

## **Reply by the United Nations High Commissioner for Refugees (UNHCR) in response to request for guidance on the application of the internal flight or relocation alternative, particularly in respect of Jalalabad, Afghanistan**

### **UNHCR's mandate and role**

1. UNHCR has been entrusted by the United Nations General Assembly with a mandate to provide international protection to refugees and, together with Governments, seek permanent solutions to the problems of refugees.<sup>1</sup> According to its Statute, UNHCR fulfils its mandate *inter alia* by “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto[.]”<sup>2</sup> This supervisory responsibility is reiterated in Article 35 of the 1951 Convention and Article II of the 1967 Protocol relating to the Status of Refugees (hereafter collectively referred to as “1951 Convention”).<sup>3</sup>
2. UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention. Such guidelines are included in the UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status.<sup>4</sup> UNHCR also provides information on a regular basis to decision-makers and courts of law concerning the proper interpretation and application of provisions of the 1951 Convention. These responses are provided without prejudice to UNHCR’s position under the Convention on the Privileges and Immunities of the United Nations.

### **General and procedural considerations in applying the internal flight or relocation alternative**

3. When the availability of an internal flight or relocation alternative is assessed, it should be examined cautiously, in the context of the individual claim, and never on a group basis. A detailed analytical framework for assessing the availability of an internal flight alternative (hereafter “IFA”) or internal relocation alternative (hereafter “IRA”), is contained in the UNHCR “Guidelines on International Protection: the “Internal Flight or Relocation Alternative” within

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<sup>1</sup> UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950 A/RES/428(V), available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3628> (hereafter “UNHCR Statute”).

<sup>2</sup> UNHCR Statute, para. 8(a).

<sup>3</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, No. 2545, vol. 189, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>. According to Article 35 (1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of the Convention”.

<sup>4</sup> UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.unhcr.org/refworld/docid/4f33c8d92.html> (hereafter “UNHCR, Handbook”).

the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees”.<sup>5</sup>

4. The consideration of the possibility of relocation requires an assessment of the **relevance** as well as the **reasonableness** of the proposed IFA/IRA.<sup>6</sup> In assessing a refugee claim in which a well-founded fear of persecution has been established in a localized part of the country of origin, the determination of whether the proposed internal flight or relocation area is an appropriate alternative in the particular case requires an assessment over time, taking into account not only the circumstances that gave rise to the persecution feared, and that prompted flight from the pre-flight place of origin or habitual residence, but also whether the proposed area provides a safe and meaningful alternative in the future.
5. The personal circumstances of the individual applicant, such as age, sex, health, disability, family situation and relationships, social, ethnic, cultural or religious considerations, political and social links, educational, professional and work background and opportunities, any past persecution and its psychological effects and the conditions in the proposed area of relocation, will also need to be considered.<sup>7</sup>
6. Special considerations apply when IFA is considered for a child.<sup>8</sup> The child’s best interests inform both the relevance and reasonableness assessments. As in the case of adults, internal relocation is only **relevant** where the applicant can access practically, safely and legally the place of relocation. If the child were to relocate, for example, from a rural to an urban area, the protection risks in the place of relocation would also need to be examined carefully, taking into account the age and coping capacity of the child.<sup>9</sup>
7. Just as country of origin information may be gender-biased to the extent that it is more likely to reflect male than female experiences, the experiences of children may not always be sufficiently reflected in the available country of origin information. In addition, children may have only limited knowledge or memory of the conditions in the country of origin, or may be unable to explain the reasons for their persecution. For these reasons, asylum authorities need to make special efforts to gather relevant country of origin information and other supporting evidence, including about the proposed place of relocation.<sup>10</sup>
8. UNHCR further notes that if the facts of the case cannot be ascertained and/or the child is incapable of fully articulating his/her claim, the examiner needs to

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<sup>5</sup> UNHCR, *Guidelines on International Protection: the “Internal Flight or Relocation Alternative” within the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, available at: <http://www.refworld.org/docid/3f2791a44.html> (hereafter “UNHCR, Guidelines on IFA”).

