



**Submission by the Office of the United Nations High Commissioner for Refugees
in the case of *M.J. v. the Netherlands* (application no. 49259/18)
before the European Court of Human Rights**

1. Introduction *

1.1. UNHCR welcomes the opportunity to intervene in this case, as granted by the European Court of Human Rights ('the Court') in its letter of 15 November 2019.

1.2 UNHCR has been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions for refugees.¹ UNHCR is also responsible for supervising the application of international conventions for the protection of refugees.² UNHCR's supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee law instruments. These include the Guidelines on Internal Flight or Relocation Alternative ('2003 IFA Guidelines')³ and the Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan ('2018 Eligibility Guidelines on Afghanistan').⁴

1.3. In this submission, UNHCR addresses the legislative framework and practice in the Netherlands regarding the application of the internal flight alternative (IFA; also referred to as the internal protection alternative (IPA) in European law) in the asylum procedure (Part 2); provides UNHCR's interpretation of the relevant principles of international refugee and human rights law pertaining specifically to the application of the IFA concept (Part 3); and provides information about the current security, human rights and humanitarian situation in Kabul and in Afghanistan more broadly (Part 4).

2. The legislative framework and practice in the Netherlands regarding the application of the IFA concept in the asylum procedure

2.1. National legislation and policy on the application of the IFA concept

2.1.1. Dutch policy regarding the application of the IFA concept is codified in Article 3.37d of the Aliens Regulations⁵ and elaborated in paragraph C2/3.4 of the Dutch Aliens Act Implementation Guidelines.⁶

2.1.2. Article 3.37d of the Aliens Regulations provides that:

- 1. When assessing whether an alien is eligible for a temporary residence permit pursuant to Article 29, paragraph 1, under a or b, of the Aliens Act ("Vreemdelingenwet 2000"), it holds true that an alien is not in need of protection if in a part of his country of origin he:*
- a. has no well-founded fear of being prosecuted or does not face a real risk of suffering serious harm; or*

* This submission does not constitute a waiver, express or implied, of any privilege or immunity which UNHCR and its staff enjoy under applicable international legal instruments and recognized principles of international law. UN General Assembly, *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946: www.refworld.org/docid/3ae6b3902.html.

¹ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), para. 1: www.refworld.org/docid/3ae6b3628.html.

² *Ibid.*, para. 8(a).

³ 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*, 23 July 2003: www.refworld.org/docid/3f2791a44.html.

⁴ UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 30 August 2018: www.refworld.org/docid/5b8900109.html.

⁵ *Voorschrift Vreemdelingen 2000*: <https://wetten.overheid.nl/BWBR0012002/2019-10-01>.

⁶ *Vreemdelingencirculaire 2000*: <https://wetten.overheid.nl/BWBR0012288/2019-10-01#Circulaire.divisieC2>.

b. has access to protection as referred to in Article 3.37c Aliens Regulations against persecution or serious harm and he can travel to and access that part of the country in a safe and legal manner and can reasonably be expected to settle there.

2. When assessing whether the alien has a well-founded fear of persecution or faces a real risk of suffering serious harm or has access to protection against persecution or serious harm in a part of his country of origin in accordance with the first paragraph, the general circumstances in that part of the country and the personal circumstances of the foreign national will be considered in accordance with Article 31 of the Aliens Act. To this end, it is ensured that accurate and up-to-date information is available from relevant sources such as the United Nations High Commissioner for Refugees and the European Asylum Support Office.⁷

2.1.3. Paragraph C2/3.4 of the Dutch Aliens Act Implementation Guidelines further indicates that:

When assessing whether an alien needs protection in the Netherlands against imminent persecution or acts as referred to in Article 29, first paragraph, preamble and under b, of the Aliens Act, the Immigration and Naturalisation Service (“IND”) assesses whether the alien has a protection alternative in a different area in his country of origin where he can evade these threats.

The term protection alternative is a combined term for the internal flight alternative and the internal relocation alternative. The use of these terms is determined by the threat against which these alternatives offer protection. The IND uses the term flight alternative when referring to protection for aliens against persecution as meant in the Refugee Convention. The IND uses the term relocation alternative when referring to protection for aliens against acts as referred to in Article 29, first paragraph, preamble and under b Aliens Act 2000.

