well as the reasonableness of the proposed IFA/IRA.⁵³⁰ 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

⁵²¹ UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, pp. 59-60.

⁵²² UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 50.

⁵²³ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 49; UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 59.

⁵²⁴ See UN Security Council, *Report of the Analytical Support and Sanctions Monitoring Team on Specific Cases of Cooperation between Organized Crime Syndicates and Individuals, Groups, Undertakings and Entities Eligible for Listing under Paragraph 1 of Security Council Resolution 2160 (2014)*, S/2015/79, 2 February 2015, <http://reliefweb.int/report/afghanistan/report-analytical-support-and-sanctions-monitoring-team-specific-cases>, para. 37. President Ghani acknowledged the issue at an international forum. Tolo News, *In China, Ghani Discusses Needs, Expectations of Afghan Businessmen*, 1 November 2014, <http://www.tolonews.com/en/afghanistan/16963-in-china-ghani-discusses-needs-expectations-of-afghan-businessmen>.

⁵²⁵ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 49.

⁵²⁶ See Section III.A.1.

⁵²⁷ See Sections III.A.5 and III.A.13.

⁵²⁸ European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 13 December 2011, <http://www.refworld.org/docid/4f197df02.html>, Article 8.

⁵²⁹ UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>.

⁵³⁰ In relation to applications for international protection in EU Member States, Article 8 of the 2011 Qualification Directive applies. It includes both a relevance and reasonable test. 2011 Qualification Directive, Article 8.

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.⁵³¹

If an IFA/IRA is considered in asylum procedures, a particular area of proposed relocation must be identified, and the applicant must be given an adequate opportunity to respond to the purported relevance and reasonableness of the proposed IFA/IRA.⁵³²

1. Relevance Analysis

In assessing the relevance of an IFA/IRA for Afghan applicants, it is of particular importance to consider: (i) the requirement that the proposed area of relocation must be durably safe, and (ii) the fact that the area of prospective IFA/IRA must be practically, safely and legally accessible to the individual.⁵³³ In light of the first requirement, particular attention must be given to the volatility and fluidity of the armed conflict in Afghanistan, and the fact that provinces and districts that were previously not directly affected by the conflict have seen a deterioration of the security situation and attendant displacement.⁵³⁴ The second requirement entails an assessment of the concrete prospects of safely accessing the proposed area of relocation, including by assessing the risks associated with the widespread use of IEDs and presence of landmines and explosive remnants of war (ERW) throughout the country; attacks and fighting taking place on roads; and restrictions on civilians' freedom of movement imposed by AGEs.⁵³⁵

Where the applicant has a well-founded fear of persecution at the hands of the State or its agents, there is a presumption that consideration of an IFA/IRA is not relevant for areas under the control of the State.⁵³⁶

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

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

Where the agents of persecution are AGEs, consideration must be given to whether the persecutor is

⁵³¹ UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 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".

⁵³² UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 6.

⁵³³ UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 7.

⁵³⁴ For example, provinces in the North Eastern region such as Takhar, Badakhshan and Baghlan that had previously not seen forced population movements saw significant conflict-induced displacement in 2015. UNHCR, *Major Situations of Conflict-Induced Displacement in the First Months of 2016*, 24 February 2016, http://www.unhcr.af/UploadDocs/DocumentLibrary/UNHCR_Summary_note_on_conflict_IDPs_APC_24.02.2016_635924216039050000.pdf.

⁵³⁵ Many areas of Afghanistan are not safely accessible as a substantial number of main roads are considered insecure. Adjudicators must carefully consider current country conditions and risks in this regard. See for example UN Secretary-General, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 7 March 2016, A/70/775-S/2016/218, <http://www.refworld.org/docid/56f2667d4.html>; UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>.

⁵³⁶ UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, paras 7, 13, 27.

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

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

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

2. Reasonableness Analysis

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

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

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

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

⁵³⁷ See for example Al Jazeera, *Suicide Attacks Kill Dozens in Afghanistan*, 27 February 2016, <http://www.aljazeera.com/news/2016/02/suicide-bomber-kills-11-eastern-afghanistan-160227062901757.html>; Al Jazeera, *Deadly Suicide Attack Rocks Afghanistan's Capital*, 1 February 2016, <http://www.aljazeera.com/news/2016/02/suicide-attack-rocks-afghan-capital-police-160201093751757.html>; UN News Service, *Security Council Deplores Latest Terrorist Attacks in Afghan Capital*, 9 August 2015, <http://www.refworld.org/docid/55c84f9e1f7.html>.

⁵³⁸ UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, paras 25-26.

⁵³⁹ UNHCR, *ibid.*, paras 24, 27-30.

⁵⁴⁰ See UNHCR, *ibid.*, para. 27.

⁵⁴¹ See UNHCR, *ibid.*, para. 28.

- (i) the effective availability of traditional support mechanisms, provided by members of the applicant's extended family or members of his or her ethnic group;
- (ii) access to shelter in the proposed area of relocation;
- (iii) 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;
- (iv) the presence of livelihood opportunities, including access to land for Afghans originating from rural areas,⁵⁴² and
- (v) the scale of internal displacement in the proposed area of relocation.

Applicants may be able to fall back on the support of members of their extended family or members of their larger ethnic group. However, the existence of such traditional support networks can be assumed to weigh in favour of the reasonableness of a proposed IFA/IRA only when the members of the applicant's extended family or wider ethnic group are assessed to be willing and able to provide genuine support to the applicant in practice, taking into account Afghanistan's low humanitarian and developmental indicators and the wider economic constraints affecting large segments of the population.⁵⁴³ Moreover, 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 in the absence of specific pre-existing social relations connecting the applicant to individual members of the ethnic community in question.⁵⁴⁴ 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 the reported stigma and discrimination against those who return to Afghanistan after spending time abroad.⁵⁴⁵

⁵⁴² 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.

⁵⁴³ According to a survey conducted by the Food Security and Agricultural Cluster Afghanistan in May-June 2015, 5.9 per cent of the population (1.57 million people) is severely food insecure, compared to 4.7 per cent in 2014. A further 27.5 per cent (7.3 million people) is moderately food insecure. The survey also indicated that the proportion of severely food insecure people who have already exhausted their capacity to cope with these emergencies has increased, meaning many more are now forced to sell land, take children out of school to work, or depend on relatives for support. Food Security and Agricultural Cluster Afghanistan, *Seasonal Food Security Assessment (SFSA) May-June 2015 Afghanistan*, 31 August 2015, http://foodsecuritycluster.net/sites/default/files/SFSA_2015_Final_0.pdf, pp. 5-7. Families that host IDPs are themselves at risk of depleting their resources; see for example UNHCR, *Afghanistan - Conflict-Induced Internal Displacement Monthly Update*, May 2015, <http://www.refworld.org/docid/5594f2544.html>, p. 3.