<sup>6</sup> *Ibid.*, para. 7.

<sup>7</sup> *Ibid.*, paras. 6 and 8.

<sup>8</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, HCR/GIP/09/08, available at: <http://www.refworld.org/docid/4b2f4f6d2.html>, (hereafter “UNHCR, Guidelines on Child Asylum Claims”), para. 53.

<sup>9</sup> *Ibid.*, para. 54.

<sup>10</sup> *Ibid.*, para. 11.

make a decision on the basis of all known circumstances, which may call for a liberal application of the benefit of the doubt.<sup>11</sup> Similarly, to promote that a decision is taken in the best interest of the child, the child should be given the benefit of the doubt, should there be some concern regarding the credibility of parts of his/her claim.<sup>12</sup>

9. In regard to the procedural aspects, the usual rule that the burden of proving an allegation rests on the one who asserts it equally applies when the internal flight or relocation alternative is being considered. Hence, **the decision-maker bears the burden of proof of establishing that an analysis of relocation is relevant to the particular case.** If considered relevant, it is up to the party asserting this to identify the proposed area of relocation and provide evidence establishing that it is a reasonable alternative for the individual concerned.<sup>13</sup>
10. Once a relevant and reasonable location has been identified, basic rules of procedural fairness require that the asylum-seeker be given clear and adequate notice that the possibility of applying IFA is under consideration, thereby providing the claimant with the possibility to provide evidence or arguments against such a relocation.<sup>14</sup>
11. UNHCR notes that in the present case, the Refugee Appeal Board accepts the main material elements of the claim, including that the applicant witnessed the killing of his father by his father's cousins due to a conflict concerning property. The Appeal Board considers in its decision of 14 May 2014 that the conflict between the applicant and his father's cousins is a private and local conflict. The Board further notes that the applicant following his flight from Khogyani District, Nangarhar province stayed with his maternal uncles in Jalalabad, Nangarhar province, together with his mother and his siblings (one elder sister and four minor siblings). In view of the character of the conflict, the time lapse following the killing of the father and the applicant's family circumstances, the Appeal Board does not find that the applicant would be at risk of violations since he can take up residence in Jalalabad with his maternal uncles, together with his mother and siblings. The maternal uncles, according to available information, are wealthy and powerful persons.
12. It is UNHCR's understanding of the decision, that Jalalabad shall serve as an IFA. UNHCR notes that Jalalabad is located only 41 km from the child's place of origin in Stara Tarmai, Khogyani District, Nangarhar province.

### **General considerations on integrating the principle of the best interest of the child**

#### *The Convention on the Rights of the Child*

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<sup>11</sup> UNHCR, Handbook, para. 219.

<sup>12</sup> Inter-Agency, *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, January 2004, available at: <http://www.refworld.org/docid/4113abc14.html>, p. 61.

<sup>13</sup> *Ibid.*, para. 34.

<sup>14</sup> *Ibid.*, paras. 6 and 35.

13. The 1989 Convention on the Rights of the Child (hereafter “CRC”) provides a comprehensive framework for the responsibilities of its States Parties to all children within their jurisdiction including asylum-seeking and refugee children. The four general principles of the CRC are general requirements for all rights of the Convention and include the right to non-discrimination (Article 2), the best interests of the child (Article 3), the right to life, survival and development (Article 6), and the right to be heard (Article 12). These principles inform both the substantive and the procedural aspects of the determination of a child’s application for refugee status,<sup>15</sup> and apply throughout all stages of displacement.<sup>16</sup>
14. The principle of the best interests of the child provides that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”<sup>17</sup> The UNHCR Executive Committee has in several of its Conclusions stressed that all action taken on behalf of refugee children must be guided by the principle of the best interests of the child.<sup>18</sup> The principle of the best interest of the child requires that the harm be assessed from the child’s perspective. Ill-treatment which may not rise to the level of persecution in the case of an adult may do so in the case of a child.<sup>19</sup>
15. The principle of the best interests of the child is also incorporated in Article 24 of the Charter of Fundamental Rights of the European Union,<sup>20</sup> which states that children have the right to such protection and care as is necessary for their well-being and that their best interests must be a primary consideration in all actions relating to them, whether taken by public authorities or private institutions.
16. The Committee on the Rights of the Child issues General Comments in order to provide authoritative guidance to States regarding the interpretation and implementation of the CRC. The Committee defines in its General Comment

