



# FORCED BACK TO DANGER

ASYLUM-SEEKERS RETURNED FROM EUROPE TO AFGHANISTAN

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First published in 2017

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index: ASA 11/6866/2017

Original language: English

**amnesty.org**



**Cover photo:** Afghan security forces personnel are seen at the site of a truck bomb attack in Kabul on 31 May 2017. At least 150 people were killed and hundreds injured as a massive blast ripped through Kabul's diplomatic quarter, shattering the morning rush hour and bringing carnage to the streets of the Afghan capital. © Shah Marai/AFP/Getty Images

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# GLOSSARY

TERM	DEFINITION
UNHCR	United Nations High Commissioner for Refugees, the UN Refugee Agency. The agency is mandated to protect and support refugees – that is, people in need of international protection.
ASYLUM / INTERNATIONAL PROTECTION	The grant of a formal legal status – including refugee, subsidiary protection, and humanitarian status – due to the risk of serious human rights violations in a person's country of origin.
REFUGEE STATUS	The international protection status granted to people with a well-founded fear of persecution for reasons of their race, religion, nationality, membership of a particular social group or political opinion, as defined under the 1951 <i>Convention Relating to the Status of Refugees</i> .
SUBSIDIARY PROTECTION STATUS	The international protection status granted to people who do not qualify as refugees, but who are at risk of serious harm in their country of origin.
HUMANITARIAN PROTECTION STATUS	The international protection status granted to people who do not qualify as refugees, but whose removal cannot be effected for legal or practical reasons
RETURN TO AFGHANISTAN	Also called “deportation,” this is the process of returning someone to Afghanistan after they have been denied international protection status, and includes forcible returns as well as those effected through a so-called voluntary return process. For the purposes of this document, “returns” exclude “voluntary repatriation,” defined below.
RETURNEE	An Afghan national who has returned to Afghanistan, either forcibly or through a so-called Assisted Voluntary Return (AVR) process. For the purposes of this document, “returnees” do not include people who voluntarily repatriated, defined below.
FORCED RETURN	This is a return to a person's country of origin, following an order to leave. Forced returns vary in the way they take place, but usually involve being detained and then escorted on the flight by security officers from the national police or immigration authority of the sending country.
ASSISTED VOLUNTARY RETURN (AVR)	This is a return to a person's country of origin, following an order to leave, but which takes place in a less coercive manner. AVRs vary in the way they occur, but usually do not involve detention or a security escort. Upon arrival, the person is entitled to reintegration assistance provided by the sending country.

TERM	DEFINITION
<b>VOLUNTARY REPATRIATION</b>	This is the truly voluntary return of a <i>refugee</i> to his or her country of origin. UNHCR supports this process as one of the three durable solutions (along with local integration and resettlement) to refugee crises.
<b>IOM</b>	International Organization for Migration
<b>UNAMA</b>	United Nations Assistance Mission in Afghanistan
<b>EUROPEAN COUNTRIES</b>	Unless otherwise indicated, in this document “European countries” means the 28 European Union states (Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Spain, Sweden and the United Kingdom), as well as Norway and Switzerland

# EXECUTIVE SUMMARY

**“I’m so afraid I can’t even bring my children to their father’s grave.”**

Sadeqa, a woman returned to Afghanistan by Norway with her family in mid-2016

In 2015, Sadeqa’s\* husband Hadi was kidnapped in Afghanistan by a group opposed to his work. The family paid a ransom to secure his release, but he was badly beaten and could not speak for days. After he recovered, Sadeqa, Hadi and other family members – including an infant – fled Afghanistan in fear for their lives. After an arduous and dangerous journey of several months, they arrived in Norway where the family lodged an application for international protection, which was eventually refused.

The Norwegian authorities then presented the family with two options: they could be forcibly returned to Afghanistan after being detained for a period of time, or “accept” to go home in a so-called “Assisted Voluntary Return” process, thereby avoiding detention and receiving the equivalent of approximately EUR 10,700. Sadeqa told Amnesty International researchers: “So we agreed to a return and decided to start from scratch again – we had no choice.”

They arrived in Afghanistan in mid-2016. Hadi started in a new line of work, and tried to keep a low profile. But a few months after returning from Norway, he disappeared. A few days later, Sadeqa said she discovered that her husband had been killed, and she is certain that the responsibility lies with the people who had previously kidnapped him. She told Amnesty International researchers that she and the rest of her family remain in hiding in Afghanistan, trapped in their house, and are too afraid to even visit Hadi’s grave.

Sadeqa is one of thousands of Afghans who have been returned from Europe to Afghanistan in the last two years. These returns are taking place despite evidence that people returned to Afghanistan face a real risk of serious human rights violations. This report examines the legality of returns to Afghanistan. It looks at the security and human rights situation in the country and at the experiences of some of those who, like Sadeqa, have been returned by European countries. It contrasts data on the numbers of people being returned from Europe with information on conflict-related casualties and other dangers in Afghanistan, raising a number of questions about the decision-making processes of some European authorities.

To conduct research for this report, Amnesty International researchers travelled to Afghanistan in May 2017 and spoke with 18 women, men and children who had recently been deported from Europe. Researchers also carried out extensive reviews of expert reports on the security and human rights situation across Afghanistan as well as interviews in Afghanistan with local and international civil society organizations, lawyers, academics, the International Organization for Migration (IOM), the United Nations Refugee Agency (UNHCR), and the Afghan Ministry for Refugees and Repatriation. Researchers also met with UNHCR staff at the headquarters in Geneva.

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\* All interviewees’ names have been changed to protect them.

Afghanistan is currently gripped by a non-international armed conflict between what are known as “Anti-Government Elements” and Pro-Government Forces. Among the Anti-Government Elements are the Taliban and the group calling itself the Islamic State, but more than 20 armed groups are operating inside the country. UN expert reports and other sources provide evidence that the conflict in Afghanistan and the impact on civilians have gotten worse in the last two years. The United Nations Assistance Mission in Afghanistan (UNAMA) reported that 2016 was the deadliest year on record for civilians in Afghanistan, with 11,418 people killed or injured. The UN body stated:

*“In 2016, conflict-related insecurity and violence inflicted severe harm on civilians, especially women and children. The intensification of armed clashes between Pro-Government Forces and Anti-Government Elements over territorial gains and losses resulted in record levels of civilian harm, including the highest number of child casualties and levels of internal displacement documented since 2009.”*

The deterioration in the security situation witnessed in 2016 has persisted into 2017. The UN recorded more than 16,290 security-related incidents in the first eight months of 2017 alone. In June 2017, the UN Secretary-General characterized the situation in Afghanistan as “intensely volatile” and the European Civil Protection and Humanitarian Aid Operations (ECHO) stated that the situation had “reverted to an increasingly acute humanitarian crisis.”

Between 1 January and 30 June 2017, UNAMA documented 5,243 civilian casualties (1,662 deaths and 3,581 injured). The majority of these deaths and injuries resulted from the use of Improvised Explosive Devices by Anti-Government Elements in civilian-populated areas – particularly suicide bombs and pressure-plate devices. UNAMA has stated that in the first half of 2017, it documented more civilian deaths and injuries from suicide and complex attacks than in any previous six month period since the UN agency began systematic documentation of civilian casualties in 2009.

In terms of civilian casualties, Kabul is the most dangerous province in Afghanistan. However, a review of the 10 provinces with the highest numbers of civilian casualties in 2016 shows that conflict took place country-wide, with provinces in the North, South, East, West and central areas all affected. The conflict is volatile and involves multiple groups that are constantly seeking to gain or regain territory, and whose actions can be unpredictable. Statements by UNAMA and the UN Secretary-General, as well as US government authorities, international NGOs and parts of the Afghan government all underscore the extent to which people are at risk across the country.

Beyond the threat of serious harm to all Afghans as a result of the ongoing conflict, many people in the country are also at particular risk of persecution – defined in European Union (EU) and international law as “severe violations of basic human rights” on the basis of a person’s race, religion, nationality, membership in a particular social group or political opinion. Persecution is not a localized threat. This serious human rights violation takes place across the country, regardless of whether the area is under the effective control of Pro-Government Forces or Anti-Government Elements. In areas under the control of the government, State agents routinely perpetrate human rights violations. Pro-government armed groups are responsible for abuses such as deliberate killings, assault, extortion and intimidation. In regions in which Anti-Government Elements are in control, human rights violations are widespread. These include extrajudicial executions, torture and ill-treatment, as well as denials of the rights to free movement, freedom of expression, political participation, access to education and the right to health care. Moreover, both sides of the conflict perpetrate human rights violations in areas outside their respective control.

Torture is another serious danger in Afghanistan. In 2017, the UN Committee Against Torture (CAT), which is responsible for overseeing the implementation of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* expressed its grave concern at the prevalence of torture and the climate of impunity for torture in Afghanistan. The CAT found that there is “widespread acceptance and legitimization of torture in Afghan society.” Perpetrators of war crimes and gross human rights violations – including acts of torture – continue to hold official executive positions, some of them in government.

Accountability for human rights violations is rare. Afghanistan experiences high levels of corruption, a culture of impunity, and governance problems. These factors combine to weaken the rule of law and undermine the Afghan government’s ability to protect people from human rights violations. The government’s capacity to uphold human rights is further undermined by insecurity, instability and frequent attacks by Anti-Government Elements. The Afghan police and security forces face a wide range of well-documented challenges in dealing with security risks to the civilian population. Moreover, a number of State actors tasked with protecting human rights – including the local and national police forces – are *themselves* reportedly responsible for committing such abuses.

Furthermore, Afghanistan is the site of an acute humanitarian crisis. The UN Office for the Coordination of Humanitarian Affairs (OCHA) estimated that 9.3 million people will require humanitarian assistance in 2017. Over 9 million Afghans have limited or no access to essential health services. The country’s infant and maternal mortality rates are among the worst in the world, at 73/1,000 live births and 327/100,000 respectively. Food security is deteriorating, with 1.6 million people severely food insecure across the country.

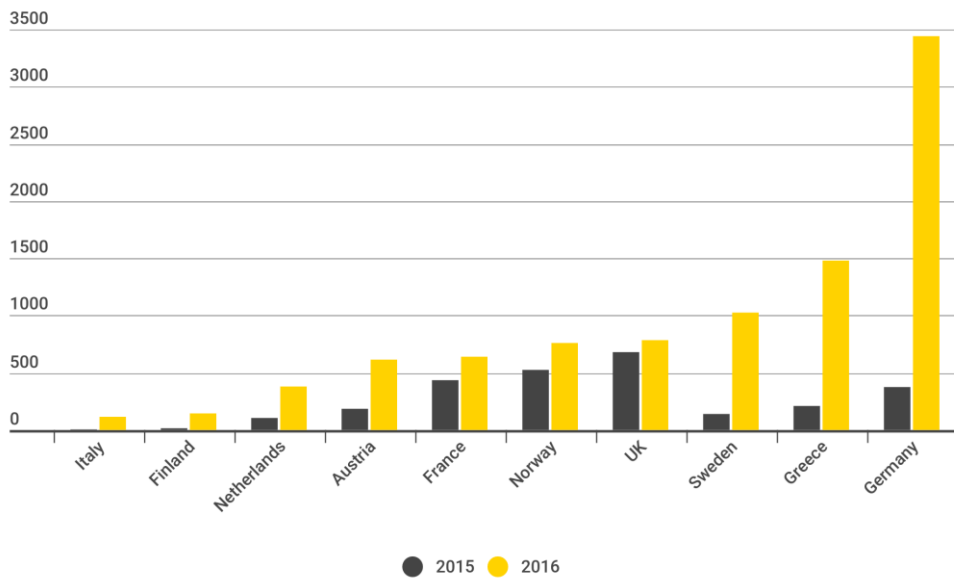
Afghanistan’s approximately 2 million Internally Displaced People (IDPs) and those returning to the country – many involuntarily – have exacerbated this already severe humanitarian crisis. In September 2017, OCHA reported that 30 out of Afghanistan’s 34 provinces were affected by forced displacement, with 257,900 people newly displaced between 1 January and 16 September 2017 alone. Nearly 60% of those new IDPs were children.

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If Afghans fleeing their country’s devastating security and human rights situation reach Europe, they have the right to lodge an asylum claim. Under international law, everyone who leaves their country of origin has the right to seek and enjoy asylum from persecution, in line with the principles set out in the *Universal Declaration of Human Rights*. Moreover, the binding international legal principle of *non-refoulement* means that European countries cannot transfer anyone to a place where they are at a real risk of serious human rights violations.

There has been a marked decrease in the recognition rates of Afghans’ applications for international protection in European countries in recent years. The average recognition rate dropped from 67% in 2015 to 56.7% in 2016. The decline is even more acute between September 2015 (68%) and December 2016 (33%). While this report does not examine European countries’ asylum processes or decisions, the rising number of asylum applications that are denied is relevant. People are entitled to appeal a negative asylum decision but if a person’s final appeal is unsuccessful, they must leave the country, either in a “forced return,” or in a somewhat less coercive but nonetheless compulsory process known as an “Assisted Voluntary Return.” In recent years, returns from Europe to Afghanistan have increased dramatically. Between 2015 and 2016, the number of Afghan citizens returned by European countries to Afghanistan nearly tripled: from 3,290 to 9,460.

**NUMBERS OF AFGHANS RETURNED FROM EUROPEAN COUNTRIES TO AFGHANISTAN, 2015-2016**

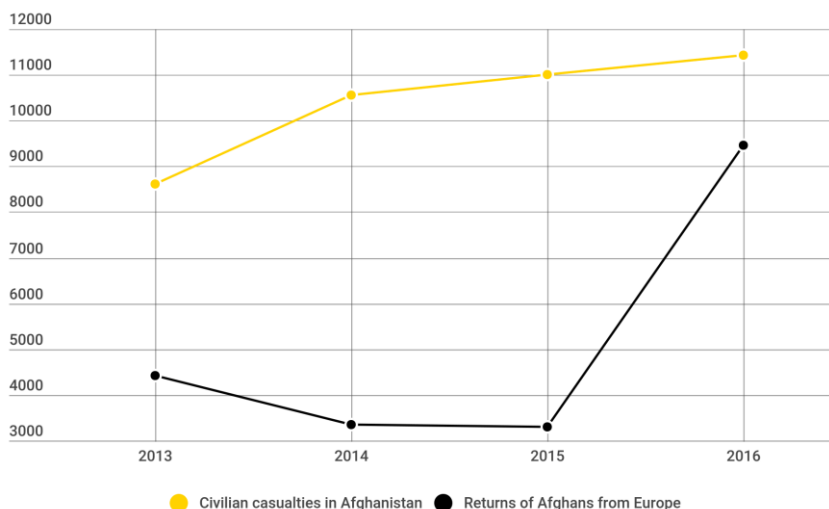




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The increasing numbers of returns of people to Afghanistan, when contrasted with the increasing number of civilian casualties, raise serious questions about the decision-making processes of European authorities.

## CIVILIAN CASUALTIES IN AFGHANISTAN AND RETURNS FROM EUROPE, 2013-2016



Evidently there is a gap between the objective facts on the ground in Afghanistan, and the actions and policies of the EU and European governments towards Afghan asylum-seekers. Why this incoherence between reality in Afghanistan and European authorities' treatment of people who have fled the country?

One key factor would appear to be political developments in Europe. In 2015, an unprecedented number of people – over one million – reached Europe irregularly, mainly on dangerous boat journeys from Turkey. Approximately 20% of these people (200,000) were from Afghanistan. Notwithstanding the fact that these numbers are small compared to the millions of refugees living in countries like Iran and Pakistan, the EU and many national governments in Europe responded by actively trying to prevent more asylum-seekers from arriving irregularly on European soil.

This is the context in which a document called the “EU-Afghanistan Joint Way Forward” (Joint Way Forward) was negotiated and signed in October 2016. The document aims to facilitate the return of Afghan nationals from all European Member States to Afghanistan.

Officially, the Joint Way Forward is premised on solidarity and collective efforts to address the migration challenges faced by both Afghanistan and the EU. The document explicitly states that the development aid provided to Afghanistan is independent of the funds meant for return programmes and reintegration assistance.

Notwithstanding the Joint Way Forward's rhetoric of solidarity and cooperation, in fact the agreement puts pressure on Afghanistan to accept large numbers of returns. Afghanistan's Minister of Finance, Eklil Hakimi, has been quoted telling the Afghan parliament: “If Afghanistan does not cooperate with EU countries on the refugee crisis, this will negatively impact the amount of aid allocated to Afghanistan.” Similarly, a confidential Afghan government source called the Joint Way Forward a “poisoned cup” that Afghanistan was forced to drink in order to receive development aid. The country is highly aid-dependent, with nearly 70% of Afghanistan's annual income dependent upon international donors. In a leaked document from March 2016, EU agencies stated that leverage at an upcoming October 2016 aid conference for Afghanistan (at which the Joint Way Forward was signed) “should be used as a positive incentive for the implementation of the Joint Way Forward.” The document also specified that a EUR 200 million state-building contract in Afghanistan “is intended to be made migration sensitive, probably through one indicator linking it to the Government's policy on migration and return and possibly to the implementation of the ‘Joint Way Forward’.” In the document, EU agencies also acknowledged Afghanistan's “worsening security situation and threats to which people are exposed,” as well as the likelihood that “record levels of terrorist attacks and civilian casualties” will increase, but nevertheless stated that “more than 80,000 persons could potentially need to be returned in the near future.”

The message is clear: deportations will increase, irrespective of the dangers to which people are exposed upon return.