⁵⁴⁴ While some safety nets reportedly exist at the communal level in urban areas, through which vulnerable households can access informal loans and intra-community charity, such mechanisms are reportedly in decline and can also be exclusionary towards newly arrived IDPs. Samuel Hall Consulting, *Urban Poverty Report: A Study of Poverty, Food Insecurity and Resilience in Afghan Cities (report commissioned by Danish Refugee Council and People in Need)*, November 2014, <http://samuelhall.org/wp-content/uploads/2014/11/DRC-PIN-Urban-Poverty-Report.pdf>, p. 9. A spate of 'insider attacks', where perpetrators pretend to be a friendly guest only for them then to attack their hosts, has reportedly weakened the tradition of 'Pashtunwali' and its strict codes of hospitality. New York Times, *Afghans See a Collapse of Tradition in a Spate of Devious Attacks*, 3 September 2015, <http://www.nytimes.com/2015/09/04/world/asia/afghans-see-devious-attacks-as-sign-of-wars-toll-on-traditional-values.html>. Due to the deteriorating security situation, returnees reportedly "end up stuck in an overcrowded Kabul, far from family networks essential to survival in Afghanistan." Reuters, *Sent Back from Europe, Some Afghans Prepare to Try Again*, 16 November 2015, <http://www.reuters.com/article/2015/11/16/us-afghanistan-migrants-insight-idUSKCN0T50E020151116>. According to the Afghanistan Migrants Advice and Support Organisation: "There are a large number of returnees who fled Afghanistan as minors and have been returned to Afghanistan now. Most of the boys interviewed by the organisation have been searching for their families for years and years, when they did not find any clues they give up. They are living alone now." UNICEF, *Child Notice Afghanistan*, November 2015, <http://www.refworld.org/docid/56430b2d4.html>.

⁵⁴⁵ Family networks are reported to play an essential role in offering support and livelihood opportunities for returnees. However, such support may be withdrawn if the returnee is perceived to bring shame to the family, including because the returnee is perceived to have come under the influence of Western culture. Schuster, L. & Majidi, N., *What Happens Post-Deportation? The Experience of Deported Afghans*, 2013, *Migration studies*, 1(2), pp. 221-240, <http://openaccess.city.ac.uk/4717/1/2013%20Schuster%20Majidi%20.pdf>. According to long-term research by the Refugee Support Network (RSN) tracking a group of young men returned from the United Kingdom to Afghanistan, "The simple existence of family in Afghanistan does not equate to protection for the returnees. Some young people are not welcomed by family as they have returned from the UK without having met family expectations of their initial migration, while, for others families' resources are too limited for them to provide for a returning young person." The RSN also noted that the majority of those tracked 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, *After Return: Documenting The Experiences of Young People Forcibly Removed to Afghanistan*, April 2016, https://refugeesupportnetwork.org/sites/default/files/files/After%20Return_RSN_April%202016.pdf, pp. 6, 22. According to interviews carried out by USIP in Kabul in November 2015, "NGOs involved in the reintegration of returnees report challenges that young people in particular face, including feelings of alienation from the wider community, especially in urban areas, as well as discrimination." USIP, *The Forced Return of Afghan Refugees and Implications for Stability*, January 2016, <http://www.usip.org/sites/default/files/PB199-The-Forced-Return-of-Afghan-Refugees-and-Implications-for-Stability.pdf>, p. 3. Returnees reportedly face a general assumption that they have become 'westernized' or 'anti-Islamic' in Europe. Many also reportedly feel they have disappointed their family and become a drain on the family's

Where the proposed area of relocation is an urban area where the applicant has no access to pre-identified accommodation and livelihood options, and where he or she cannot reasonably be expected to be able to fall back on meaningful support networks, the applicant would likely find him- or herself in a situation comparable to that of other urban IDPs. To assess the reasonableness of such an outcome, adjudicators need to take into account the scale of internal displacement in the area of prospective relocation, and the living conditions of IDPs in that location. Relevant considerations in this regard include the fact that IDPs are considered to be among the most vulnerable groups in Afghanistan, many of whom are beyond the reach of humanitarian organizations;⁵⁴⁶ as well as available information to the effect that urban IDPs are more vulnerable than the non-displaced urban poor, as they are particularly affected by unemployment; limited access to water and sanitation; and food insecurity.⁵⁴⁷ The limited availability of adequate housing must also be taken into account, including in particular for IDPs, with land allocation schemes reportedly often ill-managed and marred with corruption (see also Section II.E).⁵⁴⁸

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

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

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

resources. PRIO, *Can Afghans Reintegrate after Assisted Return from Europe?*, July 2015, http://file.prio.no/publication_files/PRIO/Oeppen%20-%20Can%20Afghans%20Reintegrate%20after%20Assisted%20Return%20from%20Europe.%20PRIO%20Policy%20Brief%207-2015.pdf. See also BBC, *The Young People Sent Back to Afghanistan*, 17 July 2015, <http://www.bbc.com/news/magazine-33524193>; Catherine Gladwell, "No Longer a Child: from the UK to Afghanistan", *Forced Migration Review*, Issue 44, September 2013, <http://www.fmreview.org/en/detention.pdf>, pp. 63-64.

⁵⁴⁶ A joint study by Samuel Hall, NRC/IDMC and the Joint IDP Profiling Service in 2012 found that, "Approximately 90 per cent of IDPs interviewed qualified as extremely vulnerable individuals (EVI) whose socio-economic profiles place them not only below national averages, but also at significant risk of living in life-threatening conditions." Samuel Hall Consulting, *Challenges of IDP Protection: Research Study on the Protection of Internally Displaced Persons in Afghanistan*, November 2012, https://www.nrc.no/archiv_img/9154086.pdf, p. 22. See also UNHCR, *Afghanistan: Conflict-Induced Internal Displacement Monthly Update*, June 2015, <http://www.refworld.org/docid/55ba09dc4.html>; OCHA, *Afghanistan 2015 Humanitarian Response Plan: Mid-Year Review of Financing, Achievements and Response Challenges*, 18 August 2015, <http://reliefweb.int/report/afghanistan/afghanistan-2015-humanitarian-response-plan-mid-year-review-financing>, p. 4. See also Section II.E.

⁵⁴⁷ For further details, see Section II.E.