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<sup>15</sup> See further, UNHCR, Guidelines on Child Asylum Claims, para. 5.

<sup>16</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, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html>.

<sup>17</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, available at: <http://www.refworld.org/docid/3ae6b38f0.html> (hereafter “CRC”), Art. 3.

<sup>18</sup> UNHCR, *A Thematic Compilation of Executive Committee Conclusions*, 6th edition, June 2011, available at: <http://www.refworld.org/docid/4f50cfbb2.html>: *Conclusion No. 47 (XXXVIII) – 1987 – Refugee Children*, stressing that all action taken on behalf of refugee children must be guided by the principle of the best interests of the child as well as by the principle of family unity, para. (d); *Conclusion No. 98 (LIV) – 2003 – Protection from Sexual Abuse and Exploitation*, providing that the best interest of the child shall be a primary consideration in the design and implementation of all prevention and response measures, to ensure the protection of children from all forms of abuse, neglect, exploitation and violence, including sexual abuse and exploitation.

<sup>19</sup> UNHCR, Guidelines on Child Asylum Claims, para. 10.

<sup>20</sup> European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, available at: <http://www.refworld.org/docid/3ae6b3b70.html>.

No. 14 on the right of the child to have his or her best interests taken as a primary consideration,<sup>21</sup> the principle as a three-fold concept:

- 1) A substantive right: the right of the child to have his or her best interests assessed and taken as primary consideration;
  - 2) A legal principle: meaning that if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen;
  - 3) A rule of procedure: whenever a decision is made that will affect a specific child, group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child concerned.
17. As explained by the Committee on the Rights of the Child, a decision concerning a child must be well reasoned and reflect that the best interests of the child has been a primary consideration:

“In order to demonstrate that the right of the child to have his or her best interests assessed and taken as a primary consideration has been respected, any decision concerning the child or children must be motivated, justified and explained. The motivation should state explicitly all the factual circumstances regarding the child, what elements have been found relevant in the best-interests assessment, the content of the elements in the individual case, and how they have been weighted to determine the child's best interests. If the decision differs from the views of the child, the reason for that should be clearly stated. If, exceptionally, the solution chosen is not in the best interests of the child, the grounds for this must be set out in order to show that the child's best interests were a primary consideration despite the result. It is not sufficient to state in general terms that other considerations override the best interests of the child; all considerations must be explicitly specified in relation to the case at hand, and the reason why they carry greater weight in the particular case must be explained. The reasoning must also demonstrate, in a credible way, why the best interests of the child were not strong enough to outweigh the other considerations. Account must be taken of those circumstances in which the best interests of the child must be the paramount consideration”.<sup>22</sup>

18. The assessment of the child's best interests must also include a consideration of the child's safety, that is, the right of the child to protection against all forms of physical or mental violence, injury or abuse (Article 19 of the CRC), as well as other forms of harm set out in Articles 32 – 39 of the CRC.<sup>23</sup> Applying a best interests approach to decision-making means assessing the safety and integrity of the child at the current time; however, it also requires assessing the possibility

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<sup>21</sup> UN Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 29 May 2013, CRC /C/GC/14, available at: <http://www.refworld.org/docid/51a84b5e4.html>, para. 6 (a).

<sup>22</sup> *Ibid.*, para. 97.