To effect these returns, European countries have arbitrarily called some areas of Afghanistan “safe,” relying on the idea of an “Internal Flight Alternative” (IFA). In other words, the authorities recognise that the person’s province of origin is dangerous, but expect them to live elsewhere in the country. For example, several European countries consider Kabul to be a safe place. However, UNAMA reports that the province continues to be the site of the highest number of civilian casualties, mainly in Kabul city, accounting for 19% of all civilian casualties in the entire country.

The concept of IFA is both legally questionable and – in the case of Afghanistan – factually unsound. The UN Refugee Agency, UNHCR, as expressed serious reservations about the concept of IFA, which has no basis in the *Convention Relating to the Status of Refugees*. Furthermore, UN and other expert reports make clear that civilian casualties and serious security incidents are occurring across Afghanistan, from North to South and East to West. The security situation is volatile and the multiple armed groups operating in the country are seeking to hold, capture or recapture territory. There is no credible possibility of durable IFA option.

European countries’ determination to return people to Afghanistan regardless of widespread insecurity, is clear in their efforts to deport vulnerable young people. This includes unaccompanied children, as well as young adults who originally reached Europe as unaccompanied children. Children face the same dangers as everyone in Afghanistan, but also face additional risks, of which the European authorities are aware. The EU-funded, IOM-run “European Reintegration Network Programme for Afghanistan” has acknowledged the particular vulnerability of unaccompanied children returned from Europe, noting the complete absence of national legislation governing their care, or of local or international NGOs that could provide them with support.

\* \* \*

Afghanistan is deeply unsafe, and has become more so in recent years. Yet European countries are returning people to Afghanistan in increasingly large numbers, even as the violence in the country escalates. At present, given the grave security and human rights situation across the country, all returns to Afghanistan constitute *refoulement*. For the principle of *non-refoulement* to be breached, it is not necessary for serious harm to ensue: the human rights violation takes place when someone is returned to a real *risk* of such harm. European governments have remained wilfully blind to the dangers to which returnees are exposed, and – together with the EU – are putting Afghanistan under tremendous pressure to accept large numbers of returnees. Prioritizing deportations, heedless of the evidence, is reckless and illegal.

Amnesty International is calling on all European countries to implement a moratorium on returns to Afghanistan until they can take place in safety and dignity. The organization also recommends that UNHCR call for such a moratorium. In addition, Amnesty International urges the Government of Afghanistan and IOM not to cooperate with the returns of people from Europe to Afghanistan.

# METHODOLOGY

This report is based on desk and field research conducted between May and September 2017. An Amnesty International delegation travelled to Afghanistan in May 2017. Researchers met or spoke with local and international civil society organizations, lawyers, academics, the International Organization for Migration (IOM), the United Nations Refugee Agency (UNHCR), and the Afghan Ministry for Refugees and Repatriation. Researchers also met with UNHCR staff at the headquarters in Geneva.

Amnesty International documented a total of 26 cases, mainly through in-person interviews conducted in Afghanistan. Researchers identified 18 cases directly, and used media reports and legal documents to track the returns of eight other people: three from the Netherlands (two teenage boys and one man), and five from Norway (one unaccompanied boy, and a family of two parents and two boys). Of the 18 returnees researchers spoke with, 15 were interviewed in person in Kabul and three interviewees were interviewed by phone from Afghanistan, Pakistan and Iran. Of the 18 Afghan returnees interviewed by Amnesty International researchers, 16 were men or boys and two were women. The majority of the Afghan returnees interviewed (10) had been returned from Norway, three had been returned by Germany, three by the Netherlands and two by Sweden.

Whenever possible, Amnesty International corroborated interviewees' testimony by communicating with their lawyers and relatives in Europe, and by obtaining supporting evidence such as medical records, police reports, court documents and other legal documents, as well as photographs and videos.

In order to not expose the Afghan interviewees to further risk, all their names have been changed and – when necessary – some identifying information withheld.

Amnesty International would like to thank everyone who contributed to this research, in particular the Afghans interviewed, as well as their friends and advocates in Europe.

A note on statistics: This report draws principally on data from Eurostat, the statistical office of the EU, which provides the most robust and widely comparable data available for asylum acceptance rates and numbers of returns from across Europe to Afghanistan. Eurostat obtains its data from European national authorities, in line with Regulation (EC) No 862/2007 on statistics on migration and international protection. When relevant, the report also refers to data from other sources such as UNHCR, IOM and the Afghan Ministry for Refugees and Repatriation.

# 1. FORCED BACK: STORIES FROM AFGHANISTAN

Amnesty International researchers travelled to Afghanistan in May 2017 and met with women, men and children who had recently been deported from Europe. This chapter documents some of their experiences upon return. In each case names have been changed and details have been withheld to protect the individuals in Afghanistan who, without exception, were deeply frightened.

Subsequent chapters look at the current security and human rights situation in Afghanistan, why people are being returned, and whether the returns are consistent with European countries' legal obligations.

## **Sadeqa and her family<sup>1</sup>**

Sadeqa is a mother of three young children. Along with her husband and children she was deported from Norway to Afghanistan in 2016. Amnesty International researchers interviewed her in 2017 by phone and also spoke with a family member in the UK and the family's lawyer in Norway.

Sadeqa described to researchers how, in 2015 before the family fled to Norway, her husband Hadi had been kidnapped by a group opposed to the nature of his work. The family paid a ransom to secure his release. According to Sadeqa, the kidnappers had beaten him so badly he was unable to speak for days. She told researchers: "They had tied his legs and hands. He was injured from head to toe and was shivering so much." The family was too frightened to bring Hadi to the hospital and had to ask a doctor to treat him at home. After he had recovered, Sadeqa and her husband and other family members – including an infant – fled the country in fear for their lives. It took them several months to make their way to Europe. It was an arduous journey, and she said that at one point, her youngest son lost consciousness from the cold. Once they reached Norway, they submitted an application for international protection. For reasons that are not clear, their asylum claim was rejected. Sadeqa told researchers that she never saw a written copy of the negative decision.<sup>2</sup>

After the asylum claim was rejected, the Norwegian authorities presented the family with two options: be forcibly returned to Afghanistan after being detained for a period of time, or "accept" a return and thereby receive the equivalent of approximately EUR 10,700<sup>3</sup> and avoid detention. Sadeqa told Amnesty International: "So we agreed to a return and decided to start from scratch again – we had no choice."

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<sup>1</sup> Unless otherwise indicated, information in this section comes from interviews with returnee by phone, Afghanistan (location known to Amnesty International), 23 July 2017 and 23 August 2017.

<sup>2</sup> It was not clear if the Norwegian authorities failed to provide this document, or whether a legal representative was given a document that was not shared with the family.

<sup>3</sup> Amnesty International researchers were shown a document given to the family by the Norwegian authorities which set out the sum provided for reintegration support: 20,000 NOK per person \* 5 people = 100,000 NOK. Document on file with Amnesty International.

After the family was deported in mid-2016, Hadi started in a new line of work, and tried to keep a low profile. But several months after returning from Norway, he disappeared. A few days later, Sadeqa got a call informing her that her husband had been killed. She is certain that the responsibility lies with the people who had previously kidnapped him. Amnesty International has seen a copy of Hadi's death certificate, as well as police reports questioning a suspect in his murder. Although researchers are not in a position to verify the authenticity of these documents, if genuine they provide compelling evidence of Hadi's murder.

Sadeqa cried as she told researchers by phone from Kabul: "Not a single word of what we said was a lie, but Norway didn't believe us. If we had been accepted, my husband would be alive today." She said that she and the rest of her family remain trapped in their house: "I'm so afraid I can't even bring my children to their father's grave."

#### Fahima and her family<sup>4</sup>

Fahima is a 44-year-old woman whom Amnesty International researchers met in Kabul in May 2017. She is a mother of two sons and one daughter. Her daughter arrived alone in Norway, aged 13, and was granted asylum. The parents and two sons arrived later, in 2011. The family spent five years together in the country, and the children became fluent in Norwegian. For reasons that are not clear, the authorities rejected the asylum application of the parents and sons, and deported them to Afghanistan in August 2016. The deportation has separated the family, and the now 18-year-old daughter remains alone in Norway.

A few months after the Norwegian authorities returned them to Afghanistan, Fahima said that her husband and son were on their way to a Shia shrine in Kabul when a suicide attacker struck, killing at least 14 people and injuring over 40.<sup>5</sup> It was a terrifying experience, and Fahima's youngest son is now too afraid to leave the house. She questions the Norwegian authorities' view that Afghanistan is a safe place for returns:

*"Once my son and I tried to go to the Norwegian embassy in Kabul. The road was totally blocked with concrete walls, police, security guards and tanks. They asked us if we had an appointment with the embassy and with whom. We told them that we do not have any appointment and we were deported from Norway so we want to go and meet someone, but the guards told us that for security reasons they are not able to allow anyone to enter the road and we had to leave. If Norwegian diplomats are hiding behind concrete walls and even a harmless person like me cannot enter for security reasons how can they think that it is safe for Afghans to return and live in this country?"*

#### The Farhadi family<sup>6</sup>

The case of the Farhadi family, which was covered extensively in the Norwegian print and TV media, is similar.

According to media reports, the parents and their two sons were forcibly returned from Norway to Kabul in October 2016, and were close to a suicide attack on the Baqir-ul-uloom mosque in Kabul on 21 November 2016. At least 27 people died when a suicide bomber blew himself up inside the mosque – an attack for which the group calling itself the Islamic State has claimed responsibility.<sup>7</sup>

One of the sons, 13-year-old Ali Reza, told the Norwegian news outlet *Dagbladet* that he was with a friend at the main entrance to the mosque when there was an explosion, followed by a fire. His two-year-old brother Subhan was injured when the pressure from the explosion caused his mother to drop him. After the family returned home, Ali Reza said that Subhan began to bleed from his ears. According to his mother, he still has pain in one ear. In a poignant gesture, the football team in Norway that Ali Reza had played for, "Bagn IL," posted two photos on social media following the attack, saying:

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<sup>4</sup> Interview with returnee, Kabul, 28 May 2017.

<sup>5</sup> Sune Engel Rasmussen, "Gunmen Kill 14 People in Attack on Shia Muslim Shrine in Kabul," 11 October 2016, <https://www.theguardian.com/world/2016/oct/11/afghanistan-gunmen-kill-fourteen-people-shia-shrine-ashura-kabul>.

<sup>6</sup> Unless otherwise indicated, information in this section comes from: Torun Støbakk, "Familie sendt ut av Norge med tvang - rammet av bombe," *Dagbladet*, 22 November 2016, <https://www.dagbladet.no/nyheter/familie-sendt-ut-av-norge-med-tvang--rammet-av-bombe/65363934>; Norwegian Organisation for Asylum Seekers, "Afghanistan og behovet for rettshjelp," 24 November 2016, <http://www.noas.no/afghanistan-og-behovet-for-rettshjelp/>; Nilas Johnsen, "Afghanistan-retteurene: Døden nær i moskéangrep," *VG*, 28 February 2017, <http://www.vg.no/nyheter/utenriks/afghanistan/afghanistan-retteurene-doenen-naer-i-moskeangrep/a/23936754/>.

<sup>7</sup> "Deaths as Suicide Bomber Attacks Shia Mosque in Kabul," *Al Jazeera*, 22 November 2016, <http://www.aljazeera.com/news/2016/11/kabul-suicide-blast-shia-mosque-casualties-feared-161121083359269.html>.

*“Sometimes the contrasts are just too big. Ali Reza played for Bagn IL during the 2016 season. He and his family attended our end-of-season ceremony as late as mid-October. Below is a picture from the news yesterday after a bomb attack in Kabul. We have space in our teams for Ali and many others. We think about you and hope we can meet again soon in safe and secure circumstances.”<sup>8</sup>*



← The photos posted on Facebook by Bagn IL, Ali Reza Farhadi’s former football team in Norway. The first shows him (far left) with his teammates in Norway, the second shows his appearance on a TV news clip in Kabul following a suicide attack on 21 November 2016.

### Farid<sup>9</sup>

When Amnesty International researchers met 32-year-old Farid in late May 2017, he had just arrived in Kabul. It was his first time in the city, and he was bewildered and frightened. He told researchers: “I feel like I’ve fallen from the sky. I don’t believe I’m here.”

Farid’s family initially fled Afghanistan when he was a child, moving to Iran where he grew up. Farid left Iran and made his way to Norway when he was a young adult. While living in Norway he converted to Christianity. He spoke warmly of the time he spent in Norway, and showed researchers a video of his baptism. He told researchers: “People in Europe have humanity – they don’t care which religion you are.”

After nine years in the country, during which time he learned Norwegian and made local friends, Farid’s asylum claim was rejected. He said the authorities told him he would be safe in Kabul, and Norway deported him to Afghanistan in May 2017. Because of his conversion, he is estranged from his immediate family members, who still live in Iran. He told researchers: “I am scared. I don’t know anything about Afghanistan. Where will I go? I don’t have funds to live alone and I can’t live with relatives because they will see that I don’t pray.” Additionally, he cannot return to his province of origin; he said that an enemy of his family had attacked him when he had tried to move back to Afghanistan 10 years previously, and showed researchers over a dozen deep scars across his legs, arms and torso. His Hazara ethnicity adds another level of vulnerability. The UN Refugee Agency, UNHCR, has recognised that converts from Islam, Christians, people involved in blood feuds, and Hazara people are all at risk of persecution in Afghanistan.<sup>10</sup>

<sup>8</sup> Bagn IL, Facebook post, 23 November 2016, <https://www.facebook.com/BagnIL/photos/a.388369961219132.90171.312872432102219/1310873578968761/?type=3&theater>.

<sup>9</sup> Unless otherwise indicated, information in this section comes from interview with returnee, Kabul, 21 May 2017.

<sup>10</sup> UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 19 April 2016, UN Doc. HCR/EG/AFG/16/02, <http://www.refworld.org/docid/570f96564.html>, p. 50, 53, 74, 79 [UNHCR *Eligibility Guidelines for Afghan Asylum-Seekers*, 2016].

## Azad<sup>11</sup>

Amnesty International researchers met 23-year-old Azad in Kabul in May 2017, a few days after he had been deported from the Netherlands. He identifies as gay, and is also a close relative of someone working for the international military forces. UNHCR has identified both these characteristics as rendering Afghans at risk of persecution.<sup>12</sup>

Azad said that he and his family fled Afghanistan for Iran in the early 2000s after his father was killed by the Taliban. From that point on, he told researchers, his life has been turned upside down. He grew up in Iran, but the family could not achieve legal status, meaning that the children could not go to school. In desperation, Azad, his mother and brother decided to try to reach Europe in 2011. Azad told researchers that his mother died at sea *en route* from Turkey to Greece. He cried as he told researchers: “I just want to visit my mother’s grave.”

Azad and his younger brother eventually managed to reach the Netherlands, where they lived for about six years. For reasons that are not clear, his brother’s application for asylum was successful, but Azad’s was not. Azad said that he was so scared of being deported that he tried to cut his throat with broken glass, but it was not sharp enough so he tried to swallow it. He was in immigration detention at the time, and Dutch officials stopped him. Azad showed researchers a scar on the right side of his neck, and injuries inside his mouth. He was returned to Afghanistan in May 2017. He described to Amnesty International researchers in Kabul his efforts to hide his sexual orientation: “I try to be a man here. I’m losing my mind. I am fearing a lot at night – I am really scared.” Like Farid, he had never been to Kabul, and does not know anyone in the city. When Amnesty International met with him, he had no idea what he would do or where he would go.



←  “Azad” in Kabul, May 2017. © Amnesty International

<sup>11</sup> Unless otherwise indicated, information in this section comes from interview with returnee, Kabul, 20 May 2017.

<sup>12</sup> *UNHCR Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 37, 72.

### Rahim<sup>13</sup>


Rahim is a 20-year-old man whom Amnesty International researchers met in Kabul in May 2017. He had been returned from Norway.

Rahim described how his father, who was a police commander, was killed by the Taliban in 2003. Several years after his father's death, Rahim said that he and his brother started receiving threatening letters from the Taliban. They received eight or nine letters. A copy of one letter is on file with Amnesty International, marked with the official Taliban stamp, stating: "You are told to hand over any weapons of your father and surrender yourself to the *mujahedeen* or you will have the same fate as your father."<sup>14</sup> UNHCR recognises police officers as being at risk of persecution by Anti-Government Elements such as the Taliban, and reports that relatives of police officers have been subjected to harassment, forced disappearances, violence, and killings.<sup>15</sup>

Rahim fled to Norway in late 2015. He told researchers: "I felt like a human being in Norway – I had never felt that way here in Afghanistan." His asylum claim was denied. The Norwegian authorities told him that he would be safe if he lived in a different province from the one he had grown up in. Rahim was deported in late December 2016.

He told Amnesty International researchers in Kabul: "Here I live in fear. I can't study, I can't find a job, and I can't go to my place of origin. I have no choice but to go back to Europe."<sup>16</sup>



 ↑ "Rahim" in Kabul, May 2017. © Amnesty International

<sup>13</sup> Unless otherwise indicated, information in this section comes from interview with returnee, Kabul, 18 May 2017.

<sup>14</sup> Copy on file with Amnesty International.

<sup>15</sup> *UNHCR Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 36, 41.

<sup>16</sup> Interview with returnee, Kabul, 18 May 2017.



## Hamid<sup>17</sup>

A person with a similar risk profile to Rahim's is 18-year-old Hamid, who travelled from another province to meet with Amnesty International researchers in Kabul in May 2017. Hamid told researchers that his father had been a police officer and his brother had worked for the international military forces. Hamid said that the Taliban ordered him to serve with them or they would kill his whole family.

In fear for his life, he fled to the Netherlands alone, at the age of 15. He spent three years there, during which time he said he received mental health care. The Dutch authorities forcibly returned him to Afghanistan as soon as he turned 18. It was his first time in Kabul. He lived in the city for some time but eventually moved to another province.