The IND assumes, pursuant to Article 3.37d of the Aliens Regulations, that an area in the country of origin can be considered a flight or relocation alternative if all of the following conditions are met:

- (a) The alien does not run a risk of being persecuted in the considered area in the country of origin, or has access to protection against such persecution as referred to in Article 3.37c of the Aliens Regulations;*
- (b) The alien can travel to and gain access to that area in the country of origin in a safe and legal manner; and*
- (c) The alien can reasonably be expected to settle in that part of the country.*

Re a: In addition to the requirement that the threat in the considered area is absent, the foreign national should not experience new threats in the area considered. If it is plausible that the alien also has to fear persecution or acts as referred to in Article 29, first paragraph, under b, Aliens Act 2000, in the area considered, the IND will assess whether the alien can obtain protection against the threat in that area. If the threat is a consequence of an exceptional situation as referred to in Article 15c of Directive 2011/95/EU in a certain area and is not related to individual, personal fears, the alien from that area is expected to be able to evade this threat by settling in a location outside the area referred to. The conditions stated under b and c remain fully applicable.

Re b: The area must be accessible from the Netherlands. In addition, it must be possible to reach the area legally and safely.

Re c: The protection which the alien receives in the considered area does not have to be equal to the protection which the foreign national would have received in the Netherlands. The alien must be able to settle in the area and live a life under circumstances which can be considered normal by local standards. In the area concerned, the alien may not be disadvantaged in the exercise of essential rights compared to the rest of the population. In addition, living conditions in the area in question should not, in general, be such that these conditions in themselves can lead to a humanitarian emergency. The fact that circumstances in the area are

⁷ Unofficial translation provided for reference only.

less favourable than in the alien's original residential area is not a sufficient reason for the IND not to consider the flight or relocation alternative applicable.

The IND assesses whether an internal flight or relocation alternative is available in the individual case of the foreign national based on the available accurate and current information from relevant sources about the country of origin. In the country-specific asylum policy, the State Secretary for Justice and Security can determine or exclude the existence of a flight or relocation alternative in advance, based on the available accurate and up-to-date information from relevant sources, taking into account the aforementioned conditions for:

- *aliens from a part of the country where the threat originates from an exceptional situation as referred to in Article 15c of Directive 2011/95 / EU; or*
- *a specific population group.*⁸

2.2. The relevant practice

2.2.1 According to the 2000 Aliens Regulations and the 2000 Dutch Aliens Act Implementation Guidelines, the IND is to examine the general circumstances of the IFA and the applicant's personal circumstances when assessing whether an IFA is available. If an IFA is deemed available, the IND has a duty to establish why it is deemed so in the individual case. Accordingly, the District Court of the Hague in its judgment in the applicant's case⁹ noted that the burden of proof to show that an IFA is available in an individual case lies with the IND.

2.2.2. In multiple cases, Dutch courts have established that the IND did not sufficiently take into account the individual circumstances of an applicant when considering the availability of an IFA.¹⁰ For example, in one case, the applicant's sexual orientation, which had been deemed credible, was not taken into account when assessing whether the applicant would be able to obtain protection from the authorities in the proposed area of IFA.¹¹ With specific regard to a proposed IFA in Kabul, the District Court of the Hague has ruled in two cases that the IND insufficiently examined whether the Taliban would be able to find the applicants in the proposed area of IFA, emphasizing that the applicant's credible fear from the Taliban was a relevant personal circumstance for the assessment of the availability of an IFA.¹² The IND's appeals against both judgements were ruled manifestly unfounded by the Administrative Jurisdiction Division of the Council of State.¹³

2.2.3. Furthermore, on a number of occasions Dutch courts have ruled that the IND did not sufficiently take into consideration fresh information regarding the circumstances in the proposed area of IFA to conduct a relevance and reasonableness assessment. In these cases, the IND merely referred to country-specific policy embedded in the Aliens Act Implementation Guidelines or referred solely to the Official Country Report by the Dutch Ministry of Foreign Affairs. Having not taken into account other relevant and recent information regarding the proposed IFA, the IND's assessment regarding the availability of the IFA was therefore ruled to be insufficient.¹⁴

3. Application of the IFA concept under international refugee law and European human rights law

3.1. The IFA concept under international refugee law

⁸ Unofficial translation provided for reference only.

⁹ District Court, the Hague (NL), ECLI:NL:RBDHA:2018:9999 (NL17.546), 9 August 2018: <https://bit.ly/2KSJYWS>.

¹⁰ See, NL17.546; ECLI:NL:RBDHA:2017:12651 (NL17.1878), 2 October 2017: <https://bit.ly/2DaGTgO>;

ECLI:NL:RBDHA:2016:17176 (16/15879), 17 October 2016: <https://bit.ly/2KSpgq9>; ECLI:NL:RVS:2017:1163 (201604214/1/V2), 3 May 2017: <https://bit.ly/37EeAWa>.

¹¹ ECLI:NL:RVS:2017:1163 (201604214/1/V2), 25 April 2017, para. 3.1: <https://bit.ly/37HwCXs>.