⁵⁴⁸ Government of the Islamic Republic of Afghanistan, *The State of Afghan Cities 2015*, September 2015, <http://unhabitat.org/books/soac2015/>, p.17. See also NRC/IDMC, *Still at Risk: Security of Tenure and the Forced Eviction of IDPs and Refugee Returnees in Urban Afghanistan*, 11 February 2014, <http://www.refworld.org/docid/52fb2aab4.html>, p. 17 UNAMA, *The Stolen Lands of Afghanistan and its People – The State Land Distribution System*, March 2015, https://unama.unmissions.org/sites/default/files/unama_land_report_2_state_land_distribution_system_final_19march15_0.pdf, p. 30.

⁵⁴⁹ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations Treaty Series, Vol. 1577, p. 3, <http://www.refworld.org/docid/3ae6b38f0.html>. See also UNHCR, *Special Measures Applying to the Return of Unaccompanied and Separated Children to Afghanistan*, August 2010, <http://www.refworld.org/docid/4c91dbb22.html>.

⁵⁵⁰ 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 53-57. See also *AA (unattended children) Afghanistan v. Secretary of State for the Home Department*, CG [2012] UKUT 00016 (IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 6 January 2012, <http://www.refworld.org/docid/4f293e452.html>, where the Upper Tribunal found that "the background evidence demonstrates that unattached children returned to Afghanistan may, depending upon their individual circumstances and the location to which they are returned, be exposed to a risk of serious harm, inter alia from indiscriminate violence, forced recruitment, sexual violence, trafficking and a lack of adequate arrangements for child protection." (*Ibid.*, para. 92). See furthermore Catherine Gladwell and Hannah Elwyn, "Broken Futures: Young Afghan Asylum Seekers in the UK and on Return to their Country of Origin", *UNHCR, New Issues in Refugee Research, Research Paper No. 246*, October 2012, <http://www.unhcr.org/5098d2679.html>.

heads of household with no male protection, as they will not be able to lead a life without undue hardship and they can be at heightened risk, including in urban areas.⁵⁵¹

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

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

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

In the case of unaccompanied and separated children from Afghanistan, UNHCR considers that in addition to the requirement of meaningful support of the child's own (extended) family or larger ethnic community in the area of prospective relocation, it must be established that relocation is in the best interest of the child. The return of unaccompanied and separated children to Afghanistan is furthermore subject to the minimum safeguards identified in the 2010 *Aide-mémoire: Special Measures Applying to the Return of Unaccompanied and Separated Children to Afghanistan*.⁵⁵²

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

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

⁵⁵¹ The Higher Administrative Court in Lower Saxony has reportedly determined that westernized Afghan women would be exposed to violence and severe violations of human rights if they were to return to Afghanistan. Deutsche Welle, *Deportation to Afghanistan: Safe or Unsafe Origin?*, 8 November 2015, <http://www.dw.com/en/deportation-to-afghanistan-safe-or-unsafe-origin/a-18835069>. A study by the NRC and The Liaison Office found that women IDPs reportedly face greater difficulties in accessing community support, as in addition to the loss of networks from their places of origin, they also "have a hard time establishing new networks in the places of displacement due to not being permitted to venture outside their homes." Many displaced women and girls the researchers interviewed "demonstrated a palpable feeling of despair, [with] an alarming number wishing for death or regret at having been born" due to their disproportionately poor living conditions and restricted mobility and community support. Norwegian Refugee Council / The Liaison Office, *Listening to Women and Girls Displaced to Urban Afghanistan*, 26 March 2015, <http://www.refworld.org/docid/5513bec24.html>, pp. 8, 16. See also United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), *AK (Article 15(c)) Afghanistan CG v. Secretary of State for the Home Department*, [2012] UKUT 00163(IAC), 18 May 2012, <http://www.refworld.org/docid/4fba408b2.html>, where the Tribunal states, "Nevertheless, this position is qualified (both in relation to Kabul and other potential places of internal relocation) for certain categories of women. The purport of the current Home Office OGN on Afghanistan is that whilst women with a male support network may be able to relocate internally, "...it would be unreasonable to expect lone women and female heads of household to relocate internally" (February 2012 OGN, 3.10.8) and the Tribunal sees no basis for taking a different view." In *N v. Sweden* (Application no. 23505/09, 20 July 2010, <http://www.refworld.org/docid/4c4d4e4e2.html>), the European Court of Human Rights noted that women were at a particularly heightened risk of ill-treatment in Afghanistan if they were perceived as not conforming to the gender roles ascribed to them by society, tradition or the legal system. The mere fact that the applicant had lived in Sweden might well be perceived as having crossed the line of acceptable behaviour. The fact that she wanted to divorce her husband, and in any event did not want to live with him any longer, might result in serious life-threatening repercussions upon her return to Afghanistan. Reports had further shown that a high proportion of Afghan women were affected by domestic violence, acts which the authorities saw as legitimate and therefore did not prosecute. Unaccompanied women, or women without a male "tutor", faced continuous severe limitations to having a personal or professional life, and social exclusion. They also often plainly lacked the means for survival if not protected by a male relative. Consequently, the Court found that if N. were deported to Afghanistan, Sweden would be in violation of Article 3 of ECHR.

⁵⁵² UNHCR, *Special Measures Applying to the Return of Unaccompanied and Separated Children to Afghanistan*, August 2010, <http://www.refworld.org/docid/4c91dbb22.html>.

individuals or groups of persons who meet these criteria are duly recognized and protected under that instrument. Only when an asylum-seeker is found not to meet the refugee criteria in the 1951 Convention should broader international protection criteria as contained in UNHCR's mandate and regional instruments be examined, including subsidiary protection.⁵⁵³

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

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

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 Protocol,⁵⁵⁵ but has been broadened through successive UN General Assembly and ECOSOC resolutions to a variety of other situations of forced displacement resulting from indiscriminate violence or public disorder.⁵⁵⁶ In light of this evolution, UNHCR's competence to provide international protection to refugees extends to individuals who are outside their country of origin or habitual residence and who are unable or unwilling to return there owing to serious threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.⁵⁵⁷

In the context of Afghanistan, indicators to assess the threat to life, physical integrity or freedom resulting from generalized violence include: (i) the number of civilian casualties as a result of indiscriminate acts of violence, including bombings, air strikes, suicide attacks, IED explosions and landmines (see Section II.B.1); (ii) the number of conflict-related security incidents (see Section II.B.2); and (iii) the number of people who have been forcibly displaced due to conflict (see Section II.E).

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,

⁵⁵³ See UNHCR Executive Committee, *Conclusion on the Provision on International Protection Including through Complementary Forms of Protection*, No. 103 (LVI) – 2005, 7 October 2005, <http://www.refworld.org/docid/43576e292.html>.