He does not know what happened to his family, and he has no support network in the country. As a result, he is homeless. He said: "My family is missing, my life and my future are hanging in the balance. There is no hope of improvement or betterment and I am not feeling safe." Since his return, he said he has not received any mental health treatment or medication. Hamid's deportation took place notwithstanding the Afghan Red Crescent Society's inability to trace any of his family members. He told researchers:

*"Since my arrival I am literally homeless. I lived for some time under bridges, in old cars and garages. [...] I went to [another province] to find my family but I still couldn't find them. There are days and nights that I go without food or drinking tea or anything. I have a very hard life, [this province] is very unsafe and everyday there is fighting, explosions and killings everywhere. When I was in Kabul it was the same. The bridge that I was living under was full of drug addicts and at any moment I could get killed or viciously attacked by one of them. [...] Sometimes I seek shelter in the mosques and ask for food, but most of the times the mullahs [religious leaders] are reluctant to allow me in, fearing that I might be an insurgent or informant, or that I could conduct an act of terrorism as there have been several high profile attacks inside the mosques."*

Hamid told Amnesty International researchers that he was afraid of being "lured by the Taliban or other insurgents – this is why I am trying not to get myself involved with anyone who approaches me. I am scared a lot."

## Sadi<sup>18</sup>

Sadi is a 24-year-old man who was returned to Afghanistan from Sweden in March 2017. Amnesty International researchers spoke to him in Kabul in May 2017. Sadi is a Christian convert and said that he was critical of Islam on social media platforms. He claimed that his photo was circulated in Afghanistan – including in Kabul and his hometown. He told researchers: "I am very scared that someone will recognise me and kill me." UNHCR reports that Christians and converts from Islam are at risk of persecution in Afghanistan.<sup>19</sup>

Officially, Sadi "agreed" to his return from Sweden to Afghanistan. He said: "When I was in the deportation centre and awaiting deportation, I was brought a paper to sign and they told me that if I signed it I would receive cash assistance and accommodation. The people who brought us the papers told us: 'You will be deported in both cases, whether you sign or not, but if you sign it means that you will receive some assistance to manage your life, if you don't you will not receive any assistance'." But in reality, the return was far from voluntary. Sadi fears for his life in Afghanistan, and told researchers that he will go back to Europe.

## Conclusion

The overriding experience of the returnees with whom Amnesty International spoke was one of fear. While some faced specific risks related to them as individuals or because of facets of their identity such as sexual orientation, others were afraid because of the general context of violence and risk of random attacks. These accounts give a sense of the human experience of return, but how typical are they of the overall situation?

The next chapter examines the security and human rights situation in Afghanistan and the extent to which *all* returnees face a real risk of serious human rights violations.

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<sup>17</sup> Unless otherwise indicated, information in this section comes from interview with returnee, Kabul, 29 May 2017.

<sup>18</sup> Unless otherwise indicated, information in this section comes from interview with returnee, Kabul, 19 May 2017.

<sup>19</sup> *UNHCR Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 50, 53.

# 2. SECURITY AND HUMAN RIGHTS IN AFGHANISTAN

This chapter discusses the conflict gripping Afghanistan and the risk of serious human rights violations across the country, with no area being safe.

## DECADES OF CONFLICT

Afghanistan has been the site of conflict, insecurity and political upheaval for nearly 40 years. The Soviet invasion in 1979 marked the beginning of a brutal war with the *mujahedeen* resistance. The Soviets withdrew in 1989, and the subsequent fighting between competing *mujahedeen* factions eventually resulted in the Taliban's victory in 1996. The US-led war in Afghanistan beginning in 2001 forced many to flee the bombing campaign. After the fall of the Taliban, a few years of relative calm followed, with millions of Afghans returning to the country. But in 2006 the security situation deteriorated again.

Afghanistan is currently the site of a non-international armed conflict between what are known as “Anti-Government Elements” (dominated by the Taliban) and Pro-Government Forces. A period of cautious optimism in 2013 and 2014 was followed by a serious deterioration in the security situation, beginning in 2015, when the Taliban and other Anti-Government Elements made advances towards major population centres.<sup>20</sup> By the end of 2015, the Taliban controlled more territory than it had since it last governed the country, in 2001.<sup>21</sup>

In recent years, the conflict has worsened and new Anti-Government Elements – including the group calling itself the Islamic State – have emerged.<sup>22</sup> While the Taliban is the most dominant of the Anti-Government Elements in Afghanistan, the US Department of Defense has stated that the country “faces a continuing threat from an externally enabled insurgency and as many as 20 total terrorist organizations present or operating in the country, the highest concentration of terrorist groups in the world.”<sup>23</sup>

The longstanding and escalating conflict has precipitated a massive displacement crisis. Many people fleeing the conflict became Internally Displaced People (IDPs), and Afghanistan's IDP population will almost certainly exceed 2 million people by the end of 2017.<sup>24</sup> Millions of other people have managed to flee the country entirely. Afghan refugees represent the third-largest refugee population in the world, after Syrians and Palestinians.<sup>25</sup> More than 2.5 million Afghan refugees live in dozens of countries, with the vast majority residing in Iran and Pakistan.<sup>26</sup> About half of the Afghan refugee population in those two countries was born

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<sup>20</sup> UNHCR *Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 11.

<sup>21</sup> UNHCR *Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 10.

<sup>22</sup> United Nations Assistance Mission in Afghanistan, *2016 Annual Report on the Protection of Civilians in Armed Conflict in Afghanistan*, 1 February 2017, <https://unama.unmissions.org/protection-of-civilians-reports>; European Asylum Support Office, *EASO Country of Origin Information Report: Afghanistan Security Situation*, January 2016, <http://www.refworld.org/docid/56a1f8904.html>.

<sup>23</sup> US Department of Defense, *Enhancing Stability and Security in Afghanistan*, June 2017, [https://www.defense.gov/Portals/1/Documents/pubs/June\\_2017\\_1225\\_Report\\_to\\_Congress.pdf](https://www.defense.gov/Portals/1/Documents/pubs/June_2017_1225_Report_to_Congress.pdf), p. 18.

<sup>24</sup> Bilal Sarwary, “Afghanistan Now a ‘Continual Emergency’, as War Drives Record Numbers from their Homes,” *IRIN*, 10 January 2017, <https://www.irinnews.org/news/2017/01/10/updated-afghanistan-now-%E2%80%98continual-emergency%E2%80%99-war-drives-record-numbers-their-homes>.

<sup>25</sup> UNHCR, *Global Report 2016*, June 2017, [http://reporting.unhcr.org/publications#tab-global\\_report](http://reporting.unhcr.org/publications#tab-global_report), p. 16.

<sup>26</sup> UNHCR, *Global Report 2016*, June 2017, [http://reporting.unhcr.org/publications#tab-global\\_report](http://reporting.unhcr.org/publications#tab-global_report), p. 75.

in exile.<sup>27</sup> In recent years, however, increasingly hostile conditions in Iran and Pakistan have forced hundreds of thousands of Afghans to return to Afghanistan or flee elsewhere.<sup>28</sup> In 2016, Afghan refugees in Iran and Pakistan faced discrimination, racial attacks, lack of basic amenities and the risk of mass deportation to Afghanistan.<sup>29</sup>

## CONFLICT-RELATED DEATHS AND INJURIES

Tens of thousands of Afghans have died or been injured during the conflict. Between 2009 and 2016, the United Nations Assistance Mission in Afghanistan (UNAMA) calculated that nearly 25,000 civilians had been killed and over 45,000 injured.<sup>30</sup>

UN expert reports and other sources provide evidence that the conflict and the impact on civilians have gotten worse in the last two years. UNAMA reported that 2016 was the deadliest year on record for civilians in Afghanistan, with 11,418 people killed or injured.<sup>31</sup> The UN body stated:

*“In 2016, conflict-related insecurity and violence inflicted severe harm on civilians, especially women and children. The intensification of armed clashes between Pro-Government Forces and Anti-Government Elements over territorial gains and losses resulted in record levels of civilian harm, including the highest number of child casualties and levels of internal displacement documented since 2009.”<sup>32</sup>*

UNAMA went on to note:

*“In addition, the brutality and scale of civilian casualties caused by [groups identifying as Daesh/Islamic State Khorasan Province] attacks targeting members of the Shia Muslim religious minority raises serious concerns regarding the perpetration of war crimes and crimes against humanity, and the broader impact of such incidents on the right to religious freedom and the protection of minorities in general.”<sup>33</sup>*

While the majority of civilian casualties were attributable to Anti-Government Elements, there was also increasing risk of civilian casualties attributed to Pro-Government Forces. According to UNAMA this was “primarily due to the continued indirect and/or explosive use of weapons such as artillery, mortars, rockets and grenades during ground engagements by Afghan national security forces, and aerial operations conducted by both Afghan and international military forces.”<sup>34</sup>

The deterioration in the security situation witnessed in 2016 has persisted into 2017. In June 2017, the UN Secretary-General characterized the situation in Afghanistan as “intensively volatile”<sup>35</sup> and the European Civil Protection and Humanitarian Aid Operations (ECHO) stated that the situation had “reverted to an increasingly acute humanitarian crisis.”<sup>36</sup>

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<sup>27</sup> International Organization for Migration, *Afghanistan Migration Profile*, 2014, [https://publications.iom.int/system/files/pdf/mp\\_afghanistan\\_0.pdf](https://publications.iom.int/system/files/pdf/mp_afghanistan_0.pdf), p. 34.

<sup>28</sup> Human Rights Watch, *Pakistan Coercion, UN Complicity: The Mass Forced Return of Afghan Refugees*, 13 February 2017, <https://www.hrw.org/report/2017/02/13/pakistan-coercion-un-complicity/mass-forced-return-afghan-refugees>. Also see UNHCR, “Tough Choices for Afghan Refugees Returning Home after Years in Exile,” 3 February 2017, <http://www.unhcr.org/news/briefing/2017/2/589453557/tough-choices-afghan-refugees-returning-home-years-exile.html?query=afghan%20refugees>.

<sup>29</sup> Amnesty International, *Annual Report 2016/17: Afghanistan*, 2017, <https://www.amnesty.org/en/countries/asia-and-the-pacific/afghanistan/report-afghanistan/>.

<sup>30</sup> United Nations Assistance Mission in Afghanistan, *2016 Annual Report on the Protection of Civilians in Armed Conflict in Afghanistan*, 1 February 2017, <https://unama.unmissions.org/protection-of-civilians-reports>, p. 3.

<sup>31</sup> United Nations Assistance Mission in Afghanistan, *2016 Annual Report on the Protection of Civilians in Armed Conflict in Afghanistan*, February 2017, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_in\\_armed\\_conflict\\_annual\\_report\\_2016\\_final280317.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_annual_report_2016_final280317.pdf), p. 3.

<sup>32</sup> United Nations Assistance Mission in Afghanistan, *2016 Annual Report on the Protection of Civilians in Armed Conflict in Afghanistan*, February 2017, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_in\\_armed\\_conflict\\_annual\\_report\\_2016\\_final280317.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_annual_report_2016_final280317.pdf), p. 10.

<sup>33</sup> United Nations Assistance Mission in Afghanistan, *2016 Annual Report on the Protection of Civilians in Armed Conflict in Afghanistan*, February 2017, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_in\\_armed\\_conflict\\_annual\\_report\\_2016\\_final280317.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_annual_report_2016_final280317.pdf), p. 10.

<sup>34</sup> United Nations Assistance Mission in Afghanistan, *2016 Annual Report on the Protection of Civilians in Armed Conflict in Afghanistan*, February 2017, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_in\\_armed\\_conflict\\_annual\\_report\\_2016\\_final280317.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_annual_report_2016_final280317.pdf)

<sup>35</sup> UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security*, UN Doc. A/71/932-S/2017/508, 15 June 2017, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2017/508](http://www.un.org/ga/search/view_doc.asp?symbol=S/2017/508), para. 14.

<sup>36</sup> European Civil Protection and Humanitarian Aid Operations, *Afghanistan Factsheet*, May 2017, [http://ec.europa.eu/echo/files/aid/countries/factsheets/afghanistan\\_en.pdf](http://ec.europa.eu/echo/files/aid/countries/factsheets/afghanistan_en.pdf).

The UN recorded more than 16,290 security-related incidents in the first eight months of 2017. In his September 2017 report to the Security Council, the UN Secretary-General stated:

*“The continuing high numbers are attributed mainly to armed clashes, which represent 64 per cent of the total security incidents and have increased by 5 per cent since 2016. The record level of armed clashes seen during 2017 reinforced the shift in the conflict evident since earlier in the year, away from asymmetric attacks towards a more traditional conflict pattern characterized by often prolonged armed clashes between government and anti-government forces.”<sup>37</sup>*

Between 1 January and 30 June 2017, UNAMA documented 5,243 civilian casualties (1,662 deaths and 3,581 people injured).<sup>38</sup> Some of the key trends noted by UNAMA in the first six months of 2017 include:<sup>39</sup>

- In the first half of 2017, the UN agency recorded more civilian deaths and injuries from suicide and complex attacks than in any previous six month period since the mission began systematic documentation of civilian casualties in 2009.
- The majority of these casualties resulted from Anti-Government Elements using Improvised Explosive Device tactics in civilian-populated areas – particularly suicide bombs and pressure-plate devices.
- 19% of all civilian casualties occurred in Kabul city.
- Civilian casualties increased in 15 of Afghanistan’s 34 provinces, mainly due to increased attacks by Anti-Government Elements.

UNAMA also stated that “of extreme concern” was the fact that “suicide and complex attacks caused 1,151 civilian casualties (259 deaths and 892 injured), a 15% increase compared to the first six months of 2016.”<sup>40</sup> The UNAMA report went on to state that: “Of the 1,048 civilian casualties (219 deaths and 829 injured) documented in Kabul province, 94 per cent resulted from suicide and complex attacks carried out by Anti-Government Elements in Kabul city.”<sup>41</sup>

After Kabul, the nine provinces with the highest number of civilian casualties are:<sup>42</sup>

- Helmand (South)
- Kandahar (South)
- Nangarhar (East)
- Uruzgan (South)
- Faryab (North)
- Herat (West)
- Laghman (East)
- Kunduz (North)
- Farah (West)

All civilians are at risk in the conflict, but the impact on children is particularly horrific. In July 2017 UNAMA stated that children accounted for 30% of all civilian casualties, and recorded a marked increase in child deaths.<sup>43</sup> Children are also vulnerable to specific dangers such as forced recruitment by the Taliban, which trains and deploys children for military operations including the production and planning of improvised explosive devices.<sup>44</sup>

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<sup>37</sup> UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security*, UN Doc. A/72/392–S/2017/783, 15 September 2017, <http://www.refworld.org/pdfid/59c3a9f64.pdf>, para. 15.

<sup>38</sup> United Nations Assistance Mission in Afghanistan, *Protection of Civilians in Armed Conflict: Midyear Report*, July 2017, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_in\\_armed\\_conflict\\_midyear\\_report\\_2017\\_july\\_2017.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_midyear_report_2017_july_2017.pdf), p. 3.

<sup>39</sup> United Nations Assistance Mission in Afghanistan, *Protection of Civilians in Armed Conflict: Midyear Report*, July 2017, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_in\\_armed\\_conflict\\_midyear\\_report\\_2017\\_july\\_2017.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_midyear_report_2017_july_2017.pdf), p. 3-8.

<sup>40</sup> United Nations Assistance Mission in Afghanistan, *Protection of Civilians in Armed Conflict: Midyear Report*, July 2017, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_in\\_armed\\_conflict\\_midyear\\_report\\_2017\\_july\\_2017.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_midyear_report_2017_july_2017.pdf), p. 4.

<sup>41</sup> United Nations Assistance Mission in Afghanistan, *Protection of Civilians in Armed Conflict: Midyear Report*, July 2017, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_in\\_armed\\_conflict\\_midyear\\_report\\_2017\\_july\\_2017.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_midyear_report_2017_july_2017.pdf), p. 5.

<sup>42</sup> United Nations Assistance Mission in Afghanistan, *Protection of Civilians in Armed Conflict: Midyear Report*, July 2017, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_in\\_armed\\_conflict\\_midyear\\_report\\_2017\\_july\\_2017.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_midyear_report_2017_july_2017.pdf), p. 73.

<sup>43</sup> United Nations Assistance Mission in Afghanistan, *Protection of Civilians in Armed Conflict: Midyear Report*, July 2017, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_in\\_armed\\_conflict\\_midyear\\_report\\_2017\\_july\\_2017.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_midyear_report_2017_july_2017.pdf), p. 14.

<sup>44</sup> Human Rights Watch, *Afghanistan: Taliban Child Soldier Recruitment Surges: Children Trained in Madrasas to Fight, Plant IEDs*, 17 February 2016, <https://www.hrw.org/news/2016/02/17/afghanistan-taliban-child-soldier-recruitment-surges>.

# ALL PARTS OF THE COUNTRY AFFECTED

As the above list of provinces indicates, no part of Afghanistan is safe. Casualties have been documented from North to South and East to West. Moreover, the conflict is volatile and involves multiple groups that are constantly seeking to gain or regain territory, and whose actions can be unpredictable. A number of UN agencies and NGOs have underscored the wide-ranging nature of the conflict.