¹² ECLI:NL:RBDHA:2016:17176 (AWB 16/15879), 17 October 2016: <https://bit.ly/2XQxnJ2>; ECLI:NL:RBDHA:2017:12651 (NL17.1878), 2 October 2017: <https://bit.ly/37Md0BE>.

¹³ Council of State, 201708721/1/V2, 21 June 2018.

¹⁴ ECLI:NL:RBDHA:2016:17176 (16/15879), para. 6.3 and para. 6.4, where the court emphasized the insufficient consideration of information from UNHCR amongst others; ECLI:NL:RBDHA:2017:12651 (NL17.1878), para. 9; ECLI:NL:RBDHA:2018:9999 (NL17.546), para. 5.4; ECLI:NL:RVS:2017:2033 (201609483/1/V2), 31 July 2017, para. 7.3: <https://bit.ly/2KQDpnW>; ECLI:NL:RBDHA:2019:6397 (NL19.5886), 10 April 2019, para. 3.7: <https://bit.ly/37AQKKh>.

3.1.1. The 1951 Convention does not require that the fear of being persecuted need always extend to the whole territory of the refugee's country of origin.¹⁵ According to UNHCR Guidelines, the concept of IFA refers to 'a specific area of the country where there is no risk of a well-founded fear of persecution and where, given the particular circumstances of the case, the individual could reasonably be expected to establish him/herself and live a normal life.'¹⁶ As such, the question of an IFA is only relevant if, in the context of a holistic assessment of an asylum application, it is established that in some localized part of the country of origin there is a well-founded fear of persecution linked to a 1951 Refugee Convention ground (namely: race, religion, nationality, membership of a particular social group or political opinion), which, however, does not apply to the whole territory.¹⁷

3.1.2 For this reason, in order to consider the availability of a proposed IFA, a relevance and reasonableness assessment are required.¹⁸

3.2. Relevance assessment

3.2.1. For an IFA to be relevant, UNHCR considers that certain conditions must be met. First, an assessment of whether the applicant would be exposed to the original risk of being persecuted in the proposed area of IFA must be carried out. If 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 is not relevant, as national authorities are presumed to act throughout the country.¹⁹ Where the agents of persecution are non-State agents, a number of different elements, such as the ability and willingness of the State to protect the applicant from the harm feared, must be taken into account.²⁰

3.2.2. Secondly, an assessment is needed of whether the applicant would be exposed to new risks of being persecuted, which are distinct from the original fear of persecution on which his/her claim is based, which arise in the proposed area of IFA, or to other forms of serious harm. Pursuant to UNHCR Guidelines, an IFA is not available where the applicant is exposed to such a risk, irrespective of whether or not there is a link to one of the 1951 Refugee Convention grounds.²¹ Therefore, this requirement encompasses a broader category of forms of serious harm, including those generally covered under complementary forms of protection.²² Furthermore, this assessment must be based on up-to-date information about the security situation in the proposed area of IFA.

3.2.3. Finally, an assessment on whether the proposed area of IFA is practically, safely and legally accessible to the individual must be conducted. This requirement entails an assessment of the concrete prospects of safely accessing the proposed area of relocation, including the possibility 'to encounter physical dangers en route to the area such as mine fields, factional fighting, shifting war fronts, banditry or other forms of harassment or exploitation.'²³

3.3. Reasonableness assessment

3.3.1. In addition to the relevance assessment, consideration must be given as to whether it is reasonable for an applicant to relocate in the proposed IFA area. This assessment must be determined 'on a case-by-case basis, taking into account the personal circumstances of the applicant[s], including their age, gender, health, disability, family situation and relationships, as well as their educational and professional background.'²⁴

3.3.2. According to UNHCR's Guidelines, a proposed area of IFA would only be reasonable if the applicant is able to live in that area in safety and security, free from danger and risk of injury.²⁵ These conditions must be durable, not

¹⁵ See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, April 2019, para. 91: www.refworld.org/docid/5cb474b27.html.

¹⁶ UNHCR, 2003 IFA Guidelines, para. 6.

¹⁷ *Ibid.*, para. 7.

¹⁸ *Ibid.*

¹⁹ *Ibid.*, paras 7.I.b, 13-14.

²⁰ *Ibid.*, para. 15.

²¹ *Ibid.*, para. 20.

²² *Ibid.*, para. 20.

²³ *Ibid.*, para. 10.

²⁴ *Ibid.*, para. 25.

²⁵ *Ibid.*, para. 27.

illusory or unpredictable, and must be assessed based on reliable and up-to-date information about the security situation in the proposed IFA area.²⁶

3.3.3. Moreover, for a proposed IFA to be reasonable, the applicant must be able to exercise his or her basic human rights in the area of relocation and he or she must have possibilities for economic survival in dignified conditions.²⁷ This assessment must give particular attention to: (i) access to shelter in the proposed area of IFA; (ii) the availability of basic infrastructure and access to essential services in the proposed area of IFA, such as potable water and sanitation, health care and education; (iii) the presence of livelihood opportunities.