⁵⁵⁴ As regards regional instruments, see the refugee definitions contained in the 1969 OAU Convention, Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa* ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45, <http://www.refworld.org/docid/3ae6b36018.html> and in the Cartagena Declaration, *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>. Complementary forms of protection include subsidiary protection under Article 15 of the 2011 Qualification Directive. European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 13 December 2011, <http://www.refworld.org/docid/4f197df02.html>.

⁵⁵⁵ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, Vol. 189, p. 137, <http://www.refworld.org/docid/3be01b964.html> and UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations Treaty Series, Vol. 606, p. 267, <http://www.refworld.org/docid/3ae6b3ae4.html>.

⁵⁵⁶ UNHCR, *Providing International Protection Including Through Complementary Forms of Protection*, 2 June 2005, EC/55/SC/CRP.16, available at: <http://www.refworld.org/docid/47fd49d.html>; UN General Assembly, *Note on International Protection*, 7 September 1994, A/AC.96/830, <http://www.refworld.org/docid/3f0a935f2.html>.

⁵⁵⁷ See for example UNHCR, *MM (Iran) v. Secretary of State for the Home Department - Written Submission on Behalf of the United Nations High Commissioner for Refugees*, 3 August 2010, C5/2009/2479, <http://www.refworld.org/docid/4c6aa7db2.html>, para. 10.

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

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

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

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

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

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

⁵⁵⁸ UNHCR, *Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence: Roundtable 13 and 14 September 2012, Cape Town, South Africa*, 20 December 2012, <http://www.refworld.org/docid/50d32e5e2.html>, paras 10-12.

⁵⁵⁹ Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa* ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45, <http://www.refworld.org/docid/3ae6b36018.html>. The definition of the term "refugee" as contained in Article I of the 1969 OAU Convention has been incorporated into Article I of the *Bangkok Principles on the Status and Treatment of Refugees* (Bangkok Principles). See Asian-African Legal Consultative Organization (AALCO), *Bangkok Principles on the Status and Treatment of Refugees* (Final Text of the AALCO's 1966 Bangkok Principles on Status and Treatment of Refugees, as adopted on 24 June 2001 at the AALCO's 40th Session, New Delhi), <http://www.refworld.org/docid/3de5f2d52.html>.

⁵⁶⁰ 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/50fd3edb2.html>; Alice Edwards, "Refugee Status Determination in Africa", 14 *African Journal of International and Comparative Law* 204-233 (2006); UNHCR, *Extending the Limits or Narrowing the Scope? Deconstructing the OAU Refugee Definition Thirty Years On*, April 2005, ISSN 1020-7473, <http://www.refworld.org/docid/4ff168782.html>.

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

c) Refugee Status under the Cartagena Declaration

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

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

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

The consideration of possible internal relocation is not generally relevant to the determination of refugee status under Article I(2) of the OAU Convention.⁵⁶²

For individuals found to be in need of international protection under UNHCR’s broader mandate criteria or under the Cartagena Declaration, an assessment of the possibility of relocation requires an assessment on a case-by-case basis of the relevance as well as the reasonableness of the proposed IFA/IRA. The individual elements of the relevance test and the reasonableness test as set out in Section III.B apply.

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

⁵⁶¹ *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>, Section III.3. Although the Cartagena Declaration is included in a non-binding regional instrument, the Cartagena refugee definition has attained a particular standing in the region, not least through its incorporation into 14 national laws and State practice. For guidance on the interpretation of the refugee definition in the Cartagena Declaration, see: UNHCR, *Summary Conclusions on the Interpretation of the Extended Refugee Definition in the 1984 Cartagena Declaration: Roundtable 15 and 16 October 2013, Montevideo, Uruguay*, 7 July 2014, <http://www.refworld.org/docid/53c52e7d4.html>.

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

⁵⁶³ See UNHCR, *ibid.*, para. 28.

⁵⁶⁴ See UNHCR, *ibid.*, para. 27.

3. Eligibility for Subsidiary Protection under the EU Qualification Directive

Afghans who seek international protection in Member States of the European Union and who are found not to be refugees under the 1951 Convention may qualify for subsidiary protection under Article 15 of the 2011 Qualification Directive, if there are substantial grounds for believing that they would face a real risk of serious harm in Afghanistan.⁵⁶⁵ In light of the information presented in Section II.C of these Guidelines, applicants may, depending on the individual circumstances of the case, be in need of subsidiary protection under Article 15(a) or Article 15(b) on the grounds of a real risk of the relevant forms of serious harm (death penalty⁵⁶⁶ or execution; or torture or inhuman or degrading treatment or punishment), either at the hands of the State or its agents, or at the hands of AGEs.⁵⁶⁷

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

In the context of the armed conflict in Afghanistan, factors to be taken into account to assess the threat to the life or person of an applicant by reason of indiscriminate violence in a particular part of the country include the number of civilian casualties, the number of security incidents, as well as the existence of serious violations of international humanitarian law which constitute threats to life or physical integrity. Such considerations are not, however, limited to the direct impact of the violence, but also encompass the consequences of violence that are more long-term and indirect, including the impact of the conflict on the human rights situation and the extent to which the conflict impedes the ability of the State to protect human rights. In the context of the conflict in Afghanistan, relevant factors in this respect are (i) the control over civilian populations by AGEs, including through the imposition of parallel justice structures and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, restrictions on freedom of movement, and the use of extortion and illegal taxation; (ii) forced recruitment; (iii) the impact of violence and insecurity on the 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.⁵⁶⁸

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

⁵⁶⁵ Serious harm for the purposes of the Qualification Directive is defined as (a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict. European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 13 December 2011, <http://www.refworld.org/docid/4f197df02.html>, arts 2(f), 15.

⁵⁶⁶ Under Article 24 of Afghanistan's Penal Code, the death penalty may be imposed for felony crimes. *Penal Code* [Afghanistan], No. 1980, 22 September 1976, <http://www.refworld.org/docid/4c58395a2.html>. Under Article 1 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. 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>. In October 2014, five men were hanged in Kabul after having been found guilty for a gang rape in a trial that was heavily criticized by international observers. Reuters, *Afghanistan Hangs Five Men over Gang Rape, Despite Concerns of Rights Groups (Update 1)*, 8 October 2014, <http://in.reuters.com/article/afghanistan-execution-idINL3NOS33BR20141008>. See also Cornell Law School, *Death Penalty Database*, <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Afghanistan>.

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

⁵⁶⁸ UNHCR, *Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence; Roundtable 13 and 14 September 2012, Cape Town, South Africa*, 20 December 2012, <http://www.refworld.org/docid/50d32e5e2.html>, paras 10-12.