In 2016 UNHCR reported that the conflict was increasingly affecting *all* parts of Afghanistan.<sup>45</sup> During that year Anti-Government Elements (particularly Taliban) threatened to expand into population centres across the country, including in Kunduz in the north, Farah in the west, and Helmand and Uruzgan in the south.<sup>46</sup>

In relation to the group calling itself Islamic State, UNAMA reported at end of 2016 that:

*“The increased capacity of [the Islamic State in Iraq and the Levant-Khorasan Province] (ISIL-KP)] to strike beyond its perceived areas of influence and presence in eastern Afghanistan exacerbated the escalation in conflict and deteriorating security environment. The nature of attacks perpetrated by Daesh/ISKP is indicative of attempts to expand the conflict along sectarian lines, further compounding concerns for the protection of civilians.”<sup>47</sup>*

In relation to Islamic State, the UN Secretary-General noted that:

*“While Islamic State in Iraq and the Levant-Khorasan Province (ISIL-KP) operations remain mostly limited to eastern Afghanistan, the group claimed responsibility for eight significant attacks nationwide during the reporting period. The group consolidated its presence in Kunar Province and succeeded in re-establishing operational capacity in areas of Nangarhar Province that previously had been cleared by Afghan security forces. Elsewhere, alleged ISIL-KP activities were reported in the northern provinces of Jowzjan and Sari Pul, as well as in the western provinces of Herat and Ghor, indicating that the group may have attracted affiliates in areas beyond its stronghold in the east.”<sup>48</sup>*

An April 2017 report by the International Crisis Group (ICG) noted that as of December 2016, 151 of the country’s 375 districts were under “high threat” from the insurgency by Anti-Government Elements, 65 were under “medium threat”, and 11 had “collapsed.”<sup>49</sup> This represents more than 60% of the country. The ICG also noted that only 57.2 per cent of the country’s 375 districts were under Afghan government control or influence as of 1 February 2017, an almost 15 per cent decline since the end of 2015.<sup>50</sup>

According to the UN Secretary-General in 2017:

*“The conflict has further evolved because of the Government’s strategic decision, as a result of Taliban gains in rural areas, to focus its resources on defending population centres and disrupting the consolidation of Taliban control over strategic areas. This change has led to an increasing number of clashes for control over lines of communication and vital infrastructure.”<sup>51</sup>*

Underscoring the wide-ranging nature of the conflict in 2017, the UN Secretary-General reported:

*“The Taliban were able to overrun and temporarily hold several district centres, including Taywara in the western province of Ghor, Kohistan and Ghormach in the northern province of Faryab and Jani Khel in the eastern province of Paktiya. The Afghan National Defence and Security Forces recaptured Taywara and Kohistan within a week, while control of Jani Khel changed three times during the reporting period. In the north-east, the Taliban put intense pressure on Qaramol, Dawlat Abad, Shirin Tagab and Khwajah Sabz Posh districts along the Maimana-Andkhoy highway in Faryab Province. In the south, the Taliban intensified their attacks on districts adjacent to the provincial capitals of Kandahar and Lashkar Gah, as well as on the Kabul-Kandahar highway. On*

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<sup>45</sup> UNHCR Eligibility Guidelines for Afghan Asylum-Seekers, 2016, p. 14.

<sup>46</sup> International Crisis Group, *Afghanistan: The Future of the National Unity Government*, Report No. 285/Asia, 10 April 2017, <https://www.crisisgroup.org/asia/south-asia/afghanistan/285-afghanistan-future-national-unity-government>.

<sup>47</sup> United Nations Assistance Mission in Afghanistan, *2016 Annual Report on the Protection of Civilians in Armed Conflict in Afghanistan*, February 2017, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_in\\_armed\\_conflict\\_annual\\_report\\_2016\\_final280317.pdf\\_p.10](https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_annual_report_2016_final280317.pdf_p.10).

<sup>48</sup> UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security*, UN Doc. A/72/392–S/2017/783, 15 September 2017, <http://www.refworld.org/pdfid/59c3a9f64.pdf>, para. 19.

<sup>49</sup> International Crisis Group, *Afghanistan: The Future of the National Unity Government*, Report No. 285/Asia, 10 April 2017, <https://www.crisisgroup.org/asia/south-asia/afghanistan/285-afghanistan-future-national-unity-government>.

<sup>50</sup> US Special Inspector General for Afghanistan Reconstruction, *Quarterly Report to the United States Congress*, 30 July 2017, <https://www.sigar.mil/pdf/quarterlyreports/2017-07-30qr.pdf>.

<sup>51</sup> UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security*, UN Doc. A/72/392–S/2017/783, 15 September 2017, <http://www.refworld.org/pdfid/59c3a9f64.pdf>, para. 16.

17 July, Afghan forces recaptured Nawah-ye Barakzai district in Helmand Province, which had been under Taliban control since October 2016.”<sup>52</sup>

UNAMA's 2017 mid-year report described the extent to which the conflict affects villages and towns across the country, touching upon all aspects of civilian life:

*“As in 2016, sustained ground fighting between Anti-Government Elements and Pro-Government Forces in numerous provinces across the country coincided with asymmetric attacks in villages, towns, and cities by Anti-Government Elements, mainly using indiscriminate tactics. Reflecting the extent to which the armed conflict invaded the lives of Afghans countrywide during the first half of the year, violence killed and maimed civilians in nearly every conceivable setting of day to day life. Civilians lost their lives, limbs, sight or suffered harm while inside of their own homes, travelling on public roads, attending classes, praying in mosques, purchasing food, playing outside, working in offices, laboring in agricultural fields, visiting the bank, and lying in hospital beds.”*<sup>53</sup>

The UN Secretary-General also underscored the volatility and human impact of the conflict, stating:

*“The security situation remained highly volatile, as the Government and the Taliban exchanged control of several district centres during the reporting period, with casualties on both sides. [...] Civilians continued to suffer disproportionately from the conflict, with continuing high levels of civilian casualties and displacement.”*<sup>54</sup>

The view of a deteriorating security situation is echoed by the US Special Inspector General for Afghanistan Reconstruction (SIGAR) in 2017:

*“Over the past year [...] as security incidents have multiplied, SIGAR has observed that [US] Embassy Kabul has increasingly restricted chief-of-mission personnel travel to mostly inside the international zone in Kabul.”*<sup>55</sup>

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<sup>52</sup> UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security*, UN Doc. A/72/392-S/2017/783, 15 September 2017, <http://www.refworld.org/pdfid/59c3a9f64.pdf>, para. 17.

<sup>53</sup> United Nations Assistance Mission in Afghanistan, *Protection of Civilians in Armed Conflict: Midyear Report*, July 2017, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_in\\_armed\\_conflict\\_midyear\\_report\\_2017\\_july\\_2017.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_midyear_report_2017_july_2017.pdf), p. 7.

<sup>54</sup> UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security*, UN Doc. A/72/392-S/2017/783, 15 September 2017, <http://www.refworld.org/pdfid/59c3a9f64.pdf>, para. 3.

<sup>55</sup> US Special Inspector General for Afghanistan Reconstruction, *Quarterly Report to the United States Congress*, 30 July 2017, <https://www.sigar.mil/pdf/quarterlyreports/2017-07-30qr.pdf>, p. 3.

## RECENT ATTACKS

A sample of some recent high-profile attacks, while far from comprehensive, gives some indication of the country-wide context of violence and high risk of random attacks.

### Kabul city, eastern Afghanistan, May-August 2017

A bomb attack in Kabul on 31 May 2017 killed more than 150 people and wounded over 300.<sup>56</sup> The suicide truck-bomb explosion, which took place in one of the most securitized areas of the city, severely damaged several embassies and injured staff from the German, Japanese, and Pakistani embassies, as well as US citizens working as contractors. The attack precipitated several days of protests, during which protesters were killed, followed by more deaths after suicide bombers at the funeral ceremony for the victims killed six people and injured 87 others.<sup>57</sup>

A suicide bomb in Kabul on 24 July 2017 killed 30 people and injured at least 42 in an attack claimed by the Taliban.<sup>58</sup>

The group calling itself the Islamic State claimed responsibility for an attack on a Shia mosque in Kabul on 25 August 2017. Over 30 people were killed by the three attackers, including two who detonated themselves.<sup>59</sup>

### Herat city, western Afghanistan, August 2017

On 1 August 2017, two attackers entered a Shia mosque during evening prayer, killing 29 people and wounding over 60.<sup>60</sup> No group has claimed responsibility for the attack.

### Sari Pul Province, northern Afghanistan, August 2017

Between 3 and 5 August 2017, local self-proclaimed Daesh/Islamic State-affiliated fighters and the Taliban jointly attacked Mirza Olang village in Sari Pul province. At least 36 people were killed in a series of attacks that UNAMA says constitute violations of international humanitarian law and may amount to war crimes. According to UNAMA:

*“Much of the area surrounding the district administrative centre has been under control of Anti-Government Elements for more than one year. Mirza Olang village is predominantly inhabited by ethnic Hazara, of whom the majority are Shi’a Muslims. In recent years, a number of male residents of the village fought as Pro Government Militia and Afghan Local Police to defend their village from Anti-Government Elements. Residents reported to UNAMA that they had received warnings from local Anti-Government Elements to cease their resistance, which they shared with local Government officials who reportedly encouraged them ‘not to give in’. Local officials claimed that they warned the Kabul government of the potential for attacks in Sayyad district and impact on civilians if reinforcements were not sent to the area. Taliban publicly stated that the motive for the attack on Mirza Olang was its residents’ ongoing resistance and affiliation with the Government of Afghanistan.”<sup>61</sup>*

<sup>56</sup> Rod Nordland, “Death Toll in Kabul Bombing Has Hit 150, Afghan President Says,” *New York Times*, 6 June 2017, <https://www.nytimes.com/2017/06/06/world/asia/kabul-bombing-death-toll-increases.html>.

<sup>57</sup> UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security*, A/71/932-S/2017/508, 15 June 2017, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2017/508](http://www.un.org/ga/search/view_doc.asp?symbol=S/2017/508), para. 18.

<sup>58</sup> “Kabul Suicide Car Bomb: 30 Killed in Afghan Capital,” *BBC*, 24 July 2017, <http://www.bbc.co.uk/news/world-asia-40702010>.

<sup>59</sup> “Suicide Attack on Kabul Shiite Mosque Kills at Least 30,” *Reuters*, 25 August 2017, <https://www.reuters.com/article/us-afghanistan-attack/suicide-attack-on-kabul-shiite-mosque-kills-at-least-30-idUSKCN1B511T>.

<sup>60</sup> “Suicide Bombers Target Shia Mosque in Herat City,” *Al Jazeera*, 2 August 2017, <http://www.aljazeera.com/news/2017/08/shia-mosque-herat-province-hit-deadly-explosion-170801163417483.html>.

<sup>61</sup> United Nations Assistance Mission in Afghanistan, *Special Report: Attacks in Mirza Olang, Sari Pul Province: 3 - 5 August 2017*, August 2017, [https://unama.unmissions.org/sites/default/files/special\\_report\\_on\\_mirza\\_olang\\_sari\\_pul\\_august2017.pdf](https://unama.unmissions.org/sites/default/files/special_report_on_mirza_olang_sari_pul_august2017.pdf), p. 1.

## FORCED BACK TO DANGER

### ASYLUM-SEEKERS RETURNED FROM EUROPE TO AFGHANISTAN

Amnesty International

# PERSECUTION

Beyond the threat of serious harm to all Afghans as a result of the ongoing conflict, many people in the country are also at particular risk of persecution – defined in European Union (EU) and international law as “severe violations of basic human rights”<sup>62</sup> on the basis of a person’s race, religion, nationality, membership in a particular social group or political opinion.<sup>63</sup>

According to UNHCR’s guidelines on assessing Afghans’ international protection claims, people with certain profiles require a particularly careful examination of the possible risks to them:

- members of the Afghan security forces, particularly the Afghan National Police;<sup>64</sup>
- civilians associated with (or perceived as supportive of) the international military forces, such as people working as drivers, contractors or interpreters;<sup>65</sup>
- individuals perceived as “Westernized,” including people who have returned from Western countries – some of whom have been tortured or killed by anti-government elements on the basis that they had become “foreigners” or that they were spies for a Western country;<sup>66</sup>
- men of fighting age, as well as children in the context of underage and forced recruitment;<sup>67</sup>
- women and girls with certain profiles or in certain circumstances – for instance, those at risk of sexual and gender-based violence or harmful traditional practices, and women perceived as contravening social norms;<sup>68</sup>
- members of religious minorities, who reportedly avoid stating their beliefs publicly or gathering openly to worship, out of fear of discrimination, ill-treatment, arbitrary detention, or death;<sup>69</sup>
- converts from Islam, as conversion from Islam is deemed apostasy in Afghanistan, which under the Afghan courts’ interpretation of Islamic law is punishable by death;<sup>70</sup>
- individuals of diverse sexual orientations and/or gender identities, as consensual same-sex relations are criminalized, with gay men and boys (and those perceived to be gay) suffering discrimination and violence, including at the hands of the Afghan authorities, Anti-Government Elements, and their community or family members;<sup>71</sup>
- ethnic minorities including Hazaras;<sup>72</sup> and
- people involved in blood feuds, that is: members of a family killing members of another family in retaliatory acts of vengeance.<sup>73</sup>

Persecution is not a localized threat. This serious human rights violation takes place across the country, regardless of whether the area is under the effective control of Pro-Government Forces or Anti-Government Elements.<sup>74</sup> In areas under the control of the government, State agents routinely perpetrate human rights violations.<sup>75</sup> Pro-government armed groups are responsible for abuses such as deliberate killings, assault, extortion and intimidation.<sup>76</sup> In regions in which Anti-Government Elements are in control, human rights violations are widespread.<sup>77</sup> These include extrajudicial executions, torture and ill-treatment, as well as denials of the rights to free movement, freedom of expression, political participation, access to education and

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<sup>62</sup> European Union: *Council of the European Union, 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)*, 20 December 2011, OJ L 337/9-337/26; 20.12.2011, 2011/95/EU, <http://www.refworld.org/docid/4f197df02.html>, Art. 9(1)(a).

<sup>63</sup> 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>, Art. 1(A)(2).

<sup>64</sup> *UNHCR Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 36.

<sup>65</sup> *UNHCR Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 37.

<sup>66</sup> *UNHCR Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 41.

<sup>67</sup> *UNHCR Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 44.

<sup>68</sup> *UNHCR Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 56-62.

<sup>69</sup> *UNHCR Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 50.

<sup>70</sup> *UNHCR Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 53.

<sup>71</sup> *UNHCR Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 72.

<sup>72</sup> *UNHCR Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 74.

<sup>73</sup> *UNHCR Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 79.

<sup>74</sup> *UNHCR Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 18.

<sup>75</sup> *UNHCR Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 18.

<sup>76</sup> *UNHCR Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 21.

<sup>77</sup> *UNHCR Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 18.



the right to health care.<sup>78</sup> Moreover, both sides of the conflict perpetrate human rights violations in areas outside their respective control.<sup>79</sup>

Accountability for these abuses is rare. Afghanistan experiences high levels of corruption, a culture of impunity, and governance problems.<sup>80</sup> These factors combine to weaken the rule of law and undermine the Afghan government's ability to protect people from human rights violations.<sup>81</sup> The government's capacity to uphold human rights is further undermined by insecurity, instability and frequent attacks by Anti-Government Elements.<sup>82</sup> Moreover, a number of State actors tasked with protecting human rights – including the local and national police forces – are *themselves* reportedly responsible for committing such abuses.<sup>83</sup>

## TORTURE AND OTHER ILL-TREATMENT

Many Afghans across the country are at risk of torture and other ill-treatment.

In 2017, the UN Committee Against Torture (CAT), which is responsible for overseeing the implementation of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* expressed its grave concern at the prevalence of torture and the climate of impunity for torture in Afghanistan. The CAT found that there is “*widespread acceptance and legitimization of torture* in Afghan society.”<sup>84</sup> Perpetrators of war crimes and gross human rights violations – including acts of torture – continue to hold official executive positions, some of them in government.<sup>85</sup>

The situation of detainees in the criminal justice system is of particular concern, with “beatings, electric shocks, suspensions, threats, sexual abuse, and other forms of mental and physical abuse [being] *widely and increasingly* practised on detainees in custody in facilities run by the National Directorate of Security, the Afghan National Police and the Afghan Local Police.”<sup>86</sup> In one UN study, investigators interviewed 469 detainees, of whom a shocking 39% gave credible accounts of torture and other ill-treatment during their arrest and interrogation in a number of detention facilities operated by the National Directorate of Security and the Afghan National Police.<sup>87</sup> There are also reports about the widespread use of forced confessions and an absence of accountability for extracting such confessions.<sup>88</sup>

Other groups of deep concern are women and children. Violence against women is widespread in Afghanistan, in particular domestic violence, rape, battery, as well as crimes committed in the name of so-called “honour” and instances of stoning.<sup>89</sup> Harmful practices against children remain common, including the forced and early marriages of girls, as well as *bacha baazi*, a practice that facilitates sexual violence against and the sexual slavery of boys.<sup>90</sup>

Human rights defenders and journalists are also particularly targeted and are subjected to threats, intimidation, harassment, surveillance, arbitrary detentions, forced disappearances and killings.<sup>91</sup> The Afghan Government fails to take adequate measures to protect these types of people from reprisals for their work.<sup>92</sup>

It is not only State agents who engage in torture. Anti-Government Elements such as the Taliban and the group calling itself the Islamic State perpetrate severe human rights abuses, including extrajudicial killing, flogging and stoning.<sup>93</sup>

The legal framework for torture in the country is inadequate, contributing to a climate of impunity. For instance, the Penal Code does not clearly prohibit corporal punishment, such as flogging, amputation and stoning, which are practices that amount to torture and cruel, inhuman or degrading treatment or

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<sup>78</sup> UNHCR Eligibility Guidelines for Afghan Asylum-Seekers, 2016, p. 22.

<sup>79</sup> UNHCR Eligibility Guidelines for Afghan Asylum-Seekers, 2016, p. 19.