3.4. Procedural safeguards

3.4.1. The application of the IFA concept must also comply with appropriate procedural safeguards. First, as mentioned above, the assessment regarding the availability of an IFA must be individual and carried out on a case-by-case basis. Therefore, such examination must not be based on generalized findings but must take into account the particular circumstances of the applicant and rely on well-documented, good quality and current information and research on conditions in the proposed area of IFA.²⁸

3.4.2. Furthermore, given the principle that the burden of proving an allegation rests on the one who asserts it, the use of the IFA concept should not lead to additional burdens on asylum-seekers.²⁹ Accordingly, the burden of proof in asserting an IFA lies with the authorities of the concerned State, which have to establish that the proposed IFA area is relevant to the particular case and that it is reasonable for the applicant to relocate there.³⁰

3.4.3. Lastly, procedural fairness must be accorded to asylum-seekers in the assessment of an IFA. This requires informing and giving clear and adequate notice to an applicant that the possibility of an IFA is under consideration. Moreover, the individual must also be given ‘an opportunity to provide arguments why (a) the consideration of an alternative location is not relevant in the case, and (b) if deemed relevant, that the proposed area would be unreasonable.’³¹

3.4.4. The above standards are broadly reflected in the case law of this Court. In *Salah Sheekh v. the Netherlands*, the ECtHR examined the question of an IFA in the context of return to Somalia and pointed out that ‘as a precondition for relying on an internal flight alternative, certain guarantees have to be in place: the person to be expelled must be able to travel to the area concerned, to gain admittance and be able to settle there, failing which an issue under Article 3 [ECHR] may arise, the more so if in the absence of such guarantees there is a possibility of the expellee ending up in a part of the country of origin where he or she may be subjected to ill-treatment.’³² Moreover, the Court has also outlined that “[i]n order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances.”³³

3.4.5. These criteria have been further codified in EU law and specifically in the EU Qualification Directive (QD).³⁴ Article 8(1) QD states that ‘[a]s part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin, he or she: (a) has no well-founded fear of being persecuted or is not at real risk of suffering serious harm; or (b) has access to protection against persecution or serious harm [...]; and he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.’

²⁶ *Ibid.*

²⁷ *Ibid.*, paras 28-30.

²⁸ *Ibid.*, para. 37.

²⁹ *Ibid.*, para. 33.

³⁰ *Ibid.*, para. 34.

³¹ *Ibid.*, para. 35.

³² *Salah Sheekh v. the Netherlands*, 1948/04, ECtHR, 11 January 2007, para. 141: www.refworld.org/cases.ECHR.45cb3dfd2.html.

³³ *Vilvarajah and Others v. The United Kingdom*, 45/1990/236/302-306, ECtHR, 26 September 1991, para. 108: <https://www.refworld.org/cases.ECHR.3ae6b7008.html>.

³⁴ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 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), OJ L 337/9, 2011/95/EU, www.refworld.org/docid/4f197df02.html.

3.4.6. Moreover, Article 8(2) QD further consolidates the procedural safeguards to be respected in the context of applying an IFA and provides that , ‘[i]n examining whether an applicant has a well-founded fear of being persecuted or is at real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin [...], 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 [...]. To that end, Member States shall ensure that precise and up-to-date information is obtained from relevant sources, such as the United Nations High Commissioner for Refugees.’

4. The current security, human rights and humanitarian situation in Kabul and in Afghanistan

4.1. According to UNHCR Guidelines, country information plays an essential role in all stages of a determination procedure.³⁵ UNHCR has consistently maintained that ‘[a]ccurate, up-to-date information [...] is obviously essential for UNHCR to determine who should be accorded asylum and protection as well as to formulate solutions strategies’.³⁶ In order to be useful, information must be ‘relevant, current and from reliable sources.’³⁷ UNHCR, due to its international protection mandate, including its supervisory responsibility, field presence and operational activities, is ‘often uniquely placed to obtain first-hand information on the causes and motivations of flight.’³⁸

4.2. In this context, the Court has emphasized that it must be ‘satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations.’³⁹

4.3. In *Sufi and Elmi v. the United Kingdom*, the Court further held that ‘[i]n assessing the weight to be attributed to country material, consideration must be given to its source, in particular its independence, reliability and objectivity.’⁴⁰ In this regard, the Court emphasized that the material provided by agencies of the United Nations may be highly relevant to its assessment ‘given their direct access to the authorities of the country of destination as well as their ability to carry out on-site inspections and assessments in a manner which States and non-governmental organisations may not be able to do.’⁴¹ Additionally, ‘While the Court accepts that many reports are, by their very nature, general assessments, greater importance must necessarily be attached to reports which consider the human-rights situation in the country of destination and directly address the grounds for the alleged real risk of ill-treatment in the case before the Court.’⁴²