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.⁵⁶⁹ Where, after all relevant evidence has been considered, this is found not to be the case in the part of Afghanistan from which the applicant originates, it falls to be considered whether the applicant's individual characteristics are such as to reveal specific vulnerabilities which, combined with the nature and the extent of the violence, give rise to a serious and individual threat to the applicant's life or person.

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

Where it has been established that an individual would be at risk of serious harm in their area of origin in Afghanistan, decision-makers in EU Member States may proceed to consider the possibility of internal protection in another part of Afghanistan under Article 8 of the Qualification Directive.⁵⁷⁰ In relation to decisions about the availability of internal protection in Afghanistan, the considerations regarding the relevance and reasonableness of an internal protection alternative presented in Section III.B apply.

D. Exclusion from International Refugee Protection

In light of the serious human rights abuses and violations of international humanitarian law during Afghanistan's long history of armed conflicts, exclusion considerations under Article 1F of the 1951 Convention may arise in individual claims by Afghan asylum-seekers. Exclusion considerations will be triggered if there are elements in the applicant's claim that suggest that he or she may have been associated with the commission of crimes within the scope of Article 1F. Given the potentially serious consequences of exclusion from international refugee protection, the exclusion clauses need to be interpreted restrictively and applied with caution. A full assessment of the circumstances of the individual case is required in all cases.⁵⁷¹

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;⁵⁷² (iii) the non-international armed conflict which followed, with mujahideen forces led by various commanders fighting against the Government and pro-government

⁵⁶⁹ See Court of Justice of the European Union, *Elgafaji v. Staatssecretaris van Justitie*, C-465/07, 17 February 2009, <http://www.refworld.org/docid/499aace52.html>, where the Court of Justice of the European Union held (at para. 43) that the existence of a serious and individual threat to the life or person of an applicant "can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place [...] reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat."

⁵⁷⁰ European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 13 December 2011, <http://www.refworld.org/docid/4f197df02.html>, article 8.

⁵⁷¹ Detailed guidance on the interpretation and application of Article 1F of the 1951 Convention can be found in UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, 4 September 2003, <http://www.refworld.org/docid/3f5857684.html>; and *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>.

⁵⁷² For an overview of the events leading up to the Soviet invasion in 1979 and a discussion of the applicable rules of international humanitarian law (IHL), see Michael Reisman and James Silk, "Which Law Applies to the Afghan Conflict?", *Faculty Scholarship Series*, Paper 752, 1988, http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1745&context=fss_papers.

armed groups until the Taliban took control over Kabul in September 1996; (iii) the non-international armed conflict between the Taliban and the United Front, also known as Northern Alliance between 1996 and the ouster of the Taliban in 2001; (iv) the international armed conflict which began with the intervention on 6 October 2001 led by the United States and which ended with the election of an Afghan Government in June 2002, following a period of occupation from the fall of the Taliban regime⁵⁷³ and (v) the non-international armed conflict between the Government and the Taliban and other armed groups which continues until the present day.⁵⁷⁴

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

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

⁵⁷³ See ICRC, *International Law and Terrorism: Questions and Answers*, 1 November 2011, <http://www.icrc.org/eng/resources/documents/faq/terrorism-faq-050504.htm>.

⁵⁷⁴ UN Security Council, *Security Council Resolution 2255 (2015) [on Sanctions Concerning Individuals and Entities and Other Groups and Undertakings Associated with the Taliban and the Threat International Terrorism Poses to Afghanistan]*, 22 December 2015, S/RES/2255 (2015), <http://www.refworld.org/docid/568fd2454.html>; UNAMA, *Afghanistan: Midyear Report 2015, Protection of Civilians in Armed Conflict*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 81.

⁵⁷⁵ 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/47fd520.html>, para. 134. Serious violations of the aforementioned rules of IHL that occurred earlier 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)).

⁵⁷⁶ 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 33-36.

⁵⁷⁷ For an overview of various violations of international human rights and humanitarian law in Afghanistan, see, for example, UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>; UN Security Council, *Security Council resolution 2255 (2015) [on Sanctions Concerning Individuals and Entities and Other Groups and Undertakings Associated with the Taliban and the Threat International Terrorism Poses to Afghanistan]*, 22 December 2015, S/RES/2255 (2015), <http://www.refworld.org/docid/568fd2454.html>; HRW, *Afghanistan: Generals Put Civilians at Risk*, 29 June 2015, <http://www.refworld.org/docid/55963b794.html>; HRW, *“Today We Shall All Die”: Afghanistan’s Strongmen and the Legacy of Impunity*, 3 March 2015, <http://www.refworld.org/docid/54f6c1e44.html>; Amnesty International, *Amnesty International Report 2014/15 - Afghanistan*, 25 February 2015, <http://www.refworld.org/docid/54f07e2215.html>. For additional information, see Section II.

⁵⁷⁸ According to UNODC, all actors involved in destabilizing Afghanistan are directly or indirectly linked to the drug economy. Insurgents’ access to the opium economy is said to result in increased military capabilities, prolong conflict and fuel insecurity across Afghanistan as groups fight for control of routes and territory. See UNODC, *Addiction, Crime and Insurgency. The Transnational Threat of Afghan Opium*, October 2009, <http://www.refworld.org/docid/4ae1660d2.html>. See also AREU, *The Devil Is in the Details: Nangarhar’s Continued Decline into Insurgency, Violence and Widespread Drug Production*, February 2016, <http://www.refworld.org/docid/56c2eaa34.html>, pp. 2, 8-9; UN Security Council, *Security Council resolution 2255 (2015) [on Sanctions Concerning Individuals and Entities and Other Groups and Undertakings Associated with the Taliban and the Threat International Terrorism Poses to Afghanistan]*, 22 December 2015, S/RES/2255 (2015), <http://www.refworld.org/docid/568fd2454.html>, para. 4.

⁵⁷⁹ See for example UN Secretary-General, *Report of the Secretary-General on the Threat of Terrorists Benefiting from Transnational Organized Crime*, 20 May 2015, S/2015/366, <http://www.refworld.org/docid/5587db984.html>, para. 26; Al Jazeera, *Afghanistan’s Billion*

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.⁵⁸⁰ Otherwise, such crimes may give rise to exclusion as serious non-political crimes within the meaning of Article 1F(b) of the 1951 Convention.⁵⁸¹

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

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

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

Dollar Drug War, 6 May 2015, <http://www.aljazeera.com/programmes/101east/2015/05/afghanistan-billion-dollar-drug-war-150505073109849.html>; UNODC, *Afghanistan Opium Survey 2012*, May 2013, http://www.unodc.org/documents/crop-monitoring/Afghanistan/Afghanistan_OS_2012_FINAL_web.pdf, pp. 47-48.