<sup>23</sup> *Ibid.*, para. 73.

of future risk and harm and other consequences of the decision for the child's safety.<sup>24</sup>

19. In this context, the Committee on the Rights of the Child has also noted that “Family reunification in the country of origin is not in the best interest of the child and should therefore not be pursued where there is a ‘reasonable risk’ that such a return would lead to a violation of fundamental human rights of the child”.<sup>25</sup> The CRC recognizes that in some circumstances the best interest of a child may include separation from a parent. According to Article 9, a child shall not be separated from his or her parents against his or her will, except when [such separation] is necessary for the best interests of the child.<sup>26</sup>

### Relevance Analysis – Jalalabad, Nangarhar province, Afghanistan

20. With regard to the “relevance” of IFA to Jalalabad, as noted above, attention has to be paid to whether the relocation area is **safe** and **accessible**<sup>27</sup> for the child. In the context of this particular case, it is of importance to consider the following:

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

(ii) The concrete prospects of accessing the proposed place of relocation and the risks associated with the widespread use of Improvised Explosive Devices (IEDs) and landmines throughout the country, attacks and fighting taking place on roads, and restrictions on civilians’ freedom of movement imposed by Anti Government Elements (AGEs).<sup>28</sup>

### *Safety and the ability of the State to provide protection in Jalalabad*

21. In the case concerned, the child fears persecution from a non-state agent due to a blood feud resulting in the killing of his father. As evidenced by several sources of country of origin information, blood feuds in Afghanistan can be triggered by murders, but also by other offences, such as the infliction of permanent, serious injury, **unresolved disputes over land**, access to water supplies or property.<sup>29</sup>

<sup>24</sup> *Ibid.*, para. 74.

<sup>25</sup> *Ibid.*, para. 82.

<sup>26</sup> CRC, Art. 9.

<sup>27</sup> In the context of Afghanistan, legal access is not a constraint for an Afghan national, however, travelling through areas of widespread violence to reach the relocation area poses a risk to safety.

<sup>28</sup> Many areas of Afghanistan are not safely accessible as a substantial number of main roads are considered insecure. Adjudicators must carefully consider current country conditions and risks in this regard. See for example, UN Assistance Mission in Afghanistan (UNAMA), *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2014*, July 2014, available at: <http://www.refworld.org/docid/53bd394f4.html> (hereafter “UNAMA, Mid-Year Report 2014”).

<sup>29</sup> Landinfo, Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution, 1 November 2011, available at: <http://www.refworld.org/docid/5124c6512.html>, p. 13. See also Herald Sun, Save Us, Plead Afghan Blood-Feud Lovers, 9 January 2011, available at: <http://www.heraldsun.com.au/news/victoria/save-us-plead-afghan-blood-feud-lovers/story-e6frf71f-1225984337772>; Afghanistan Protection Cluster, Protection Overview (Northern and North-Eastern Region – 2010), 11 May 2011, available at: <http://www.refworld.org/docid/4dd21fe52.html>, p. 20.

22. Blood feuds may give rise to long cycles of retaliatory violence and revenge.<sup>30</sup> When the victim's family is not in a position to exact revenge, a blood feud may lie dormant until such time as the victim's family believes it is capable of taking revenge. Revenge can thus be taken years or even generations after the original offence.<sup>31</sup> Sentencing of the offender in the formal judicial system does not necessarily preclude violent retaliation by the victim's family. Unless a settlement has been reached through a traditional dispute settlement mechanism to end the blood feud, the victim's family will still be expected to exact revenge against the offender after he has served his sentence.<sup>32</sup>
23. When examining the safety of the child in the relocation area, it is necessary to establish that there is effective and meaningful State protection in Jalalabad, which entails that the authorities concerned are willing and able to protect the applicant from risks emanating from the non-State actors, in this case the relatives responsible for the killing of the applicant's father. Effective protection in the meaning of international law has been interpreted to mean sustainable protection from persecution and other serious of harm and to which the individual has readily available access.<sup>33</sup> There needs to be clear and convincing evidence that meaningful protection of a durable kind can be provided by a recognised and reliable entity in the suggested area of relocation. **This omits for example protection afforded by individuals,** clans or militias with temporary control over an area.<sup>34</sup>
24. Where the claimant fears persecution by a non-State agent of persecution such as in the present case, the inquiry should include an assessment of the motivation of the persecutor, the ability of the persecutor to pursue the claimant in the proposed area, and the protection available to the claimant in that area from State authorities. As with questions involving State protection generally, the latter involves an evaluation of the ability and willingness of the State to protect the claimant from the harm feared. A State may, for instance, have lost effective control over its territory and thus not be able to protect the applicant. Laws and mechanisms for the claimant to obtain protection from the State may reflect the State's willingness, but, unless they are given effect in practice, they are not of themselves indicative of the availability of protection.