<sup>80</sup> UNHCR Eligibility Guidelines for Afghan Asylum-Seekers, 2016, p. 18.

<sup>81</sup> UNHCR Eligibility Guidelines for Afghan Asylum-Seekers, 2016, p. 25.

<sup>82</sup> UNHCR Eligibility Guidelines for Afghan Asylum-Seekers, 2016, p. 25.

<sup>83</sup> UNHCR Eligibility Guidelines for Afghan Asylum-Seekers, 2016, p. 25.

<sup>84</sup> UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, UN Doc. CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 7 [*UN CAT Report on Afghanistan*, 2017].

<sup>85</sup> *UN CAT Report on Afghanistan*, 2017, para. 7 (emphasis added).

<sup>86</sup> *UN CAT Report on Afghanistan*, 2017, para. 9 (emphasis added).

<sup>87</sup> Cited in UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security*, UN Doc. A/71/932-S/2017/508, 15 June 2017, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2017/508](http://www.un.org/ga/search/view_doc.asp?symbol=S/2017/508), para. 27.

<sup>88</sup> *UN CAT Report on Afghanistan*, 2017, para. 27.

<sup>89</sup> *UN CAT Report on Afghanistan*, 2017, para. 37.

<sup>90</sup> *UN CAT Report on Afghanistan*, 2017, para. 35.

<sup>91</sup> *UN CAT Report on Afghanistan*, 2017, para. 43.

<sup>92</sup> *UN CAT Report on Afghanistan*, 2017, para. 43.

<sup>93</sup> *UN CAT Report on Afghanistan*, 2017, para. 21.

punishment.<sup>94</sup> Moreover, the National Reconciliation, General Amnesty, and National Stability Law, passed in 2007, prevents the prosecution of individuals responsible for gross human rights violations, including acts of torture, committed before December 2001.<sup>95</sup> Informal parallel judicial mechanisms are meant to only hear civil cases, but these courts continue to impose sentences, in particular on women, for so called “moral crimes,” including the death sentence and corporal punishment, which amount to torture or cruel, inhuman or degrading treatment or punishment.<sup>96</sup>

## SERIOUS RISKS TO SOCIOECONOMIC RIGHTS

Afghanistan is the site of an acute humanitarian crisis, with widespread negative effects on people’s economic and social rights. The UN Office for the Coordination of Humanitarian Affairs (OCHA) estimated that 9.3 million people will require humanitarian assistance in 2017. Over 9 million Afghans have limited or no access to essential health services. The country’s infant and maternal mortality rates are among the worst in the world, at 73/1,000 live births and 327/100,000 respectively. Food insecurity is deteriorating, with 1.6 million people severely food insecure across the country. Malnutrition is also extremely common, and ranges from 10.9% to 20.7%. Moreover, severe acute malnutrition has surpassed the emergency threshold in 59% of the country (20 out of 34 provinces), with 1.8 million people (1.3 million of them children under the age of 5) requiring treatment for acute malnutrition.<sup>97</sup>

The approximately 2 million Internally Displaced People (IDPs) and those returning – many involuntarily – have exacerbated this already acute humanitarian crisis across Afghanistan. In September 2017, OCHA reported that 30 out of Afghanistan’s 34 provinces were affected by forced displacement, with 257,900 people newly displaced between 1 January and 16 September 2017 alone.<sup>98</sup> Nearly 60% of those new IDPs were children.<sup>99</sup>

Notwithstanding the ambitious National Policy on Internally Displaced Persons, adopted in 2014, the Afghan government has been unable to protect and fulfil the rights of IDPs, leaving many people on the brink of starvation, with little access to basic services, and under the constant threat of eviction from camps and settlements.<sup>100</sup> UNHCR considers IDPs to be among the most vulnerable groups in Afghanistan, with IDPs living in urban areas particularly affected by unemployment, food insecurity and limited access to water and sanitation.<sup>101</sup>

A recent IOM survey of nine<sup>102</sup> of Afghanistan’s 34 provinces paints a grim picture of the magnitude of displacement in the country. In less than five years (from 2012 to June 2017), a full 17% of the population of the nine provinces – 2.4 million out of 11.9 million – had either returned from abroad or been internally displaced. The returnees included 1.2 million Afghans from Pakistan, over 222,000 from Iran, and nearly 42,000 from Europe and Turkey. In addition, those nine provinces also experienced outward migration – between 2012 and June 2017, over 454,000 people had left the country in search of international protection.<sup>103</sup>

For IDPs and returnees, access to education is extremely precarious. For example, IOM reports that in Kunar province, there is no access to education due to the lack of schools in Khas Kunar, Marawara, Nari, Dangam, Shigal Wo Shatlan, and Ghazi Abad. The Taliban burned down a number of schools in Kunar province’s Sarkani district. In certain parts of Laghman province, existing schools have been turned into

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<sup>94</sup> UN CAT Report on Afghanistan, 2017, para. 23.

<sup>95</sup> UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, UN Doc. CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 7.

<sup>96</sup> UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, UN Doc. CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 39.

<sup>97</sup> All information from this paragraph comes from UN Office for the Coordination of Humanitarian Affairs, *Afghanistan 2017 Humanitarian Needs Overview*, 31 December 2016, <https://www.humanitarianresponse.info/en/operations/afghanistan/document/afghanistan-2017-humanitarian-needs-overview>.

<sup>98</sup> UN Office for the Coordination of Humanitarian Affairs, “Afghanistan: Conflict Induced Displacements in 2017 – Snapshot,” 24 September 2017, <https://www.humanitarianresponse.info/en/operations/afghanistan/infographic/afghanistan-conflict-induced-displacements-2017-snapshot-24>.

<sup>99</sup> UN Office for the Coordination of Humanitarian Affairs, “Afghanistan: Conflict Induced Displacements in 2017 – Snapshot,” 24 September 2017, <https://www.humanitarianresponse.info/en/operations/afghanistan/infographic/afghanistan-conflict-induced-displacements-2017-snapshot-24>.

<sup>100</sup> Amnesty International, *My Children Will Die this Winter: Afghanistan’s Broken Promise to the Displaced*, ASA 11/4017/2016, May 2016, <https://www.amnesty.org/en/documents/asa11/4017/2016/en/>, p. 8-9.

<sup>101</sup> UNHCR *Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 85.

<sup>102</sup> The nine provinces are Baghlan, Balkh, Kabul, Kunar, Kunduz, Laghman, Nangarhar, Paktia, and Takhar.

<sup>103</sup> All information in this paragraph comes from International Organization for Migration – Afghanistan, “Internally Displaced, Returnees from Abroad Soar to Over 2.4 Million in Nine Afghan Provinces: IOM Survey,” 7 July 2017, <https://www.iom.int/news/internally-displaced-returnees-abroad-soar-over-24-million-nine-afghan-provinces-iom-survey>.

reception facilities for newly arrived returnees from Pakistan and Iran. IOM further reports that in all areas of Nangarhar province where the group calling itself the Islamic State operates, the existing schools do not function. In the parts of Nangarhar province where education might still be possible, most parents do not allow their daughters to attend school due to fears of poisoning or kidnapping. In parts of Paktia province, IOM notes an absence of school premises, teachers and textbooks. In Darqad district in Takhar province, although schools are technically accessible, residents are forced to flee skirmishes in the conflict and take their children to safer locations, which interrupts their education. The Taliban in Takhar province closed all the schools in the areas under their control.<sup>104</sup>

Deeply inadequate shelter is another risk faced by IDPs and returnees. The living situation in some provinces is particularly horrendous. For example, IOM reports that in Jalalabad, the capital of Nangarhar province, approximately a third of IDPs and returnees are effectively homeless and are living outdoors without even a tent to shelter under. In Kabul city, many IDPs and returnees squat in abandoned buildings without any doors, windows or roofs. In Kabul province's Dehsabz and Mirbachakot districts, returnees and IDPs live in unstable accommodation made of mud bricks, straw and stones. Shelter is a problem across the country, with IOM stating:

*“A huge number of Returnees spent abroad more than 20 years (or were even born abroad) and they have lost their properties in their places of origin. The existing options upon return are: 1) going back to their own properties (if they still exist though often in ruins); 2) being accepted by host families (the hosts are usually relatives of the Returnee(s) or IDP(s) but not limited to this only); 3) renting accommodation in urban or semi-urban situation (those who have lost their network and linkages to the place of origin and could afford the price of it, i.e. either employed or in a possession of savings); 4) the poorest seek refuge in caves, build basic constructs with mud bricks and wooden material, erect tents or dig holes in the ground that they cover with tarpaulins.”<sup>105</sup>*

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<sup>104</sup> All information in this paragraph comes from International Organization for Migration – Afghanistan, “Internally Displaced, Returnees from Abroad Soar to Over 2.4 Million in Nine Afghan Provinces: IOM Survey,” 7 July 2017, <https://www.iom.int/news/internally-displaced-returnees-abroad-soar-over-24-million-nine-afghan-provinces-iom-survey>.

<sup>105</sup> All information in this paragraph comes from International Organization for Migration – Afghanistan, “Internally Displaced, Returnees from Abroad Soar to Over 2.4 Million in Nine Afghan Provinces: IOM Survey,” 7 July 2017, <https://www.iom.int/news/internally-displaced-returnees-abroad-soar-over-24-million-nine-afghan-provinces-iom-survey>.

# 3. AFGHAN ASYLUM-SEEKERS IN EUROPE

Once Afghans fleeing their country's devastating security and human rights situation reach Europe, they have the right to lodge an asylum claim. This chapter provides an overview of the asylum system in European countries, the process by which rejected asylum-seekers are returned to Afghanistan, and the increasing numbers of returns from Europe to Afghanistan.

## SEEKING ASYLUM IN EUROPE

Everyone who leaves their country of origin has the right to seek and enjoy asylum from persecution, in line with the principles set out in the *Universal Declaration of Human Rights*.<sup>106</sup> Furthermore, the binding international legal principle of *non-refoulement* means that European countries cannot transfer anyone to a place where they are at a real risk of serious human rights violations – such as persecution, or torture and other cruel, inhuman, or degrading treatment or punishment. The principle of *non-refoulement* has been codified in the *Convention Relating to the Status of Refugees (Refugee Convention)*<sup>107</sup> and numerous international human rights instruments;<sup>108</sup> and additionally forms part of customary international law and therefore applies to all states, regardless of whether they are parties to the relevant treaties.<sup>109</sup> As enshrined in the *Charter of Fundamental Rights of the European Union*, the principle of *non-refoulement* must be observed in respect of all removal, expulsion or extradition procedures, irrespective of whether a person has been formally recognised as a refugee or has formally submitted a request for international protection.<sup>110</sup>

EU law differentiates between refugees (as defined in the *Refugee Convention*) and beneficiaries of subsidiary protection, who do not fall within the *Convention's* remit but who deserve protection because they would be at risk of serious harm in their country of origin.<sup>111</sup> A third category – humanitarian protection –

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<sup>106</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), <http://www.refworld.org/docid/3ae6b3712c.html>, Art. 14(1).

<sup>107</sup> 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>, Art. 33(1).

<sup>108</sup> *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, [1987] 1465 U.N.T.S. 113, p.85, Art. 3(1). In addition, the United Nations Human Rights Committee has affirmed that *non-refoulement* obligations arise in respect of a real risk of serious human rights violations of certain rights protected in the *International Covenant on Civil and Political Rights*.

<sup>109</sup> UNHCR, *The Principle of Non-Refoulement as a Norm of Customary International Law: Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93*, 31 January 1994; UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-refoulement Obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, para. 15; UNHCR ExCom, *Conclusion No. 6 (XXVIII) Non-refoulement*, 28th Session, 1977, para. (a); Sir Elihu Lauterpacht and Daniel Bethlehem, "The Scope and Content of the Principle of Non-Refoulement: Opinion," in *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (edited by Erika Feller, Volker Türk and Frances Nicholson, Cambridge University Press, 2003), para. 216.

<sup>110</sup> European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, <http://www.refworld.org/docid/3ae6b3b70.html>, Art. 19(2).

<sup>111</sup> European Union: Council of the European Union, *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)*, 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, <http://www.refworld.org/docid/4f197df02.html>.

grants status to people who do not qualify as refugees, but whose removal cannot be effected for legal or practical reasons.<sup>112</sup> The first two statuses are defined in EU law, whereas the third is defined in each country's national legislation.<sup>113</sup> The difference between these statuses has a major impact on the lives of the people affected. For instance, in general subsidiary protection beneficiaries have reduced levels of access to a range of important services, compared to individuals who have refugee status.<sup>114</sup>

The EU aspires to have a Common European Asylum System, with binding minimum standards for the treatment of all asylum-seekers and their applications for international protection. However, despite two rounds of legislative harmonization and shared financial and administrative resources, the EU has failed to resolve the major disparities in how asylum-seekers and their asylum claims are treated across Member States.<sup>115</sup>

As a result, asylum-seekers from Afghanistan and other countries face what the European Council on Refugees and Exiles (ECRE) has called an "asylum lottery,"<sup>116</sup> in which the outcome of their claim for international protection is overly dependent upon the country in which they find themselves. In 2016 the asylum recognition rates for Afghans diverged sharply across Europe: from 1.7% in Bulgaria, to 37.4% in Sweden, and 97% in Italy.<sup>117</sup> According to ECRE, depending on the place where they sought asylum, "the same person could be granted refugee status in one country, subsidiary protection in another, or even have their claim refused in another."<sup>118</sup> This disparity has incentivized Afghans to engage in dangerous and irregular crossings of *internal* European borders.<sup>119</sup>

There has been a recent marked decrease in the proportion of Afghans whose claims for asylum in Europe have been recognised by the authorities as valid. The average recognition rate for Afghan asylum-seekers in Europe dropped from 67% in 2015<sup>120</sup> to 56.7% in 2016.<sup>121</sup> The decline is even more acute between September 2015 (68%) and December 2016 (33%).<sup>122</sup> With increasing numbers of Afghans being denied asylum in Europe, there are large numbers of people who are vulnerable to being deported to Afghanistan.

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<sup>112</sup> European Council on Refugees and Exiles, *Refugee Rights Subsiding? Europe's Two-Tier Protection Regime and Its Effect on the Rights of Beneficiaries*, March 2017, [http://reliefweb.int/sites/reliefweb.int/files/resources/aida\\_refugee\\_rights\\_subsiding.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/aida_refugee_rights_subsiding.pdf), p. 4.

<sup>113</sup> Eurostat, "Asylum Decisions in the EU: EU Member States Granted Protection to More than 700 000 Asylum Seekers in 2016," 26 April 2017, <http://ec.europa.eu/eurostat/documents/2995521/8001715/3-26042017-AP-EN.pdf/>.

<sup>114</sup> European Council on Refugees and Exiles, *Refugee Rights Subsiding? Europe's Two-Tier Protection Regime and Its Effect on the Rights of Beneficiaries*, March 2017, [http://reliefweb.int/sites/reliefweb.int/files/resources/aida\\_refugee\\_rights\\_subsiding.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/aida_refugee_rights_subsiding.pdf), p. 15-23.

<sup>115</sup> Human Rights Watch, *EU Policies Put Refugees at Risk: An Agenda to Restore Protection*, 23 November 2016, <https://www.hrw.org/news/2016/11/23/eu-policies-put-refugees-risk>.

<sup>116</sup> European Council on Refugees and Exiles, *Refugee Rights Subsiding? Europe's Two-Tier Protection Regime and Its Effect on the Rights of Beneficiaries*, March 2017, [http://reliefweb.int/sites/reliefweb.int/files/resources/aida\\_refugee\\_rights\\_subsiding.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/aida_refugee_rights_subsiding.pdf), p. 6.

<sup>117</sup> Eurostat, "First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded)," <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database>, last update: 17 July 2017. The metadata explanation ([http://ec.europa.eu/eurostat/cache/metadata/en/migr\\_asydec\\_esms.htm](http://ec.europa.eu/eurostat/cache/metadata/en/migr_asydec_esms.htm)): "First instance decision: decisions (positive and negative) considering applications for international protection as well as the grants of authorisations to stay for humanitarian reasons, including decisions under priority and accelerated procedures taken by administrative or judicial bodies in Member States."

<sup>118</sup> European Council on Refugees and Exiles, *Refugee Rights Subsiding? Europe's Two-Tier Protection Regime and Its Effect on the Rights of Beneficiaries*, March 2017, [http://reliefweb.int/sites/reliefweb.int/files/resources/aida\\_refugee\\_rights\\_subsiding.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/aida_refugee_rights_subsiding.pdf), p. 24.

<sup>119</sup> See for instance Amnesty International, *Trapped in Greece: An Avoidable Refugee Crisis*, EUR 25/3778/2016, 18 April 2016, <https://www.amnesty.org/en/documents/eur25/3778/2016/en/>.

<sup>120</sup> Eurostat, "Asylum Decisions in the EU: EU Member States Granted Protection to More than 700 000 Asylum Seekers in 2016," 26 April 2017, <http://ec.europa.eu/eurostat/documents/2995521/8001715/3-26042017-AP-EN.pdf/>.

<sup>121</sup> Eurostat, "Asylum Decisions in the EU: EU Member States Granted Protection to More than 330 000 Asylum Seekers in 2015," 20 April 2016, <http://ec.europa.eu/eurostat/documents/2995521/7233417/3-20042016-AP-EN.pdf/>.

<sup>122</sup> European Commission, *Third Progress Report on the Partnership Framework with Third Countries under the European Agenda on Migration*, 2 March 2017, [https://eeas.europa.eu/sites/eeas/files/com\\_2017\\_205\\_f1\\_report\\_from\\_commission\\_en\\_v8\\_p1\\_880005\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/com_2017_205_f1_report_from_commission_en_v8_p1_880005_0.pdf), p. 14, fn 32.