⁵⁸⁰ 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(a) – "crimes against humanity".

⁵⁸¹ 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 37-45.

⁵⁸² For more detailed guidance, see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras 46-49.

⁵⁸³ For exclusion based on Article 1F(b) to apply, the geographic ('outside the country of refuge') and temporal ('prior to admission to that country as a refugee') criteria under this provision must also be met; see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras 41 and 81.

⁵⁸⁴ IHL does not provide a definition of terrorism. However, it prohibits, during armed conflict, most acts that would commonly be considered terrorist if they were committed in peacetime. The decisive question is whether a particular conduct satisfies the material and mental elements required to establish a war crime under IHL. Those acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are specifically prohibited in Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II to the 1949 Geneva Conventions. In its Commentary to Article 13 of Additional Protocol II, the ICRC notes that "attacks aimed at terrorizing are just one type of attack, but they are particularly reprehensible." See ICRC, *Commentary to Article 13 of Additional Protocol No. II of 1977*, <http://www.icrc.org/ihl.nsf/COM/475-760019?OpenDocument>, para. 4785. More detailed information on terrorism and the law of armed conflict can be found on the website of the ICRC, at <http://www.icrc.org/eng/resources/documents/faq/terrorism-faq-050504.htm>. See also ICTY, *Prosecutor v. Galic*, Case No. IT-98-29A, Appeal Chamber judgment of 30 November 2006, <http://www.refworld.org/docid/47dfb565.html>, paras 98 and 102-104.

⁵⁸⁵ There is an overlap between these two exclusion grounds, as acts which fall within Article 1F(a) are also "contrary to the purposes and principles of the United Nations"; see UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, <http://www.refworld.org/docid/4f33c8d92.html>, para. 162.

⁵⁸⁶ 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/3f5857d24.html>, paras 46-49. See also UNHCR, *Yasser al-Sirri (Appellant) v. Secretary of State for the Home Department (Respondent) and DD (Afghanistan) (Appellant) v. Secretary of State for the Home Department (Respondent): UNHCR'S Composite Case in the Two Linked Appeals*, 23 March 2012, <http://www.refworld.org/docid/4f6c92b12.html>.

participated in its commission in a manner that gives rise to criminal liability, for example through ordering, instigating, aiding and abetting, or by contributing to the commission of a crime by a group of persons acting with a common purpose. For persons in positions of authority within a military or civilian hierarchy, individual responsibility may also arise on the basis of command/superior responsibility. Defences to criminal responsibility, if any, as well as considerations related to proportionality apply. Evidence about practices of forced recruitment, including in particular of children, needs to be taken into consideration in this regard.

Membership in government armed forces, police, intelligence or security apparatus, or in an armed group or militia, is not in itself a sufficient basis to exclude an individual from refugee status. The same applies to government officials and civil servants. In all such cases, it is necessary to consider whether the individual concerned was personally involved in excludable acts, or participated in the commission of such acts in a manner that gives rise to individual responsibility under the relevant criteria of international law. A careful assessment of the circumstances pertaining to each individual case is required.⁵⁸⁷

In 2008, the Government adopted the National Stability and Reconciliation Law,⁵⁸⁸ 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 2001.⁵⁸⁹ In UNHCR's view, this does not mean that exclusion may not be applied where crimes within the scope of Article 1F were committed prior to that date. Given the heinous nature of many of the crimes committed by various actors in Afghanistan throughout the past decades, UNHCR considers that the amnesty law is without incidence for the examination of the possible application of exclusion clauses under Article 1F.⁵⁹⁰

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

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

⁵⁸⁷ These considerations would apply to applicants who held official functions as government officials or civil servants in the Afghan Interim Administration between December 2001 and July 2002, the Afghan Transitional Administration between July 2002 and October 2004, or the Government of Afghanistan since the formation of the first Government led by President Karzai in late 2004. For more detailed guidance, see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras 50-73 and paras 76-78.

⁵⁸⁸ There is some confusion as to the exact date and circumstances of the adoption of the law. The law was passed by Parliament in 2007, but following international pressure President Karzai promised not to sign it. In January 2010, it emerged that the law had been gazetted in 2008, although according to some sources, it was not published until January 2010; see UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General*, A/64/705-S/2010/127, 10 March 2010, <http://www.refworld.org/docid/4bb44c5c2.html>; and HRW, *Afghanistan: Repeal Amnesty Law*, 10 March 2010, <http://www.hrw.org/en/news/2010/03/10/afghanistan-repeal-amnesty-law>.

⁵⁸⁹ The adoption of the law drew widespread national and international criticism and calls for its repeal; see, for example, AREU, *The State of Transitional Justice in Afghanistan: Actors, Approaches and Challenges*, April 2010, <http://www.refworld.org/docid/4bc6ccb42.html>; UN News Centre, *Top UN Human Rights Official in Afghanistan Calls for Repeal of Amnesty Law*, 25 March 2010, <http://www.un.org/apps/news/story.asp?NewsID=34198>; HRW, *Afghanistan: Repeal Amnesty Law*, 10 March 2010, <http://www.hrw.org/en/news/2010/03/10/afghanistan-repeal-amnesty-law>; and AIHRC, *Discussion Paper on the Legality of Amnesties*, 21 February 2010, <http://www.refworld.org/docid/4bb31a5e2.html>.

⁵⁹⁰ 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>, para. 75. Such amnesty from prosecution would be incompatible with the duty of States to investigate and prosecute crimes under IHL and violations of non-derogable human rights law; see Rule 159 (Amnesty) of the ICRC, *Customary International Humanitarian Law*, Cambridge: Cambridge Univ. Press, 2005, reprinted 2009, http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule159. Several international jurisdictions have stated that that war crimes and serious human rights violations may not be the subject of amnesty; see, for example, *Prosecutor v. Anto Furundzija (Trial Judgement)*, IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998, <http://www.refworld.org/docid/40276a8a4.html>; and *Case of Barríos Altos v. Peru*, Inter-American Court of Human Rights, 14 March 2001, http://www.corteidh.or.cr/docs/casos/articulos/seriec_75_ing.pdf.

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,⁵⁹¹ were involved in operations subjecting civilians to arrest, disappearances, torture, inhuman and degrading treatment and punishment, and extrajudicial executions.⁵⁹² 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.⁵⁹³

In this context, careful consideration needs to be given to cases of former employees of the *Khadamate Ettelaate Dowlati* (KhAD), the State Information Service, which later became the *Wezarat-e Amniyat-e Dowlati* (WAD) or Ministry of State Security.⁵⁹⁴ 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.⁵⁹⁵ 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.⁵⁹⁶ 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

⁵⁹¹ This period of recent Afghan history started with a military *coup d'état* on 27 April 1978 that brought to power a Government dominated by the PDPA, continued during the Soviet occupation that started on 27 December 1979, and lasted until the fall of the Najibullah Government on 15 April 1992.