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<sup>30</sup> See, for example, Dawn, *Jirga Settles Decades Old Blood Feud*, 21 April 2012, available at: <http://dawn.com/2012/04/21/jirga-settles-decades-old-bloodfeud/>, concerning a blood feud between families that lasted 35 years and cost the lives of 67 people; Stars and Stripes, *In Khost, Not Naming Names, But Mediating Blood Feuds*, 12 April 2012, available at: <http://www.stripes.com/news/reporter-s-notebook/in-khost-not-naming-namesbut-mediating-blood-feuds-1.174268>, concerning a blood feud that lasted 28 years and killed as many as 50 people.

<sup>31</sup> Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, p. 10, available at: <http://www.refworld.org/docid/5124c6512.html>; The Guardian, *US Troops' Killing of Hamid Karzai's Cousin Brings Claim of "Deep Conspiracy"*, 10 March 2011, available at: <http://www.guardian.co.uk/world/2011/mar/10/hamid-karzai-cousin-nato-death-conspiracy-afghanistan>.

<sup>32</sup> Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, available at: <http://www.refworld.org/docid/5124c6512.html>, p. 9.

<sup>34</sup> UNHCR, *Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees*, April 2001, available at: <http://www.refworld.org/docid/3b20a3914.html>, paras. 35–37.

<sup>34</sup> UNHCR, *Guidelines on IFA*, paras. 16–17.

25. Evidence of the State's inability or unwillingness to protect the claimant in the original area of persecution will be relevant. It can be presumed that if the State is unable or unwilling to protect the individual in one part of the country, it may also not be able or willing to extend protection in other areas.<sup>35</sup>
26. The ongoing conflict in Afghanistan negatively affects the Government's ability to protect human rights, including in particular in areas under the effective control of AGEs. The capability of the Government to protect human rights is undermined in many districts by insecurity and the high number of attacks by AGEs. Rural and unstable areas suffer from a generally weak formal justice system that is unable to effectively and reliably adjudicate civil and criminal disputes. Communities under the effective control of AGEs often have very limited access to governmental justice mechanisms or services. Government-appointed judges and prosecutors are reportedly frequently unable to remain in such communities, due to insecurity.<sup>36</sup>
27. The United Nations continued through out 2014 to monitor security events that have an impact on civilian actors. The overall number of 19,469 security incidents documented across the country since the beginning of 2014 through 15 November 2014 constitutes a 10.3 per cent increase over the same period in 2013 with 17,645 incidents. The most volatile areas continued to be the southern, south-eastern and eastern parts of the country, accounting for 69 per cent of reported incidents. The eastern part of the country, in particular, showed a marked increase in incidents relative to other areas, with **Nangarhar Province** registering 768 incidents, followed by Kandahar with 592 incidents.<sup>37</sup>
28. An increase of children casualties as result of the armed cconflict was observed by UNAMA throughout the country in 2014. UNAMA documented unprecedented levels of **conflict-related violence** affecting children. A total of 1,065 incidents resulted in 2,474 children casualties (714 killed and 1,760 injured), the highest number of children civilian casualties since UNAMA began documenting civilian casualties in 2009. Children casualties increased by 40 per

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<sup>35</sup> *Ibid.*, para. 15.