4.4. In light of the above, UNHCR underlines the significance of its 2018 Eligibility Guidelines on Afghanistan, which are based on in-depth research, information provided through UNHCR’s network of offices in Afghanistan and material from independent country specialists, researchers and other sources, rigorously reviewed for reliability. UNHCR produces and makes available to States its country-specific policy guidance as a means of furthering its

³⁵ For example, UNHCR has noted that accurate and reliable country of origin information ‘is essential for UNHCR and States alike: COI is decisive in determining who is in need of international protection [...] to formulate solution strategies, [...] [and] is essential in the determination of whether and when to invoke the cessation of refugee status and concerning repatriation decisions.’ UNHCR, *Country of Origin Information: Towards Enhanced International Cooperation*, February 2004, www.refworld.org/docid/403b2522a.html. As already noted, ‘well-documented, good quality and current information and research on conditions in the country of origin are important components for’ the purpose of determining if an IFA is available. UNHCR, *2003 IFA Guidelines*, para. 37. Similarly, UNHCR has emphasized that country information has ‘an important role in identifying the readily apparent circumstances that underlie a decision to recognize refugee status on a prima facie basis.’ UNHCR, *Guidelines on International Protection No. 11 : Prima Facie Recognition of Refugee Status*, 24 June 2015, para. 17: www.refworld.org/docid/555c335a4.html.

³⁶ UNHCR, *Informed Decision-making in Protection: The Role of Information*, EC/1993/SCP/CRP.6, 27 September 1993, www.refworld.org/docid/3ae68cd18.html.

³⁷ UNHCR, *Guidelines on International Protection No. 11 : Prima Facie Recognition of Refugee Status*, 24 June 2015, para 17: www.refworld.org/docid/555c335a4.html.

³⁸ *Ibid.*

³⁹ *Salah Sheekh v. the Netherlands*, 1948/04, *supra* note 40, para. 136.

⁴⁰ *Sufi and Elmi v. the United Kingdom*, 8319/07 and 11449/07, ECtHR, 28 June 2011, para. 230: www.refworld.org/cases/ECHR_4e09d29d2.html.

⁴¹ *Ibid.*, para. 231.

⁴² *NA. v. the United Kingdom*, no. 25904/07, ECtHR, 17 July 2008, para. 122: <https://bit.ly/2OPpsrz>.

mandate responsibility of assisting States in their interpretation and application of international refugee law. The Eligibility Guidelines are informed by UNHCR's wide field presence, including in Afghanistan, and its significant experience with refugee status determination. UNHCR notes that its country-specific policy guidance is also used by organs of the United Nations, intergovernmental organizations (IGOs), NGOs and other institutions of global, regional, national and local government, including judicial and quasi-judicial bodies.⁴³

4.5. Pursuant to these Eligibility Guidelines, in order to assess the availability of an IFA in Afghanistan, the volatility and fluidity of the armed conflict in the country must be taken into consideration. In addition, UNHCR stresses that 'reliable, up-to-date information about the security situation in the proposed area of relocation would be important elements in assessing the reasonableness of a proposed IFA.'⁴⁴

4.6. With regard more specifically to the city of Kabul, UNHCR highlights the negative trends in relation to the security situation for civilians in Kabul. This led to 993 civilian casualties during the first six months of 2018, most of which were caused by suicide, complex and indiscriminate attacks.⁴⁵

4.7. UNHCR also notes that 'civilians who partake in day-to-day economic and social activities in Kabul are exposed to a risk of falling victim to the generalized violence that affects the city. Such activities include travelling to and from a place of work, travelling to hospitals and clinics, or travelling to school; livelihood activities that take place in the city's streets, such as street vending; as well as going to markets, mosques and other places where people gather.'⁴⁶

4.8. In addition, UNHCR notes that grave concerns have been expressed by humanitarian and development actors about the limits of Kabul's absorption capacity and that the population growth in the city is outpacing its capacity to provide necessary infrastructure, services and jobs to citizens.⁴⁷

4.9. In UNHCR's views, since the issuance of the 2018 Guidelines, the security situation for civilians, including returnees, in Kabul has further deteriorated. The more recent country of origin information annexed to this submission provides further details about the worsening of the situation based on a variety of reliable and objective sources and concludes that Kabul is still not a relevant IFA.