⁵⁹² See, for example, UN Commission on Human Rights, *Report on the Situation of Human Rights in Afghanistan prepared by the Special Rapporteur, Mr. Felix Ermacora, in accordance with Commission on Human Rights Resolution 1985/38, E/CN.4/1986/24*, 17 February 1986, <http://www.refworld.org/docid/482996d02.html>; HRW, "Tears, Blood and Cries" *Human Rights in Afghanistan since the Invasion 1979 - 1984*, US Helsinki Watch Report, December 1984, <http://hrw.org/reports/1984/afghan1284.pdf>; and Amnesty International, *Violations of Human Rights and Fundamental Freedoms in the Democratic Republic of Afghanistan*, ASA/11/04/79, September 1979.

⁵⁹³ HRW, *The Forgotten War: Human Rights Abuses and Violations of the Laws of War since the Soviet Withdrawal*, 1 February 1991, <http://www.hrw.org/reports/1991/afghanistan/>; and HRW, *By All Parties to the Conflict: Violations of the Laws of War in Afghanistan*, Helsinki Watch/Asia Watch report, March 1988, <http://hrw.org/reports/1988/afghan0388.pdf>.

⁵⁹⁴ In 1986, the KhAD was upgraded to ministry level and from then on was known as WAD (*Wezarat-e Amniyat-e Dowlati* or Ministry of State Security). For detailed information on (i) the origins of the KhAD/WAD; (ii) its structure and staffing; (iii) linkages between these services and the Afghan military and militias; (iv) the distinction between operational and support services; and (v) rotation and promotion policies within the KhAD/WAD, see UNHCR, *Note on the Structure and Operation of the KhAD/WAD in Afghanistan 1978-1992*, May 2008, <http://www.refworld.org/docid/482947db2.html>.

⁵⁹⁵ These directorates included administration and finance, personnel, propaganda and counter-propaganda, logistics, telecommunications and decoding. 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>, paras 15-17.

⁵⁹⁶ 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 which was confidentiality. For this reason, they believe that the KhAD/WAD could not resort to a general rotation policy, as this would have risked disclosure of information from one Directorate to another." *Ibid.*, para. 24.

through one of the modes for incurring individual responsibility established in international law, would not be consistent with international refugee law.

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

The activities of members of armed groups and militia forces⁵⁹⁷ 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.⁵⁹⁸ 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.⁵⁹⁹

3. Members of AGEs

Elements from the former Taliban regime, combined with new recruits, started to mount armed operations in Afghanistan as early as 2002. The applicability of the exclusion clauses is relevant in relation to former members and military commanders of the Taliban, during its time in power and following its ouster, in cases where there is sufficient evidence to support findings of serious reasons for considering that they were associated with serious abuses of human rights and/or violations of humanitarian law. As noted in Section II.C.1.b, there are widespread reports about deliberate attacks on civilians by Taliban forces, summary executions, and illegal punishments meted out by parallel justice structures enforced by the Taliban. Some of these acts may constitute war crimes.⁶⁰⁰

The applicability of the exclusion clauses will also need to be considered in relation to individual members and military commanders of other AGEs, including *Al-Qaeda*,⁶⁰¹ the Haqqani Network,⁶⁰² *Hezb-e-Islami* (Party of Islam),⁶⁰³ the Islamic Movement of Uzbekistan,⁶⁰⁴ the Islamic Jihad Union,⁶⁰⁵

⁵⁹⁷ 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-Nezar*), *Jonbesh-e-Melli-Islami*, *Ittehad-e-Islami*, *Harakat-e-Inqilab-e-Islami* (led by Mohammad Nabi Mohammadi) and *Harakat-e-Islami*.

⁵⁹⁸ HRW, *The Forgotten War: Human Rights Abuses and Violations of the Laws of War since the Soviet Withdrawal*, 1 February 1991, <http://www.hrw.org/reports/1991/afghanistan/>; and HRW, *By All Parties to the Conflict: Violations of the Laws of War in Afghanistan*, Helsinki Watch/Asia Watch report, March 1988, <http://hrw.org/reports/1988/afghan0388.pdf>.

⁵⁹⁹ See for instance HRW, *Blood-Stained Hands: Past Atrocities in Kabul and Afghanistan's Legacy of Impunity*, 7 July 2005, <http://www.refworld.org/docid/45c2c89f2.html>; Amnesty International, *Afghanistan: Executions, Amputations and Possible Deliberate and Arbitrary Killings*, ASA 11/05/95, April 1995, <http://www.refworld.org/docid/48298bca2.html>; and Amnesty International, *Afghanistan: The Human Rights Crisis and the Refugees*, ASA 11/002/1995, 1 February 1995, <http://www.refworld.org/docid/3ae6a9a613.html>.

⁶⁰⁰ ISW, *Background: Afghanistan Threat Assessment: The Taliban and ISIS*, 10 December 2015, http://www.understandingwar.org/sites/default/files/Afghanistan%20Threat%20Assessment_The%20Taliban%20and%20ISIS_3.pdf; Combating Terrorism Center at West Point, *Kunduz Breakthrough Bolsters Mullah Mansoor as Taliban Leader*, 23 October 2015, <https://www.ctc.usma.edu/posts/kunduz-breakthrough-bolsters-mullah-mansoor-as-taliban-leader>.

⁶⁰¹ See New York Times, *As U.S. Focuses on ISIS and the Taliban, Al Qaeda Re-emerges*, 29 December 2015, <http://www.nytimes.com/2015/12/30/us/politics/as-us-focuses-on-isis-and-the-taliban-al-qaeda-re-emerges.html>; US Department of Defense, *Enhancing Security and Stability in Afghanistan*, December 2015, http://www.defense.gov/Portals/1/Documents/pubs/1225_Report_Dec_2015_-_Final_20151210.pdf, p. 18; Combating Terrorism Center at West Point, *Assessing Al-Qa'ida Central's Resilience*, 11 September 2015, <https://www.ctc.usma.edu/posts/assessing-al-qaeda-centrals-resilience>; American Foreign Policy Council, *World Almanac of Islamism: Al Qaeda*, page accessed on 29 February 2016; last updated 13 October 2014, <http://almanac.afpc.org/al-qaeda>.