<sup>36</sup> UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 6 August 2013, HCR/EG/AFG/13/01, available at: <http://www.refworld.org/docid/51ffdca34.html> (hereafter "UNHCR, Eligibility Guidelines for Afghanistan"), p. 24.

<sup>36</sup> "The skill and education levels of judges, attorneys, and court officials vary widely throughout the country. All attorneys are expected to have at least a bachelor's degree. Judges are supposed to have a degree and two years of post-degree training. In practice, lawyers and judges do not always meet those standards. Some are illiterate; many officials are either unaware or unsupportive of the right of the accused to a defense attorney.", Special Inspector General for Afghanistan Reconstruction, *Quarterly Report to the United States Congress*, 30 July 2012, available at: <http://www.sigar.mil/pdf/quarterlyreports/2012-07-30qr.pdf>, p. 98.

<sup>37</sup> UN General Assembly, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, 9 December 2014, A/69/647-S/2014/876, para. 19, available at: <http://www.refworld.org/docid/549808194.html> ("UNGA, The situation in Afghanistan and its implications for international peace and security"); UNAMA, *Afghanistan: Annual Report 2014, Protection of Civilians in Armed Conflict*, February 2015, available at: <http://www.refworld.org/docid/54e44e274.html> (hereafter "UNAMA, Annual Report 2014"), p. 19.



cent compared to 2013. An average of almost seven children were injured or killed from conflict-related violence every day in 2014.<sup>38</sup>

29. Children casualties from **ground engagements** increased by 65 per cent, with UNAMA recording 1,064 children casualties (259 killed and 805 injured) which remained the leading cause of children casualties, accounting for almost half of the total children casualties (43 per cent).<sup>39</sup>
30. Children **casualties caused by IEDs** also increased by 21 per cent from 2013. IEDs were the second most frequent cause of children casualties with 25 per cent of all children casualties resulted from IEDs in 2014.<sup>40</sup>
31. During the second half of 2014 the United Nations-led country task force on monitoring and reporting on children and armed conflict documented the deaths of 148 and injuries to 422 children between 16 August and 15 November. Most child casualties resulted from ground engagements between pro-Government forces and anti-Government elements. The **eastern region of the country remained the most volatile for children**, witnessing 25 per cent of the total child casualties reported. The Taliban and other armed groups were responsible for the majority of child casualties (48 per cent).<sup>41</sup>
32. The latest figures by UNAMA from April 2015 further demonstrate a continued rise in child casualties which surpassed the unprecedented levels recorded last year.<sup>42</sup>
33. UNAMA has in 2014 documented increased civilian casualties from ground engagements in every region throughout Afghanistan. In the southern, south-eastern and northern regions, civilian casualties from ground engagements more than doubled in each region and they more than tripled in the **north-east region** covering Nangarhar.<sup>43</sup> The documented casualties in the Eastern region includes:

Examples of attacks against judges, prosecutors and judicial institutions:

- On 22 April 2014, a magnetic IED attached to the private vehicle of the Qarghayi district Legal Department of Laghman province detonated in Surkh Rod district, bordering Jalalabad, killing the head of the Legal Department and injuring seven other civilians, including two children.<sup>44</sup>
- The complex attack carried out by Taleban on 12 May 2014, against the Department of Justice complex in **Jalalabad** city, Nangarhar province,

<sup>38</sup> UNAMA, Annual Report 2014, p. 17.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> UNGA, *The situation in Afghanistan and its implications for international peace and security*", para. 31.

<sup>42</sup> UN News Service, *Afghan civilian casualties from ground combat rise in 2015 – UN*, 12 April 2015, available at: <http://www.refworld.org/docid/552cc49a4.html>.

<sup>43</sup> UNAMA, Mid-Year Report 2014, p. 29.