## DANGEROUS JOURNEYS TO EUROPE

Although seeking asylum is a fundamental human right, it is only once a person is physically present on a State's territory that he or she has the right to lodge an asylum claim. Given the absence of safe and legal routes to reach safe countries of asylum, the only option for Afghan asylum-seekers is to take irregular (sometimes termed "illegal") journeys.

To reach Europe, many Afghans travel overland through Iran and Turkey, embark on boats from Turkey to Greece, and then travel onwards to mainland Europe. In 2015, over 200,000 Afghans reached Europe irregularly.<sup>123</sup> Following the virtual closing of the Eastern Mediterranean route, when Turkey agreed to prevent irregular departures from its territory under the terms of the so-called EU-Turkey Deal,<sup>124</sup> the number of Afghans arriving to Europe dropped to 50,000 in 2016.<sup>125</sup>

The journeys to reach Europe are both arduous and costly, with hundreds of dollars paid to people-smugglers. Not everyone survives. In 2015, 3,785 people died trying to cross the Mediterranean Sea to reach Europe, and that number rose to 5,143 in 2016.<sup>126</sup>

## RETURN PROCESS FROM EUROPE

Prior to a person's return to Afghanistan, an administrative decision-maker in the European country's immigration authority will decide that they do not qualify for international protection status. EU standards require that the person is then given a chance to appeal that decision. If their appeal is unsuccessful, the person must leave the country. This can happen in one of two ways:

- The first possibility is what is called a "forced return." The person is usually detained for a period of time, and is then escorted on the flight to Afghanistan by security officers from the national police or immigration authority. Upon arrival in Afghanistan, they may be entitled to receive a small sum of money from the departing government.
- A second possibility is that the person returns to Afghanistan in a process called an "Assisted Voluntary Return" (AVR). The person is generally not detained or escorted on their flight, and after arrival in Afghanistan they are entitled to reintegration assistance. According to the International Organization for Migration (IOM) office in Afghanistan, the amount varies according to the sending country – from about USD 500 (EUR 415) to USD 4,500 (EUR 3,730) per person.<sup>127</sup>

Notwithstanding the different terminology, in both cases the person is *obliged* to return to their country of origin. The difference is that the second is carried out in a less coercive manner.

Providing financial and logistical support to a person who must leave the country may be helpful, but it is misleading to call such returns "Assisted *Voluntary* Returns." The "voluntary" label also creates confusion with an entirely different process, which is *voluntary repatriation*. This is the truly voluntary return of recognised refugees, which UNHCR has identified as one of the three durable solutions to refugee crises (along with integration and resettlement).

## NUMBERS OF RETURNS

Although the data on returns recorded by IOM, the Afghan authorities, as well as European national governments and EU institutions are not fully complete or consistent,<sup>128</sup> all available figures point to a dramatic rise in the number of people being returned from Europe to Afghanistan over the last two years.

<sup>123</sup> UNHCR, "Over One million Sea Arrivals Reach Europe in 2015," 30 December 2015, <http://www.unhcr.org/afr/news/latest/2015/12/5683d0b56/million-sea-arrivals-reach-europe-2015.html>.

<sup>124</sup> Amnesty International, *No Safe Refuge: Asylum-Seekers and Refugees Denied Effective Protection in Turkey*, EUR 44/3825/2016, 3 June 2016, <https://www.amnesty.org/en/documents/eur44/3825/2016/en/>.

<sup>125</sup> European Commission, *Third Progress Report on the Partnership Framework with Third Countries under the European Agenda on Migration*, 2 March 2017, [https://eeas.europa.eu/sites/eeas/files/com\\_2017\\_205\\_f1\\_report\\_from\\_commission\\_en\\_v8\\_p1\\_880005\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/com_2017_205_f1_report_from_commission_en_v8_p1_880005_0.pdf), p. 14.

<sup>126</sup> Missing Migrants Project, "Deaths in the Mediterranean," <https://missingmigrants.iom.int/region/mediterranean>, 25 September 2017.

<sup>127</sup> Interview with IOM, Kabul, 22 May 2017.

<sup>128</sup> Jelena Bjelica, "Voluntary and Forced Returns to Afghanistan in 2016-17: Trends, Statistics and Experiences," Afghan Analysts Network, 19 May 2016, <https://www.afghanistan-analysts.org/voluntary-and-forced-returns-to-afghanistan-in-201617-trends-statistics-and-experiences/>, p. 12.

According to official EU statistics, Between 2015 and 2016, the number of Afghan citizens returned by European countries to Afghanistan nearly tripled: from 3,290 to 9,460.<sup>129</sup>

In 2016 the five European countries from which the most Afghans returned were: Germany (3,440); Greece (1,480); Sweden (1,025); UK (785); and Norway (760).<sup>130</sup>

There are no comprehensive, comparable data on the breakdown of forced versus so-called voluntary returns from European countries. But recent data provided by the Afghan authorities give some indication of the situation. According to Dr. Alema Alema, Afghanistan's Deputy Minister of Refugees and Repatriation, of the 828 returns from Europe that took place between January and April 2017, 304 (37%) were forced, and 524 (63%) were "voluntary."<sup>131</sup>

Although there are no comprehensive data on the gender breakdown of deportations to Afghanistan, Afghan men are reportedly being returned in disproportionately large numbers. IOM staff in Kabul informed Amnesty International researchers that single men comprise most returns (forced and "voluntary") to Afghanistan.<sup>132</sup> Of the "voluntary" returnees from Finland in 2016, the Finnish Immigration Service reports that 90% were men.<sup>133</sup> A group of men whom Amnesty International researchers interviewed in Kabul, and who were returned to Afghanistan on two flights from Germany and Sweden in February and March 2017, transporting a total of 49 returnees, said that all their fellow returnees were men or boys.<sup>134</sup>

In 2016, Germany was responsible for the largest number of Afghans returned (forcibly and ostensibly voluntarily), at 3,440.<sup>135</sup> However, following the 31 May 2017 suicide attack in Kabul, which severely damaged the German Embassy, the authorities announced that they would only be returning three categories of Afghans: people with a criminal record, people who were deemed to pose a threat, and those who failed to disclose their identity.<sup>136</sup>

Norway appears to be the European country responsible for the largest number of *forcibly* returned Afghans – not even proportionally to its small population of 5.2 million, but in sheer numbers. According to the Afghan authorities, of the forced returns in the first four months of 2017, a full 32% (97 out of 304 people) came from Norway.<sup>137</sup> In 2016, the proportion was even higher: the Afghan Ministry of Refugees and Repatriation told Amnesty International that there had been 580 forced returns from Europe that year, with Norway accounting for 372 people – over 64%.<sup>138</sup> Amnesty International provided the Government of Norway an opportunity to respond to this information, but at the time of publication in late September 2017, no response had been received.

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<sup>129</sup> Data is from the 28 EU Member States as well as Iceland, Norway, Liechtenstein and Switzerland. Eurostat, "Asylum and Managed Migration: Third country nationals returned following an order to leave - annual data (rounded)," last update: 17 July 2017, <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database>. The metadata explanation ([http://ec.europa.eu/eurostat/cache/metadata/en/migr\\_eil\\_esms.htm](http://ec.europa.eu/eurostat/cache/metadata/en/migr_eil_esms.htm)): "Third country nationals returned following an order to leave: Third country nationals who have in fact left the territory of the Member State, following an administrative or judicial decision or act stating that their stay is illegal and imposing an obligation to leave the territory (see Art. 7.1 (b) of the Council Regulation (EC) no 862/2007). [...] Data do not include persons who are transferred from one Member State to another under the mechanism established by the Dublin Regulation (Council Regulation (EC) No 604/2013 and Council Regulation (EC) No 1560/2003 amended by Council Regulation (EC) 118/2014, for these cases see related Dublin Statistics). Each person is counted only once within the reference period."

<sup>130</sup> Data is from the 28 EU Member States as well as Iceland, Norway, Liechtenstein and Switzerland. Eurostat, "Asylum and Managed Migration: Third country nationals returned following an order to leave - annual data (rounded)," last update: 17 July 2017, <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database>. The metadata explanation ([http://ec.europa.eu/eurostat/cache/metadata/en/migr\\_eil\\_esms.htm](http://ec.europa.eu/eurostat/cache/metadata/en/migr_eil_esms.htm)): "Third country nationals returned following an order to leave: Third country nationals who have in fact left the territory of the Member State, following an administrative or judicial decision or act stating that their stay is illegal and imposing an obligation to leave the territory (see Art. 7.1 (b) of the Council Regulation (EC) no 862/2007). [...] Data do not include persons who are transferred from one Member State to another under the mechanism established by the Dublin Regulation (Council Regulation (EC) No 604/2013 and Council Regulation (EC) No 1560/2003 amended by Council Regulation (EC) 118/2014, for these cases see related Dublin Statistics). Each person is counted only once within the reference period."

<sup>131</sup> Data on file with Amnesty International.

<sup>132</sup> Interview with IOM, Kabul, 22 May 2017.

<sup>133</sup> Finnish Immigration Service, "Vapaaehtoinen Paluu Afganistaniin: Reply to Information Request about Voluntary Returns to Afghanistan, 2 June 2017, copy on file with Amnesty International.

<sup>134</sup> Interview with five returnees, Kabul, 19 May 2017.

<sup>135</sup> Data is from the 28 EU Member States as well as Iceland, Norway, Liechtenstein and Switzerland. Eurostat, "Asylum and Managed Migration: Third country nationals returned following an order to leave - annual data (rounded)," last update: 17 July 2017, <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database>. The metadata explanation ([http://ec.europa.eu/eurostat/cache/metadata/en/migr\\_eil\\_esms.htm](http://ec.europa.eu/eurostat/cache/metadata/en/migr_eil_esms.htm)): "Third country nationals returned following an order to leave: Third country nationals who have in fact left the territory of the Member State, following an administrative or judicial decision or act stating that their stay is illegal and imposing an obligation to leave the territory (see Art. 7.1 (b) of the Council Regulation (EC) no 862/2007). [...] Data do not include persons who are transferred from one Member State to another under the mechanism established by the Dublin Regulation (Council Regulation (EC) No 604/2013 and Council Regulation (EC) No 1560/2003 amended by Council Regulation (EC) 118/2014, for these cases see related Dublin Statistics). Each person is counted only once within the reference period."

<sup>136</sup> European Council on Refugees and Exiles, "Germany: Temporary Suspension of Asylum Procedures for Afghan Nationals," 7 July 2017, <https://www.ecre.org/germany-temporary-suspension-of-asylum-procedures-for-afghan-nationals/>.

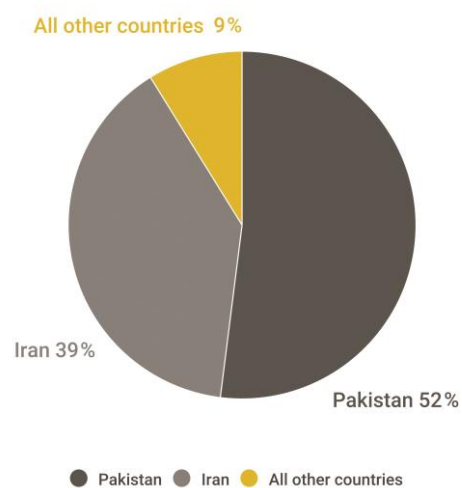
<sup>137</sup> Data on file with Amnesty International.

<sup>138</sup> Interview with AAN, Kabul, 20 May 2017.

## AFGHANISTAN: FORCED DISPLACEMENT AND FORCED RETURNS



## COUNTRIES HOSTING THE WORLD'S 2.5 MILLION AFGHAN REFUGEES<sup>139</sup>



<sup>139</sup> UNHCR, *Global Report 2016*, June 2017, [http://reporting.unhcr.org/publications#tab-global\\_report](http://reporting.unhcr.org/publications#tab-global_report), p. 75.



# 4. EUROPEAN COUNTRIES: WILFUL BLINDNESS

**“I went to Europe because I believed that they respect human rights and would protect me from harm. Unfortunately I was wrong.”**

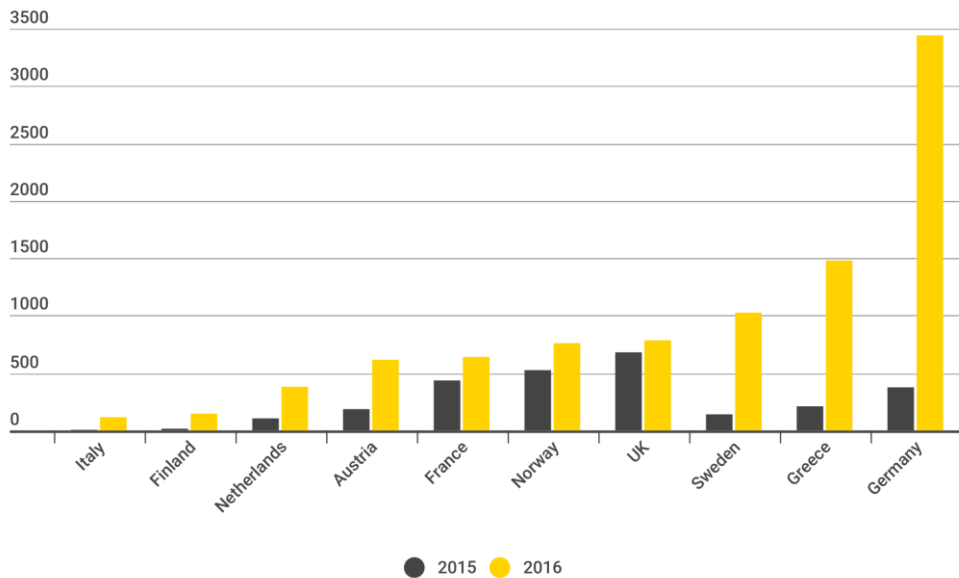
Rahim, returnee from Norway, 18 May 2017

This chapter describes how European governments have remained wilfully blind to the dangers described in Chapter 2, to which returnees are exposed. European governments and the EU are putting Afghanistan under tremendous pressure to accept large numbers of returnees. The impetus for these returns is disconnected from the situation on the ground in Afghanistan, and reflects internal political developments in Europe itself. Returns to Afghanistan have increased, even as dangers in the country have become more severe. To effect returns, European countries have arbitrarily called some areas of Afghanistan “safe,” relying on the idea of an “Internal Flight Alternative,” which is legally questionable and factually unsound.

## FACT DEFICIT

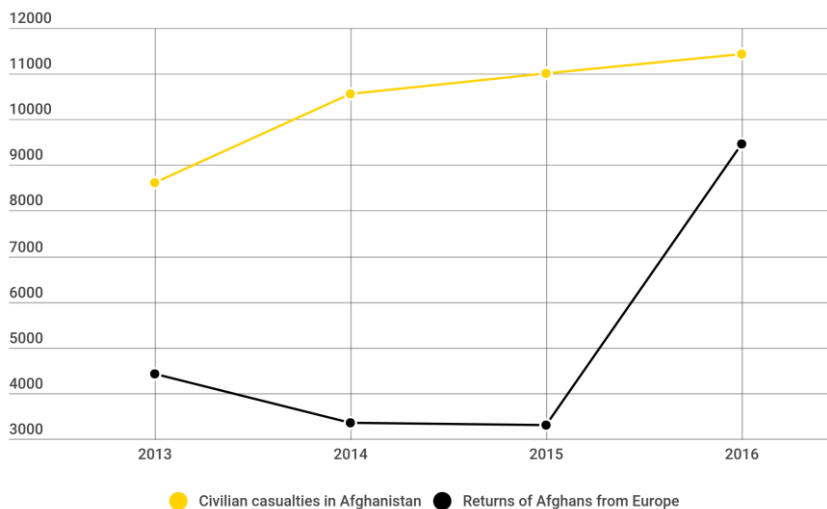
Despite the serious deterioration in people’s safety and security across Afghanistan, as discussed in Chapter 2, the numbers of people being returned to the country from Europe have increased significantly since 2013, particularly between 2015 and 2016. As previously mentioned, according to official EU statistics, between 2015 and 2016, the number of Afghan citizens returned by European countries to Afghanistan nearly tripled: from 3,290 to 9,460.<sup>140</sup> The following chart shows the increase in returns (forcibly and ostensibly “voluntarily”) of Afghans from a number of European countries, between 2015 and 2016.

## NUMBERS OF AFGHANS RETURNED FROM EUROPEAN COUNTRIES TO AFGHANISTAN, 2015-2016<sup>141</sup>



The increasing numbers of returns of people to Afghanistan, when contrasted with the increasing number of civilian casualties, raise serious questions about the decision-making processes of European authorities.

## CIVILIAN CASUALTIES IN AFGHANISTAN AND RETURNS FROM EUROPE, 2013-2016<sup>142</sup>



<sup>141</sup> Data is from the 28 EU Member States as well as Iceland, Norway, Liechtenstein and Switzerland. Eurostat, "Asylum and Managed Migration: Third country nationals returned following an order to leave - annual data (rounded)," last update: 17 July 2017, <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database>. The metadata explanation ([http://ec.europa.eu/eurostat/cache/metadata/en/migr\\_eil\\_esms.htm](http://ec.europa.eu/eurostat/cache/metadata/en/migr_eil_esms.htm)): "Third country nationals returned following an order to leave: Third country nationals who have in fact left the territory of the Member State, following an administrative or judicial decision or act stating that their stay is illegal and imposing an obligation to leave the territory (see Art. 7.1 (b) of the Council Regulation (EC) no 862/2007). [...] Data do not include persons who are transferred from one Member State to another under the mechanism established by the Dublin Regulation (Council Regulation (EC) No 604/2013 and Council Regulation (EC) No 1560/2003 amended by Council Regulation (EC) 118/2014, for these cases see related Dublin Statistics). Each person is counted only once within the reference period."