4.10. Security incidents and civilian casualties in Kabul have reached an unprecedented number, specifically 1,491, from 1 January to 30 September 2019.⁴⁸ This is notably due to the continuous presence of Taliban at the local and national levels, in particular in Kabul, as well as the absence of a visible presence of the central authorities in the Afghan capital.⁴⁹ The presence and activity of so-called Islamic State in Kabul is also an aggravating factor.⁵⁰ In

⁴³ UNHCR, *Staten v/Utlendingsnemnda (Regjeringsadvokaten) v. A, B, C, D before the Supreme Court of Norway: Affidavit of Janice Lyn Marshall*, 26 October 2015; www.refworld.org/docid/562f546c4.html; UNHCR, *UNHCR public statement in relation to AMM and others v. Secretary of State for the Home Department pending before the Upper Tribunal (Immigration and Asylum Chamber)*, 6 June 2011; www.refworld.org/docid/4edc7b7f2.html. See also RRT Case No. 1002233, [2010] RRTA 588, Refugee Review Tribunal of Australia, 19 July 2010, para. 62: <https://www.refworld.org/pdfid/4c84d16a2.pdf>; Supreme Administrative Court of Austria, Ra2018/18/0533-11, 13 December 2018: <https://bit.ly/34vDMfw>; Refugee Appeals Board (Denmark), Afghanistan/2018/9/TBP, Afghanistan/2018/8/TBP, Afgh/2019/13/CABV, Afgh/2019/12/CABV: <https://bit.ly/32tKroH>; Afghanistan/2018/9/TBP, Afghanistan/2018/8/TBP, Afgh/2019/13/CABV, Afgh/2019/12/CABV: <https://bit.ly/2OuCagl>.

⁴⁴ UNHCR, 2018 Eligibility Guidelines on Afghanistan, p. 108.

⁴⁵ *Ibid.*, p. 112.

⁴⁶ *Ibid.*, pp. 112-113.

⁴⁷ *Ibid.*, p. 113.

⁴⁸ UNAMA, *Quarterly Report on the Protection of Civilians in Armed Conflict: 1 January to 30 September 2019*, 17 October 2019, pp. 1-2: <https://bit.ly/2pHv7HH>; Special Inspector General for Afghanistan Reconstruction, *Quarterly Report to the United States Congress*, 30 July 2019, p. 70: <https://bit.ly/32tKroH>; Action on Armed Violence, *Worst Month for Afghan Civilians in over Eight Years of Casualty Recording*, 5 August 2019: <https://bit.ly/33xCMGY>.

⁴⁹ Harvard Humanitarian Initiative, *Fragile Future: The Human Cost of Conflict in Afghanistan*, December 2018, p. 15 and pp. 28-29: <https://reliefweb.int/sites/reliefweb.int/files/resources/SSRN-id3291982.pdf>.

⁵⁰ United Nations Security Council, *Eighth Report of the Secretary-General on the Threat Posed by ISIL (Da'esh) to International Peace and Security and the Range of United Nations Efforts in Support of Member States in Countering the Threat*, 1 February 2019, para. 39: <https://un-docs.org/en/S/2019/103>; OCHA, *Afghanistan: 2019 Humanitarian Needs Overview*, 6 December 2018, p. 18: https://reliefweb.int/sites/reliefweb.int/files/resources/afg_2019_humanitarian_needs_overview.pdf.

addition to conflict-related violence, other security threats include criminal networks involved in killings and kidnappings.⁵¹

4.11. Given the deterioration of the socio-economic situation in Kabul, the absorption capacity in terms infrastructures and housing is even more limited than in 2018. This is notably due to the population increase since the fall of the Taliban regime⁵² and the number of returnees and IDPs, representing more than eight per cent of Kabul Province's total population⁵³ and making the Kabul District sixth in the top 25 districts hosting the greatest numbers of returnees and IDPs as of 30 June 2019.⁵⁴ Accordingly, the International Organization for Migration (IOM) has concluded that Kabul is 'potentially susceptible to social instability induced by large influxes of returnees and IDPs, who face limited access to basic services and livelihoods, jeopardizing reintegration prospects and fuelling secondary displacement.'⁵⁵ The same source has further reported that in Kabul Province 49,490 arriving IDPs are living in informal settlements.⁵⁶ According to a World Bank survey conducted in 2018 with Afghan returnees, the peri-urban areas of the big cities, including Kabul, are facing much pressure due to the large influx of returnees.⁵⁷ Further, in a joint report on displacement and humanitarian access in Afghanistan, the Norwegian Refugee Council and the Assessment Capacities Project concluded in June 2019 that '[t]he influx of IDPs and returnees to Herat, Jalalabad, and Kabul has put a strain on resources and public services (many people have extremely limited access to basic services) while increasing the number of unemployed.'⁵⁸