<sup>44</sup> *Ibid.*, p. 20.

killing eight civilians and injuring 14 people. The Taliban claimed responsibility for the attack on their website.<sup>45</sup>

Examples of civilian deaths and injuries from mortars:

- On 20 June 2014, Anti-Government Elements attacked the Mohmand Dara district administration center in Nangarhar province with heavy and small arms fire. One of the mortar rounds fired by Anti-Government Elements impacted a civilian home, killing a seven-year old boy and injuring three girls and two boys.<sup>46</sup>
- On 14 June 2014, in Rodat district of Nangarhar province, two children were killed (a six-year old girl and a 16-year old boy) and seven civilians were wounded (five boys and two men) when a mortar round fired by AGE impacted next to a well from which they were collecting water.<sup>47</sup>
- On 30 August 2014, an incident was reported in Jalalabad when a suicide attacker drove his explosive mini-truck into the main gate of the National Directorate of Security (NDS) and succeeded in breaching the gate for other attackers to enter while using rockets, grenades and small arms. Eight NDS personnel, six ANP officers and 54 civilians were reported injured.<sup>48</sup>
- On 11 November 2014, rockets attacks were fired by AGE into a residential area of Jalalabad killing one civilian and injuring seven others.
- On 10 February 2015, in Jalalabad city near Bibi Hawa high school, a Magnetic Improvised Explosive Devise (MIED) attached to a vehicle of a Nangarhar provincial Council member detonated resulting in the driver being killed and the PC member being injured. Three school girls near to the explosion were also injured. The PC member died from her wounds on 16 February.<sup>49</sup>
- On 2 March 2015, in Pul-i-Shekasta area of Jalalabad city, an IED planted on the roadside detonated against an Afghan National Army (ANA) patrol. Two ANA soldiers and one local bystander were killed.<sup>50</sup>

34. These are just a few examples of ongoing security incidents in Nangarhar Province. During the third quarter of 2014 security incidents in the Eastern Region amounted in average to approximately 90 – 130 incidents per week. However some weeks in 2014 stood out with even higher numbers. For example, during the week of 13 – 19 June a total of 227 security incidents were reported.<sup>51</sup>

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<sup>45</sup> *Ibid.*, p. 16.

<sup>46</sup> *Ibid.*, p. 35.

<sup>47</sup> *Ibid.*, p. 55.

<sup>48</sup> UNHCR Kabul.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

35. The above examples illustrate how the ongoing conflict in the Eastern Region negatively affects the local Afghan authorities and thereby also hampers their ability to effectively and reliably adjudicate civil and criminal disputes and ensure State protection.
36. In view of the deteriorating security situation in Nangarhar province, the Finnish Immigration Service added in 2013 the province to its list of areas in Afghanistan which are classified as insecure due to general violence. Persons fleeing general violence in Nangarhar province are consequently granted subsidiary protection in Finland.<sup>52</sup>

#### *Access to Jalalabad*

37. When assessing whether Jalalabad is accessible for a child or an adult this entails an assessment of the risks associated with the widespread use of IEDs, landmines attacks and fighting taking place on the highway.
38. Jalalabad, Nangarhar Province is only accessible by road as no commercial flights are available.<sup>53</sup> Jalalabad can be accessed by the Kabul-Assadabad-Torkham highway. The latter runs through the border to Pakistan. The 40 mile (140 km) stretch from Kabul to Jalalabad has been reported as one of the most dangerous roads in the world, not only due to security incidents caused by the ongoing conflict, but also in view of the road conditions combined with hazard and reckless driving causing many fatal accidents.<sup>54</sup> In 2013, 200 persons were reported killed in accidents on the Kabul-Jalalabad highway and 5,000 persons reported injured.<sup>55</sup>
39. In addition to the regular accidents caused by poor road conditions security incidents often occur on the Kabul-Assadabad-Torkham highway every week.<sup>56</sup> This is illustrated with a few examples below:
- On 13 May 2014, Anti-Government Elements fired two mortar rounds toward the ANP Regional Training Center in Rodat district, Nangarhar province. One of the rounds missed the target and exploded on the nearby Jalalabad-Torkham highway. The blast hit a group of children who were on their way home from school, killing a 12-year old girl and a 10-year old boy, and wounding four girls.<sup>57</sup>