<sup>142</sup> United Nations Assistance Mission in Afghanistan, *2016 Annual Report on the Protection of Civilians in Armed Conflict in Afghanistan*, February 2017, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_in\\_armed\\_conflict\\_annual\\_report\\_2016\\_final280317.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_annual_report_2016_final280317.pdf); United Nations Assistance Mission in Afghanistan, *2015 Annual Report on the Protection of Civilians in Armed Conflict in Afghanistan*, February 2016, [https://unama.unmissions.org/sites/default/files/poc\\_annual\\_report\\_2015\\_final\\_14\\_feb\\_2016.pdf](https://unama.unmissions.org/sites/default/files/poc_annual_report_2015_final_14_feb_2016.pdf); United Nations Assistance Mission

It is contrary to international and EU law to return people to a risk of serious human rights violations. This is known as the principle of *non-refoulement*, which is enshrined in the *Refugee Convention* and the *Charter of Fundamental Rights of the European Union*. Yet as Chapter 2 discusses, the conflict gripping Afghanistan is widespread and the risk to civilians is worsening, and no part of the country can be considered safe.

Evidently there is a gap between the objective reality on the ground in Afghanistan, and the actions and policies of the EU and European governments towards Afghan asylum-seekers. Why this incoherence between reality in Afghanistan and European authorities' treatment of people who have fled the country?

One key factor is political developments in Europe, specifically in relation to the issues of immigration and asylum, over the past two years. A dramatic shift in the rate of returns of Afghans took place between 2015 and 2016, and it was in 2015 that an unprecedented number of people – over one million – reached Europe irregularly, mainly on dangerous boat journeys from Turkey.<sup>143</sup> About 20% of those new arrivals – 200,000 – were Afghan.<sup>144</sup> Notwithstanding the fact that these numbers are small compared to the millions of refugees living in countries such as Iran and Pakistan, the EU and many national governments in Europe responded to the arrival of large numbers of asylum-seekers by actively trying to prevent them from arriving on European soil. On 7 June 2016, the European Commission proposed a fundamental reorientation of EU and Member States' foreign policy around the imperative of preventing irregular migration. In particular, the Commission advocated making financial assistance to non-European States dependent upon those states' cooperation on readmission and returns.<sup>145</sup> Afghanistan was identified as one of these non-European States. In a leaked 2016 document, EU agencies acknowledged Afghanistan's "worsening security situation and threats to which people are exposed," as well as the likelihood that "record levels of terrorist attacks and civilian casualties" will increase, but nevertheless stated that "more than 80,000 persons could potentially need to be returned in the near future."<sup>146</sup>

## EUROPEAN PRESSURE ON AFGHANISTAN

Any State may lawfully return to their country of origin foreigners who have no protection needs, as long as the rights of people subject to removal are upheld. From the point of view of international law, returns are not problematic *per se*.

Returns require the cooperation of the country of origin, and there are reasons why that country might be reluctant to admit returnees. For instance, the local economy might be highly dependent on remittances from people who are working overseas. Or the government might be anxious that large numbers of returnees will exacerbate political instability or put pressure on limited resources. Therefore, although not strictly necessary for effecting returns, many countries in Europe and elsewhere have developed agreements with countries from where significant numbers of migrants and asylum-seekers originate, which aim to facilitate and accelerate the process of sending people back to their country of origin.

A number of countries have developed return agreements with Afghanistan. Because these type of agreements are not always made public, it is challenging to track them, but Amnesty International is aware of 10 countries that have established such arrangements with Afghanistan.

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in Afghanistan, *2014 Annual Report on the Protection of Civilians in Armed Conflict in Afghanistan*, February 2015, <https://unama.unmissions.org/sites/default/files/2014-annual-report-on-protection-of-civilians-final.pdf>; United Nations Assistance Mission in Afghanistan, *2013 Annual Report on the Protection of Civilians in Armed Conflict in Afghanistan*, February 2014, [https://unama.unmissions.org/sites/default/files/feb\\_8\\_2014\\_poc-report\\_2013-full-report-eng.pdf](https://unama.unmissions.org/sites/default/files/feb_8_2014_poc-report_2013-full-report-eng.pdf); Data is from the 28 EU Member States as well as Norway. Eurostat, "Asylum and Managed Migration: Third country nationals returned following an order to leave - annual data (rounded)," last update: 17 July 2017, <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database>. The metadata explanation ([http://ec.europa.eu/eurostat/cache/metadata/en/migr\\_eil\\_esms.htm](http://ec.europa.eu/eurostat/cache/metadata/en/migr_eil_esms.htm)): "Third country nationals returned following an order to leave: Third country nationals who have in fact left the territory of the Member State, following an administrative or judicial decision or act stating that their stay is illegal and imposing an obligation to leave the territory (see Art. 7.1 (b) of the Council Regulation (EC) no 862/2007). [...] Data do not include persons who are transferred from one Member State to another under the mechanism established by the Dublin Regulation (Council Regulation (EC) No 604/2013 and Council Regulation (EC) No 1560/2003 amended by Council Regulation (EC) 118/2014, for these cases see related Dublin Statistics). Each person is counted only once within the reference period."

<sup>143</sup> UNHCR, "Over One Million Sea Arrivals Reach Europe in 2015," 30 December 2015,

<http://www.unhcr.org/uk/news/latest/2015/12/5683d0b56/million-sea-arrivals-reach-europe-2015.html>.

<sup>144</sup> UNHCR, "Over One Million Sea Arrivals Reach Europe in 2015," 30 December 2015,

<http://www.unhcr.org/uk/news/latest/2015/12/5683d0b56/million-sea-arrivals-reach-europe-2015.html>.

<sup>145</sup> European Commission, *Communication from the Commission to the European Parliament, the European Council, the Council and the European Investment Bank on Establishing a New Partnership Framework with Third Countries under the European Agenda on Migration*, 7 June 2016, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication\\_external\\_aspects\\_eam\\_towards\\_new\\_migration\\_ompact\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf).

<sup>146</sup> European Commission and European External Action Service, *Joint Commission-EEAS Non-Paper on Enhancing Cooperation on Migration, Mobility and Readmission with Afghanistan*, 3 March 2016, <http://statewatch.org/news/2016/mar/eu-council-afghanistan-6738-16.pdf>, p. 2-3.

Seven are tripartite “Memoranda of Understanding” (MoUs) in which the other party is the UN Refugee Agency, UNHCR: France (2002), UK (2002), Netherlands (2003), Denmark (2004), Norway (2005), Switzerland (2006), and Australia (2011). All seven MoUs are primarily “voluntary *repatriation* instruments” – that is, they were intended to facilitate the transfer of recognised *refugees* who wished to go back to Afghanistan, *not* the transfer of people whose asylum applications had been refused and who had no right to remain in Europe. UNHCR, in accordance with its mandate,<sup>147</sup> supports voluntary repatriation of refugees as one of the three durable solutions to refugee crises (along with resettlement and local integration). The first MoUs were signed in the early 2000s, when Afghanistan’s future looked relatively bright and large numbers of Afghans did want to go home.

Notwithstanding the MoUs’ primary focus being the voluntary repatriation of *refugees*, the agreements also include provisions on the return of *rejected asylum-seekers* – that is, deportations of people with no right to stay in the country – and European countries have sought to rely on the MoUs for these purposes. Although rejected asylum-seekers by definition fall outside of UNHCR’s mandate, the agency reports: “UNHCR has repeatedly been asked by States to engage in the issue of return of such persons, and the Office has done so on a good offices basis on a variety of occasions. It goes without saying that UNHCR’s involvement must always be consistent with its humanitarian and protection mandate.”<sup>148</sup> UNHCR noted in 2010 that

*“there are few if any voluntary returns of Afghans who have been recognized as refugees in Europe or in other countries where asylum applications are reviewed on an individual basis. [...] As a result, the MoUs [between Afghanistan and European countries] now primarily serve to facilitate the compulsory return to Afghanistan of persons who have been found not to need international protection.”*<sup>149</sup>

Currently, in other words, these agreements are almost exclusively being used to facilitate the return to Afghanistan of people with no right to remain in Europe.

The other three arrangements are bilateral “Joint Declarations,” to which UNHCR is not a party, and which Afghanistan signed in October 2016 with Finland, Germany and Sweden.<sup>150</sup> These declarations make no mention of voluntary repatriation of refugees, and appear concerned entirely with the return to Afghanistan of people not in need of international protection, by means of forced returns or “Assisted Voluntary Returns.”

At the same time as the three bilateral Joint Declarations were signed in October 2016, the EU as a whole negotiated a return arrangement with Afghanistan – entitled the “Joint Way Forward on Migration Issues between Afghanistan and the EU” (Joint Way Forward). The document is public, although its operational plan, set out in an annex, is not.<sup>151</sup> The EU has described the Joint Way Forward as “a non-legally binding joint commitment setting out a framework for cooperation on return, readmission and reintegration of irregular migrants.”<sup>152</sup> As is the case with the three bilateral Joint Declarations, UNHCR is not party to the Joint Way Forward.

Officially, the Joint Way Forward is premised on solidarity and collective efforts to address the migration challenges faced by both Afghanistan and the EU.<sup>153</sup> The document explicitly states that the development aid provided to Afghanistan is independent of the funds meant for return programmes and reintegration assistance (these are funds aimed at helping people rebuild their lives in Afghanistan after they are returned).<sup>154</sup> There are no figures on the funds that the EU intends to provide for the reintegration of Afghans, but the document states that they fall within three categories: a funding package for the

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<sup>147</sup> UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), <http://www.refworld.org/docid/3ae6b3628.html>, Art. 2(d).

<sup>148</sup> UNHCR, *UNHCR Protection Training Manual for European Border and Entry Officials: The Return of Persons not in Need of International Protection*, 2011, <http://www.unhcr.org/4d9487259.html>, p. 4.

<sup>149</sup> UNHCR, *Special Measures Applying to the Return of Unaccompanied and Separated Children to Afghanistan*, August 2010, <http://www.refworld.org/docid/4c91dbb22.html>.

<sup>150</sup> The Finnish and German Declarations are on file with Amnesty International. The Swedish Declaration is available on Regeringskansliet, “Avtal mellan Sverige och Afghanistan om återtagande,” 21 October 2016, <http://www.regeringen.se/artiklar/2016/10/avtal-mellan-sverige-och-afghanistan-om-atertagande/>.

<sup>151</sup> Jelena Bjelica, “Voluntary and Forced Returns to Afghanistan in 2016-17: Trends, Statistics and Experiences,” Afghan Analysts Network, 19 May 2016, <https://www.afghanistan-analysts.org/voluntary-and-forced-returns-to-afghanistan-in-201617-trends-statistics-and-experiences/>, p. 3.

<sup>152</sup> European Commission, “Parliamentary Questions: Answer Given by Vice-President Mogherini on Behalf of the Commission,” E-008105/2016, 30 January 2017, <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2016-008105&language=EN>.

<sup>153</sup> *European Union-Afghanistan Joint Way Forward on Migration Issues*, October 2016, [https://eeas.europa.eu/sites/eeas/files/eu\\_afghanistan\\_joint\\_way\\_forward\\_on\\_migration\\_issues.pdf](https://eeas.europa.eu/sites/eeas/files/eu_afghanistan_joint_way_forward_on_migration_issues.pdf), Introduction.

<sup>154</sup> *European Union-Afghanistan Joint Way Forward on Migration Issues*, October 2016, [https://eeas.europa.eu/sites/eeas/files/eu\\_afghanistan\\_joint\\_way\\_forward\\_on\\_migration\\_issues.pdf](https://eeas.europa.eu/sites/eeas/files/eu_afghanistan_joint_way_forward_on_migration_issues.pdf), Part IV(2).

Government of Afghanistan; support to IOM; and a programme aimed at preventing irregular migration to Europe by improving employment in Afghanistan.<sup>155</sup>

Notwithstanding the Joint Way Forward's rhetoric of solidarity and cooperation, in fact the agreement puts pressure on Afghanistan to accept large numbers of returns. Afghanistan's Minister of Finance, Eklil Hakimi, has been quoted telling the Afghan parliament: "If Afghanistan does not cooperate with EU countries on the refugee crisis, this will negatively impact the amount of aid allocated to Afghanistan."<sup>156</sup> Similarly, a confidential Afghan government source called the Joint Way Forward a "poisoned cup" that Afghanistan was forced to drink in order to receive development aid.<sup>157</sup> The country is highly aid-dependent, with nearly 70% of Afghanistan's annual income dependent upon international donors.<sup>158</sup> In a leaked document from March 2016, EU agencies stated that leverage at an upcoming October 2016 aid conference for Afghanistan (at which the Joint Way Forward was signed) "should be used as a positive incentive for the implementation of the Joint Way Forward."<sup>159</sup> The document also specified that a EUR 200 million state-building contract in Afghanistan "is intended to be made migration sensitive, probably through one indicator linking it to the Government's policy on migration and return and possibly to the implementation of the 'Joint Way Forward'."<sup>160</sup>

## INTERNAL FLIGHT ALTERNATIVE

As discussed in Chapter 2, the conflict in Afghanistan is widespread and volatile. Civilian casualties are increasing, and no part of the country remains unaffected. However, the immigration authorities in many European countries deny Afghans asylum – thereby paving the way for their return – on the basis of a controversial concept in international refugee law called "Internal Flight Alternative" (IFA). This means that European authorities recognise that the person's region of origin is dangerous, but expect them to live elsewhere in the country.

The concept of IFA has no basis in the *Refugee Convention*, and the UN Refugee Agency, UNHCR, has expressed reservations about it, stating:

*"International law does not require threatened individuals to exhaust all options within their own country first before seeking asylum; that is, [UNHCR] does not consider asylum to be the last resort. The concept of internal flight or relocation alternative should therefore not be invoked in a manner that would undermine important human rights tenets underlying the international protection regime, namely the right to leave one's country, the right to seek asylum and protection against refoulement."*<sup>161</sup>

In some instances, however, the concept of IFA can be a valid concept in assessing international protection claims, as long as the relevant standards are met. In particular, under international standards and EU law, assessing the possibility of relocation requires an evaluation of the relevance as well as the reasonableness of the proposed IFA.<sup>162</sup> With respect to relevance, UNHCR underlines the requirement that the proposed area

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<sup>155</sup> *European Union-Afghanistan Joint Way Forward on Migration Issues*, October 2016,

[https://eeas.europa.eu/sites/eeas/files/eu\\_afghanistan\\_joint\\_way\\_forward\\_on\\_migration\\_issues.pdf](https://eeas.europa.eu/sites/eeas/files/eu_afghanistan_joint_way_forward_on_migration_issues.pdf), Annex.

<sup>156</sup> Quoted in Jelena Bjelica, "EU and Afghanistan Get Deal on Migrants: Disagreements, Pressure and Last Minute Politics," *Afghan Analysts Network*, 6 October 2016, <https://www.afghanistan-analysts.org/eu-and-afghanistan-get-deal-on-migrants-disagreements-pressure-and-last-minute-politics/>.

<sup>157</sup> Quoted in Amnesty International, "Press Release: EU Forces Afghanistan to Drink Poisoned Cup in Exchange for Aid," 5 October 2016, <http://www.amnesty.eu/en/news/press-releases/all/eu-forces-afghanistan-to-drink-poisoned-cup-in-exchange-for-aid-0999>.

<sup>158</sup> Cited in "World Donors Pledge \$15 Billion for Afghanistan," *Al Jazeera*, 5 October 2016, <http://www.aljazeera.com/news/2016/10/afghanistan-aid-donors-pledge-billions-brussels-161005130723718.html>. Also see Bill Byrd and M. Khalid Payenda, *Afghanistan's Government Revenue: Continuing Robust Growth in the Face of Economic Weakness*, *Afghan Analysts Network*, 1 September 2016, <https://www.afghanistan-analysts.org/afghanistans-government-revenue-continuing-robust-growth-in-the-face-of-economic-weakness/>.

<sup>159</sup> European Commission and European External Action Service, *Joint Commission-EEAS Non-Paper on Enhancing Cooperation on Migration, Mobility and Readmission with Afghanistan*, 3 March 2016, <http://statewatch.org/news/2016/mar/eu-council-afghanistan-6738-16.pdf>, p. 8.

<sup>160</sup> European Commission and European External Action Service, *Joint Commission-EEAS Non-Paper on Enhancing Cooperation on Migration, Mobility and Readmission with Afghanistan*, 3 March 2016, <http://statewatch.org/news/2016/mar/eu-council-afghanistan-6738-16.pdf>, p. 8.

<sup>161</sup> 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, UN Doc. HCR/GIP/03/04, <http://www.refworld.org/docid/3f2791a44.html>, para. 4.