4.12. Food insecurity⁵⁹ as well as access to clean water⁶⁰ are also a continuous issue of concern in Kabul. Equally problematic is the deterioration of mental health due to everyday fear of explosions and attacks⁶¹ and the lack of access to health services.⁶²

4.13. The above issues are particularly affecting persons who have been returned to Kabul. According to Stahlmann, 90 per cent of studied deportees in Kabul experience violence upon their return.⁶³ Several sources also point to the

⁵¹ The New York Times, *In Chaotic Afghan Capital, Crackdown on Crime is Turning Heads*, 16 January 2019: <https://nyti.ms/2qCxagk>; France 24, *Never Mind the War: Kabul Residents Fear Surge in Violent Crime*, 22 May 2019: <https://bit.ly/2NvZDgO>; Cedoca (Documentation and Research Department of the Office of the Commissioner General for Refugees and Stateless Persons (CGRS)), *Afghanistan. Security Situation in Kabul City*, 15 May 2019, p. 15: <https://bit.ly/2pY0PRB>; Afghan Analysts Network (AAN), *Kabul Unpacked. A Geographical Guide to a Metropolis in the Making*, January 2019: <https://bit.ly/33unuTp>; UNAMA, *Afghanistan Protection of Civilians in Armed Conflict - Annual Report 2018*, February 2019, p. 30: <https://bit.ly/2PZLU3a>; Tolo News, *Concerns Rise on 'Increasing' Threats to Business Community*, 23 April 2019: <https://bit.ly/2oZPgzb>; Reuters, *Kidnapping and Killing of Six-Year-Old Girl Enrages Afghans*, 13 March 2019: <https://reut.rs/2Ntb8Ft>; Pajwok, *Rise in Drug-Related Crimes Worries 'Powder Street' Dwellers*, 18 November 2018: <https://bit.ly/2oZ2HIF>.

⁵² Norwegian Refugee Council (NRC) and ACAPS, *Displacement and Access in Afghanistan: Scenarios - Possible Developments in the Profile of the Displaced Population and Humanitarian Access Over the Next 18 Months, June 2019*, June 2019, p. 11: <https://bit.ly/2qxguXm>; Cedoca, *Afghanistan. Security Situation in Kabul City*, 15 May 2019, pp. 6-7: <https://bit.ly/2PYxf8D>; and Samuel Hall, *Urban Displaced Youth in Kabul Part One: Mental Health Matters*, 1 June 2016, p. 7: <https://bit.ly/2NsdgNY>.

⁵³ IOM, *Afghanistan: Baseline Mobility Assessment – Summary Results, Round 8, Mar – Jun 2019*, 15 October 2019, p. 2: <https://bit.ly/2qEBZp5>.

⁵⁴ *Ibid.*, p. 6; OCHA, *Afghanistan: Conflict Induced Displacements (as of 27 October 2019). Actual Displacements Between 1 January 2019 and 8 October 2019*, 27 October 2019: <https://bit.ly/34GNIH7>; OCHA, *Afghanistan - Estimated Population 2016/2017 (Archived)*, undated, <https://bit.ly/33sgrus>; OCHA, *Afghanistan: 2019 Humanitarian Needs Overview*, 6 December 2018, p. 15: <https://bit.ly/32qpyL2>; Vienna Institute for International Dialogue and Cooperation (VIDC), *Refugees Return to Poverty, Unemployment and Despair*, 5 November 2018, p. 19: <https://bit.ly/34HaV7p>.

⁵⁵ IOM, *Afghanistan: Baseline Mobility Assessment – Summary Results, Round 8, Mar – Jun 2019*, 15 October 2019, p. 6: <https://bit.ly/2Csiqak>.

⁵⁶ *Ibid.*, p. 5.

⁵⁷ World Bank, *Living Conditions and Settlement Decisions of Recent Afghan Returnees. Findings from a 2018 Phone Survey of Afghan Returnees and UNHCR Data*, June 2019, p. 6: <https://bit.ly/2WZPonR>.

⁵⁸ Norwegian Refugee Council and Assessment Capacities Project, *Displacement and Access in Afghanistan: Scenarios - Possible Developments in the Profile of the Displaced Population and Humanitarian Access Over the Next 18 Months*, June 2019, p. 5: <https://bit.ly/33shlak>.

⁵⁹ FAO, *Monitoring Food Security in Countries with Conflict Situations. A Joint FAO/WFP Update for the Members of the United Nations Security Council*, August 2019, p. 1: <https://bit.ly/2CqlbF9>.

⁶⁰ Islamic Republic of Afghanistan, Central Statistics Organization, *Afghanistan Living Conditions Survey 2016 – 17*, 2018, p. 244: <https://bit.ly/2K0W9kf>.