⁶⁰² The Haqqani Network, while enjoying a large measure of tactical autonomy, is reported to share many of the Taliban's political and ideological objectives. See UN Security Council, *Security Council resolution 2255 (2015) [on Sanctions Concerning Individuals and Entities and Other Groups and Undertakings Associated with the Taliban and the Threat International Terrorism Poses to Afghanistan]*, 22 December 2015, S/RES/2255 (2015), <http://www.refworld.org/docid/568fd2454.html>, p. 2; US Congressional Research Service, *Afghanistan: Post-Taliban Governance, Security, and U.S. Policy*, 22 December 2015, RL30588, <http://www.refworld.org/docid/56bb16de4.html>, pp. 21-22; US Department of State, *Country Reports on Terrorism 2014 - Foreign Terrorist Organizations: Haqqani Network*, 19 June 2015, <http://www.refworld.org/docid/5587c72a5f.html>; American Foreign Policy Council, *World Almanac of Islamism: Taliban*, page accessed on 29 February 2016; last updated 1 October 2013, <http://almanac.afpc.org/taliban>.

⁶⁰³ AAN, *Bomb and Ballot: The Many Strands and Tactics of Hezb-e-Islami*, 19 February 2014, <https://www.afghanistan-analysts.org/bomb-and-ballot-the-many-strands-and-tactics-of-hezb-e-islami/>; American Foreign Policy Council, *World Almanac of Islamism: Taliban*, page accessed on 29 February 2016; last updated 1 October 2013, <http://almanac.afpc.org/taliban>; National Consortium for the Study of

the Lashkari Tayyiba,⁶⁰⁶ *Tora-Bora Nizami Mahaz* (Tora-Bora Military Front),⁶⁰⁷ and members of groups that are affiliated to ISIS.⁶⁰⁸

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

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

5. Members of Pro-Government Paramilitary Groups and Militias

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

Terrorism and Responses to Terrorism (START), *Hizb-I Islami Gulbuddin (HIG)*, undated, http://www.start.umd.edu/tops/terrorist_organization_profile.asp?id=4372; International Crisis Group, *The Insurgency in Afghanistan's Heartland*, Asia Report No. 207, 27 June 2011, <http://www.crisisgroup.org/en/regions/asia/south-asia/afghanistan/207-the-insurgency-in-afghanistans-heartland.aspx>.

⁶⁰⁴ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 3, fn. 4; Jamestown Foundation, *Unrest in Northern Afghanistan Heralds Regional Threats*, 7 January 2016, Terrorism Monitor, Volume 14, Issue 1, <http://www.refworld.org/docid/569f501c4.html>; US Department of State, *Country Reports on Terrorism 2014 - Foreign Terrorist Organizations: Islamic Movement of Uzbekistan*, 19 June 2015, <http://www.refworld.org/docid/5587c72815.html>; Global Security, *Islamic Movement of Uzbekistan (IMU), Islamic Party of Turkestan*, undated, <http://www.globalsecurity.org/military/world/para/imu.htm>. In August 2015 the Islamic Movement of Uzbekistan, which is reported to have ties with Al-Qaeda, reportedly pledged alliance to ISIS. See Radio Free Europe, *IMU Declares It Is Now Part of the Islamic State*, 6 August 2015, <http://www.rferl.org/content/imu-islamic-state/27174567.html>; Combating Terrorism Center at West Point, *The Islamic Movement of Uzbekistan Opens a Door to the Islamic State*, 29 June 2015, <https://www.ctc.usma.edu/posts/the-islamic-movement-of-uzbekistan-opens-a-door-to-the-islamic-state>.

⁶⁰⁵ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 3, fn. 4. 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 Jihad Union*, undated, <http://www.globalsecurity.org/military/world/para/iju.htm>; Jamestown Foundation, *Unrest in Northern Afghanistan Heralds Regional Threats*, 7 January 2016, Terrorism Monitor, Volume 14, Issue 1, <http://www.refworld.org/docid/569f501c4.html>; US Department of State, *Country Reports on Terrorism 2014 - Foreign Terrorist Organizations: Islamic Jihad Union*, 19 June 2015, <http://www.refworld.org/docid/5587c7283a.html>.

⁶⁰⁶ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 3, fn. 4. According to the US Congressional Research Service, the Pakistani group Lashkari Tayyiba, or Lashkar-e-Tayyiba, is increasingly active in Afghanistan. US Congressional Research Service, *Afghanistan: Post-Taliban Governance, Security, and U.S. Policy*, 22 December 2015, RL30588, <http://www.refworld.org/docid/56bb16de4.html>, p. 20. See also Combating Terrorism Center at West Point, *The Fighters of Lashkar-e-Taiba: Recruitment, Training, Deployment and Death*, April 2013, https://www.ctc.usma.edu/v2/wp-content/uploads/2014/07/Fighters-of-LeT_Final.pdf.

⁶⁰⁷ The *Tora-Bora Nizami Mahaz* is reported to be an offshoot of the *Hezb-e-Islami* (Khalis) and was created by Anwarul Haq Mujahid, the son of Afghan Mujahideen leader Maulvi Yunis Khalis, to organize resistance to US-led foreign forces primarily in eastern Afghanistan. The group is reported to be allied with the Taliban. See American Foreign Policy Council, *World Almanac of Islamism: Taliban*, page accessed on 29 February 2016; last updated 1 October 2013, <http://almanac.afpc.org/taliban>; AREU, *The Devil Is in the Details: Nangarhar's Continued Decline into Insurgency, Violence and Widespread Drug Production*, February 2016, <http://www.refworld.org/docid/56c2ea34.html>, p. 4.

⁶⁰⁸ UNAMA, *Afghanistan: Annual Report 2015, Protection of Civilians in Armed Conflict*, February 2016, <http://www.refworld.org/docid/56c17b714.html>, p. 3, fn. 4; Stars and Stripes, *Islamic State Attack Claim Signals Escalation by Group in Afghanistan*, 14 January 2016, <http://www.stripes.com/news/islamic-state-attack-claim-signals-escalation-by-group-in-afghanistan-1.388693>; ISW, *Backgrounder: ISIS in Afghanistan*, 3 December 2015, http://www.understandingwar.org/sites/default/files/ISIS%20in%20Afghanistan_2.pdf; NPR, *ISIS Gains a Foothold in Afghanistan*, 16 November 2015, <http://www.npr.org/2015/11/16/456174727/isis-gains-a-foothold-in-afghanistan>. In January 2016, the US Department of State designated the Afghanistan branch of ISIS as a terrorist organization. US Department of State, *Foreign Terrorist Organization Designation of ISIL - Khorasan (ISIL-K)*, 14 January 2016, <http://www.state.gov/r/prs/ps/2016/01/251237.htm>.