<sup>162</sup> *UNHCR Eligibility Guidelines for Afghan Asylum-Seekers*, 2016, p. 81; European Union: *Council of the European Union, 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)*, 20 December 2011, OJ L 337/9-337/26; 20.12.2011, 2011/95/EU, <http://www.refworld.org/docid/4f197df02.html>, Art. 8.

of relocation be durably safe (with due consideration given to the volatility and fluidity of the armed conflict in the country), as well as the requirement that the proposed area be practically, safely and legally accessible to the person.<sup>163</sup> Regarding reasonableness, UNHCR states that an IFA is only possible if the person is able to live in the proposed area in safety and security, free from danger and risk of injury.<sup>164</sup> UNHCR also requires that these conditions be sustainable, not illusory or unpredictable.<sup>165</sup>

The potentially arbitrary nature of the IFA concept is exemplified in the wide variation among European countries' assessments of the security situation in Afghanistan. In a survey of 28 EU Member States as well as Norway and Switzerland, the EU's European Asylum Support Office found that two states judged the level of violence in Afghanistan as high enough for a civilian to face a real risk of serious harm *merely by being present anywhere* on the territory; eight states considered that this only applied to the *most unstable regions* of the country, and six of them stated that the level of violence was *nowhere high enough* to reach such a conclusion.<sup>166</sup> Finland and the UK, for instance, consider that any province in Afghanistan is safe enough to return people to.<sup>167</sup> Sweden, on the other hand, considers that civilians face a risk of serious harm only in the provinces of Helmand and Uruzgan.<sup>168</sup> Norway has the same position, but about the provinces of Helmand and Nangarhar.<sup>169</sup>

Moreover, several European countries consider Kabul to be an appropriate IFA, notwithstanding that it is currently the country's most dangerous province for civilians. For instance, the UK Home Office's policy guidance states that "return or relocation to Kabul is, in general, considered reasonable."<sup>170</sup> According to several returnees interviewed for this report, European authorities informed them that Kabul Province was safe, and that they should be expected to live there. However, UNAMA reports that the province continues to be the site of the highest number of civilian casualties, mainly in Kabul city, accounting for 19% of all civilian casualties in the entire country.<sup>171</sup> In mid-2017, according to the International NGO Safety Organisation, the most active armed group in Kabul is the group calling itself the Islamic State.<sup>172</sup> While Amnesty International researchers were in the city on 31 May 2017, a suicide attacker detonated a truck-borne device in one of the most securitized areas of the city centre, killing at least 150 people and wounding hundreds more.<sup>173</sup>

Conditions across Afghanistan are currently so volatile and dangerous that the required standards of relevance and reasonableness cannot be met, and the concept of IFA is factually unsound. As discussed at length in Chapter 2, Afghanistan is currently gripped by a non-international armed conflict between Anti-Government Elements and Pro-Government Forces. Among the Anti-Government Elements are the Taliban and the group calling itself the Islamic State, but more than 20 armed groups are operating inside the country. UN expert reports and other sources provide evidence that the conflict in Afghanistan and the impact on civilians have gotten worse in the last two years. The conflict is unpredictable, and no part of the country can be considered durably safe. Beyond the generalized danger of death and injury in the conflict, Afghans are also at risk of persecution and of torture and other ill-treatment. Human rights violations against the civilian population take place in all parts of the country, regardless of who is in effective control of an area.<sup>174</sup> In May 2017, Amnesty International researchers met with Dr. Alema Alema, Afghanistan's Deputy Minister for Refugees and Repatriation. When asked about whether returns from European countries were safe, her reply was unambiguous. She told researchers: "Afghanistan is not safe at all."<sup>175</sup>

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<sup>163</sup> UNHCR Eligibility Guidelines for Afghan Asylum-Seekers, 2016, p. 82.

<sup>164</sup> UNHCR Eligibility Guidelines for Afghan Asylum-Seekers, 2016, p. 83.

<sup>165</sup> UNHCR Eligibility Guidelines for Afghan Asylum-Seekers, 2016, p. 83.

<sup>166</sup> European Asylum Support Office, *The Implementation of Article 15(c) QD in EU Member States*, July 2015, <http://www.refworld.org/docid/55bf1f794.html>, p. 10.

<sup>167</sup> Finnish Immigration Service, "Humanitarian Protection No Longer Granted; New Guidelines Issued for Afghanistan, Iraq and Somalia," 17 May 2016,

[http://www.migri.fi/for\\_the\\_media/bulletins/press\\_releases/press\\_releases/1/0/humanitarian\\_protection\\_no\\_longer\\_granted\\_new\\_guidelines\\_issued\\_for\\_afghanistan\\_iraq\\_and\\_somalia\\_67594](http://www.migri.fi/for_the_media/bulletins/press_releases/press_releases/1/0/humanitarian_protection_no_longer_granted_new_guidelines_issued_for_afghanistan_iraq_and_somalia_67594); UK Home Office, *Country Policy and Information Note: Afghanistan: Security and Humanitarian Situation*, August 2017, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/638653/Afghanistan\\_-\\_Security\\_-\\_CPIN\\_-\\_v4.0\\_August\\_2017\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/638653/Afghanistan_-_Security_-_CPIN_-_v4.0_August_2017_.pdf).

<sup>168</sup> Migrationsverket, *Rättsligt ställningstagande angående säkerhetssituationen i Afghanistan - SR 31/2017*, 29 August 2017, <http://ifos.migrationsverket.se/dokument?documentSummaryId=40195>.

<sup>169</sup> Frode Forfang, General Director of the Norwegian Directorate of Immigration, quoted in VG, "UDI: Bare to av Afghanistans 34 provinser er utrygge," 4 April 2017, <http://www.vg.no/nyheter/innenriks/afghanistan/udi-bare-to-av-afghanistans-34-provinser-er-utrygge/a/23963813/>.

<sup>170</sup> UK Home Office, *Country Policy and Information Note: Afghanistan: Security and Humanitarian Situation*, August 2017, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/638653/Afghanistan\\_-\\_Security\\_-\\_CPIN\\_-\\_v4.0\\_August\\_2017\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/638653/Afghanistan_-_Security_-_CPIN_-_v4.0_August_2017_.pdf), 3.1.4.

<sup>171</sup> United Nations Assistance Mission in Afghanistan, *Protection of Civilians in Armed Conflict: Midyear Report*, July 2017, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_in\\_armed\\_conflict\\_midyear\\_report\\_2017\\_july\\_2017.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_midyear_report_2017_july_2017.pdf), p. 5.

<sup>172</sup> Interview with INSO, Kabul, 22 May 2017.

<sup>173</sup> Rod Nordland, "Death Toll in Kabul Bombing Has Hit 150, Afghan President Says," *New York Times*, 6 June 2017, <https://www.nytimes.com/2017/06/06/world/asia/kabul-bombing-death-toll-increases.html>.

<sup>174</sup> UNHCR Eligibility Guidelines for Afghan Asylum-Seekers, 2016, p. 18.

<sup>175</sup> Interview with Dr. Alema, Kabul, 20 May 2017.

# CHILDREN NOT SPARED

States Party to the UN *Convention on the Rights of the Child* are obliged to ensure that in all actions concerning children, the best interest of the child shall be a primary consideration.<sup>176</sup>

European countries' determination to return people to Afghanistan regardless of widespread insecurity, is clear in their efforts to deport vulnerable young people. This includes unaccompanied children, as well as young adults who originally reached Europe as unaccompanied children.

The return arrangements between Afghanistan and individual European countries, as well as the Joint Way Forward with the EU, explicitly anticipate the return of children, including unaccompanied children.<sup>177</sup>

The European authorities are aware of the risks to Afghan children upon return. The EU-funded, IOM-run "European Reintegration Network Programme for Afghanistan" acknowledges the particular vulnerability of unaccompanied children returned from Europe, noting the complete absence of national legislation governing their care, or of local or international NGOs that could provide them with support.<sup>178</sup> In response to official questions asked in the Dutch parliament, on 22 June 2017 State Secretary Klaas Dijkhoff acknowledged that violations of children's rights are an issue of serious concern in Afghanistan, but said that he "did not see any reason to immediately stop the deportation of vulnerable groups to Afghanistan."<sup>179</sup>

Cases documented by Amnesty International show how determined European countries are to return young people to Afghanistan. In a case from Norway, the authorities returned a person who was recognised as a child by the Norwegian judicial authorities themselves, and in defiance of a court order. On 2 December 2016, the Borgarting Court of Appeal ruled that Afghan national Wazir Timori was a minor and should be released from detention,<sup>180</sup> but the Norwegian Directorate of Immigration nonetheless returned him to Afghanistan the following day.<sup>181</sup> In the Netherlands, Dutch lawyers informed Amnesty International of two teenage brothers who were forcibly returned in March 2017 even though their parents could not be found, on the basis that the 18-year-old could care for the 17-year-old.<sup>182</sup> Another case is that of Badi, an Afghan teenager who grew up in Pakistan with his family, after the Taliban had accused his father of being a spy. Amnesty International researchers spoke to him on the phone. He told researchers that he arrived in Norway alone at the age of 15 in 2015. He was returned a year later when he said he was still a child, in December 2016. Badi said that the Norwegian Immigration Directorate contradicted his claims of being a child, informing him that he was an adult. He stayed only one week in Afghanistan before fleeing again to Pakistan. Badi told Amnesty International researchers from Pakistan: "I didn't know anybody there [in Afghanistan]. I was very afraid."<sup>183</sup>

The deportations of young adults who fled Afghanistan as children have been publicly criticized by Afghan officials. For instance, between 2007 and 2015, 2,018 young people who had sought refuge in the UK as unaccompanied child asylum-seekers were deported to Afghanistan.<sup>184</sup> The Afghan Minister for Refugees and Repatriation, Hussain Alami Balkhi stated: "People who lived in the UK for so many years till they became 18 are completely unfamiliar with Afghanistan's situation and challenges and this can cause problems. [The] UK government should have granted them asylum."<sup>185</sup>

In some cases, European countries return people to Afghanistan once they turn 18 and are thereby recognised as adults, but the methods by which the authorities assess a person's age are problematic. Because many Afghans lack birth certificates or other documents proving their age, the authorities in their country of asylum often verify their age through other means. Different countries use a wide range of

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<sup>176</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html>, Art. 3(1).

<sup>177</sup> *European Union-Afghanistan Joint Way Forward on Migration Issues*, October 2016, [https://eeas.europa.eu/sites/eeas/files/eu\\_afghanistan\\_joint\\_way\\_forward\\_on\\_migration\\_issues.pdf](https://eeas.europa.eu/sites/eeas/files/eu_afghanistan_joint_way_forward_on_migration_issues.pdf), Parts I(4,5), IV(3).

<sup>178</sup> European Reintegration Network (ERIN) Specific Action Program, "Afghanistan Briefing Note," 2016, [http://erin-iom.belgium.iom.int/sites/default/files/Documents/Countries%20Info%20Material/Afghanistan/ERIN\\_Afghanistan\\_Briefing\\_Note\\_EN.PDF](http://erin-iom.belgium.iom.int/sites/default/files/Documents/Countries%20Info%20Material/Afghanistan/ERIN_Afghanistan_Briefing_Note_EN.PDF), p. 5.

<sup>179</sup> Letter on file with Amnesty International.

<sup>180</sup> Court judgment on file with Amnesty International.

<sup>181</sup> Anne Stine Sæther, "Mindreårig sendt alene til Kabul," *VG*, 4 December 2017, <http://www.vg.no/nyheter/innenriks/udi/mindrearig-sendt-alene-til-kabul/a/23863467/>.

<sup>182</sup> Correspondence and court documents on file with Amnesty International.

<sup>183</sup> Interview with returnee by phone, Pakistan, 22 July 2017.

<sup>184</sup> Maeve McClenaghan, "The Thousands of Former Child Refugees Deported to Afghanistan and Iraq," *The Bureau of Investigative Journalism*, 9 February 2016, <https://www.thebureauinvestigates.com/stories/2016-02-09/revealed-the-thousands-of-former-child-refugees-deported-to-afghanistan-and-iraq>.

<sup>185</sup> Quoted in Maeve McClenaghan, "Theresa May Wins Right to Deport Failed Asylum Seekers to Afghanistan after Judges Remove Court Injunction," *The Bureau of Investigative Journalism*, 3 March 2016, <https://www.thebureauinvestigates.com/stories/2016-03-03/theresa-may-wins-right-to-deport-failed-asylum-seekers-to-afghanistan-after-judges-remove-court-injunction>.

methods to assess people's ages.<sup>186</sup> The most common medical techniques are wrist x-rays, dental examinations and dental x-rays,<sup>187</sup> but as the EU agency the European Asylum Support Office has noted, "no method currently available can tell with certainty the exact age of an individual,"<sup>188</sup> and the margin of error has been estimated at a minimum of two years.<sup>189</sup> Several young interviewees told Amnesty International that the methods used to determine their age were inaccurate and unfair. One returnee claimed that the Norwegian authorities gave precedence to the results of a medical test placing his age at 18, over his official Afghan identification stating that he was 16 years old.<sup>190</sup>

These types of testimonies raise concerns about whether European countries are complying with international standards on age assessments for young asylum-seekers. Indeed, the European Council on Refugees and Exiles has identified a worrisome tendency on the part of the EU Member States to rely on medical methods of age assessment, which run against the best interests of the child principle.<sup>191</sup> The UN committee responsible for overseeing the implementation of the *Convention on the Rights of the Child* stresses that age assessments "must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such."<sup>192</sup> Likewise, UNHCR underscores the centrality of the "benefit of the doubt" principle, stating that "[t]he margin of appreciation inherent to all age-assessment methods needs to be applied in such a manner that, in case of uncertainty, the individual will be considered a child."<sup>193</sup>

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<sup>186</sup> Lauren Collins, "Europe's Child Refugee Crisis," *The New Yorker*, 27 February 2017, <http://www.newyorker.com/magazine/2017/02/27/europes-child-refugee-crisis>.

<sup>187</sup> Vivien Feltz, *Age Assessment for Unaccompanied Minors: When European Countries Deny Children their Childhood*, Médecins du Monde, 28 August 2015, <https://mdmeuroblog.files.wordpress.com/2014/01/age-determination-def.pdf>, p. 5.

<sup>188</sup> European Union: European Asylum Support Office (EASO), *EASO Age Assessment Practice in Europe*, December 2013, <http://www.refworld.org/docid/532191894.html>, p. 6.

<sup>189</sup> Vivien Feltz, *Age Assessment for Unaccompanied Minors: When European Countries Deny Children their Childhood*, Médecins du Monde, 28 August 2015, <https://mdmeuroblog.files.wordpress.com/2014/01/age-determination-def.pdf>, p. 3.

<sup>190</sup> Interview with returnee, Kabul, 21 May 2017.

<sup>191</sup> European Council on Refugees and Exiles, *Detriment of the Doubt: Age Assessment of Unaccompanied Asylum-Seeking Children*, December 2015, <http://www.refworld.org/docid/568fcb94.html>.

<sup>192</sup> 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, UN Doc. CRC/GC/2005/6, <http://www.refworld.org/docid/42dd174b4.html>, para. 31.

<sup>193</sup> 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, UN Doc. HCR/GIP/09/08, <http://www.refworld.org/docid/4b2f4f6d2.html>, paras. 73, 75.



# 5. CONCLUSION AND RECOMMENDATIONS

The conflict gripping Afghanistan is widespread and volatile. Tens of thousands of civilians have been killed or injured, and a wide range of people are at additional risk of other serious human rights violations such as persecution or torture. No part of the country can be considered safe.

European countries and the European Union have remained wilfully blind to these dangers, and are putting tremendous pressure on Afghanistan to accept large numbers of returns. Returns are increasing, even as dangers in the country have become more severe. To effect these returns, European countries have arbitrarily called some areas of Afghanistan “safe,” including Kabul, which is currently the most dangerous part of the country for civilians.

The returns from Europe, happening despite the evidence on the ground in Afghanistan, amount to *refoulement* – that is, transfers to a risk of serious human rights violations. At present, given the grave security and human rights situation across the country, all returns violate the international legal principle of *non-refoulement*.

In light of these findings, Amnesty International makes the following recommendations:

## EUROPEAN GOVERNMENTS

- Implement a moratorium on returns to Afghanistan until the situation in the country permits returns to take place in safety and dignity; and
- Ensure that age assessments of asylum-seekers are based on respect for a child’s dignity and his or her best interests.

## EUROPEAN UNION

- Recommend the suspension of deportations to Afghanistan until the situation in the country permits returns to take place in safety and dignity;
- Suspend return flights to Afghanistan coordinated and/or financed by the European Border and Coast Guard Agency (Frontex);
- Ensure effective monitoring of, and reporting on, the situation of returnees by the Joint Working Group on the EU-Afghanistan Joint Way Forward; and
- Give to the statistical office of the EU (Eurostat) the resources and authority to track the types of returns (forced returns and AVR) from European countries to countries of origin, disaggregated by age and gender.

## **UNHCR**

- Call for a moratorium on all deportations to Afghanistan until the situation in the country permits returns to take place in safety and dignity.

## **INTERNATIONAL ORGANIZATION FOR MIGRATION**

- Not participate in deportations to Afghanistan until the situation in the country permits returns to take place in safety and dignity.

## **GOVERNMENT OF AFGHANISTAN**

- Refuse to cooperate with European countries' returns of people to Afghanistan.

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WHEN INJUSTICE HAPPENS  
TO ONE PERSON, IT  
MATTERS TO US ALL.**

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# FORCED BACK TO DANGER

## ASYLUM-SEEKERS RETURNED FROM EUROPE TO AFGHANISTAN

The conflict gripping Afghanistan is widespread and volatile. Tens of thousands of civilians have been killed or injured, and a wide range of people are at additional risk of other serious human rights violations such as persecution or torture. No part of the country can be considered safe.

European countries and the European Union have remained wilfully blind to these dangers, and are putting tremendous pressure on Afghanistan to accept large numbers of returns. Returns are increasing, even as dangers in the country have become more severe. To effect these returns, European countries have arbitrarily called some areas of Afghanistan “safe,” including Kabul, which is currently the most dangerous part of the country for civilians.

The returns from Europe, happening despite the evidence on the ground in Afghanistan, amount to *refoulement* – that is, transfers to a risk of serious human rights violations. At present, given the grave security and human rights situation across the country, all returns violate the international legal principle of *non-refoulement*.

Amnesty International is calling for a moratorium on all returns to Afghanistan, until they can take place in safety and dignity.