⁶¹ UNAMA, *Afghanistan Protection of Civilians in Armed Conflict Special Report. Increasing Harm to Afghan Civilians from the Deliberate and Indiscriminate Use of Improvised Explosive Devices*, October 2018, p. 2: <https://bit.ly/36JbFe8>.

⁶² OCHA, *Afghanistan: 2019 Humanitarian Needs Overview*, 6 December 2018, p. 15: <https://bit.ly/2NOOfvg>; Human Rights Watch (HRW), *Afghanistan: Little Help for Conflict-Linked Trauma*, 7 October 2019: <https://bit.ly/33upY4b>.

⁶³ F. Stahlmann, *Studie zum Verbleib und zu den Erfahrungen abgeschobener Afghanen*, Informationsverbund Asyl und Migration (September 2019), pp. 278-279, 286 of *Asylmagazin*, issue 8-9/2019, Draft Version: <https://bit.ly/32q959v>. In the case of one Afghan returnee, the Taliban learned within one week about his return, captured the person and mistreated him during three days, punishing him for his flight and forcing

fear of recruitment that IDPs and Afghan returnees to Kabul face.⁶⁴ and the lack of reaction from security forces to violent incidents involving IDPs and returnees.⁶⁵

4.14. Deported Afghans and their relatives and friends in the country are threatened by several actors due to their flight and their life in Europe. The fact of having been in Europe is enough to be targeted by the Taliban.⁶⁶ In their communities in Kabul, deported Afghans encounter the prevailing belief that they, because of having been deported, are serious criminals, leading to additional difficulties.⁶⁷

4.15. Access to livelihoods has also worsened for returnees, in particular.⁶⁸ and deported Afghans are particularly vulnerable when accessing the labour market.⁶⁹

4.16. In light of the above, UNHCR considers that ‘given the current security, human rights and humanitarian situation in Kabul, an IFA/IRA is generally not available in the city.’⁷⁰

5. Conclusion

5.1. In UNHCR’s view, the applicant’s personal circumstances as well as relevant, reliable, objective and up to date information on the country of origin must be specifically considered when assessing whether an IFA is available. A general assessment that does not give due weight to the individual circumstances, notably with respect to Kabul, falls short of the relevant standards of international and European refugee and human rights law.

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him to cooperate with them. The person was able to escape through the help of an acquaintance, who was briefly with the Taliban. After the incident, he left the country immediately. Some of the returned Afghans in Stahlmann’s study were so badly injured in an attack that they needed emergency treatment in the hospital. In the case of another returnee, his house was attacked and severely damaged, he only escaped injury because he was not home at that time.

⁶⁴ The Guardian, ‘*There is Less Fear*’: Restoration of Kabul Repairs the Ravages of War, 13 May 2019: <https://bit.ly/2NuWecZ>; ‘By some estimates, up to 70 percent of the Taliban are unemployed young men just looking for a way to make a living. [...] Mohammad Omar Rassouli, chief of police of Pushtrod district, confirmed Abdullah Jan’s story, pointing to unemployment as the main motivating factor in the surge of these Taliban day-laborers.’ (ETH Zurich, Center for Strategical Studies, *The Occasional Taliban*, 2019: <https://bit.ly/2NrFCI7>)

⁶⁵ F. Stahlmann, *Studie zum Verbleib und zu den Erfahrungen abgeschobener Afghanen*, Informationsverbund Asyl und Migration (September 2019), p. 280 of Asylmagazin, issue 8-9/2019, Draft Version: <https://bit.ly/32q959v>.

⁶⁶ *Ibid.*, p. 279.

⁶⁷ For instance, in order to find a regular living, returnees must be able to gain the trust of the community, a particular challenge for returnees. F. Stahlmann, *Studie zum Verbleib und zu den Erfahrungen abgeschobener Afghanen*, Informationsverbund Asyl und Migration (September 2019), p. 283 of Asylmagazin, issue 8-9/2019, Draft Version: <https://bit.ly/32q959v>.

⁶⁸ Asia Foundation, *A Survey of the Afghan Returnees 2018*, 14 May 2019, p 53: <https://bit.ly/34JGw8F>.

⁶⁹ ‘However, he had to be strictly silent about his flight to Europe and his deportation. When the shop where he was working, had to close, he lost his job. His uncle told him he was not able to help him anymore and asked him to leave the country.’ F. Stahlmann, *Studie zum Verbleib und zu den Erfahrungen abgeschobener Afghanen*, Informationsverbund Asyl und Migration (September 2019), p. 283 of Asylmagazin, issue 8-9/2019, Draft Version: <https://bit.ly/32q959v>.

⁷⁰ UNHCR, 2018 Eligibility Guidelines on Afghanistan., p. 114.