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<sup>52</sup> Finnish Immigration Service, Press Release, Statement about the situation in Afghanistan, 17 April 2013, available at:

[http://www.migri.fi/for\\_media/meddelanden/pressmeddelanden/pressmeddelanden/1/0/afghaner\\_so\\_m\\_kommer\\_fran\\_otryggaomraden\\_beviljas\\_starkare\\_skydd\\_an\\_tidigare\\_42255](http://www.migri.fi/for_media/meddelanden/pressmeddelanden/pressmeddelanden/1/0/afghaner_so_m_kommer_fran_otryggaomraden_beviljas_starkare_skydd_an_tidigare_42255)

<sup>53</sup> UNHCR Kabul has confirmed that non-commercial flights, such as UN flights, are available.

<sup>54</sup> The New York Times, *The Most Dangerous Road?*, 8 February 2010, available at:

<http://wheels.blogs.nytimes.com/2010/02/08/the-most-dangerous-road/>.

<sup>55</sup> Pajhwok Afghan News, *Kabul-Jalalabad road accidents claim 200 lives*, 20 March 2013, available at: <http://www.pajhwok.com/en/2013/03/20/kabul-jalalabad-road-accidents-claim-200-lives>.

<sup>56</sup> UNHCR Kabul.

<sup>57</sup> UNAMA, Mid-Year Report 2014, p. 31.

- During the first week of June 2014, 9 security incidents occurred on the highway of which 2 were along the Jalalabad-Kabul highway, 5 on the Jalalabad-Torkham highway and 2 on the Jalalabad-Asadabad Highway.<sup>58</sup>
- Similar during the second week of September 2014, 9 security incidents on the highway were reported.<sup>59</sup>
- During the last week of November 2014, 14 security incidents occurred on the highway of which 9 were along the main Jalalabad-Torkham highway, 2 incidents on the Jalalabad-Asadabad highway and 3 on the Jalalabad-Kabul highway. The latter included one attack by AGE with heavy weapons against the Afghan National Police (ANP). In average 5-9 security incidents per week on the Kabul-Assadabad-Torkham highway of which 1-2 are on the Jalalabad-Kabul highway were reported during the third quarter of 2014.
- The incidents on the highway have continued in 2015 and an increased observed in particular for the Jalalabad-Torkham highway with 9-12 incidents per week in February.<sup>60</sup>

## Conclusions

40. As provided by international human rights and refugee law, the best interest of the child must be a primary consideration in child asylum claims, as in any other action by an authority concerning a child. The best interests of the child should consequently also be a primary consideration when considering an IFA for a child and when assessing the relevance of the proposed place of relocation. It will always be in the best interests of the child to be protected from persecution and not to be returned to an area of relocation if this would place him or her at risk of persecution. An IFA or IRA would not be relevant, where **safe access** to the area of relocation is not guaranteed in view of the physical risks and physical barriers encountered in safely reaching the area concerned, that is, in this case Jalalabad.
41. There also needs to be clear and convincing evidence that meaningful protection of a durable kind can be provided by a recognised and reliable entity in the suggested area of relocation. In light of the overall situation in the Eastern Region, UNHCR is of the view that for a child originating from Stara Tarmi, Khogyani District, Nangarhar Province, the proposed relocation to Jalalabad in the same province, does not pass the “relevance” test. The situation of widespread violence and prevalent human rights violations in the Eastern region, negatively affect the local Afghan authorities ability to effectively and reliably protect the citizens and adjudicate civil and criminal disputes.
42. UNHCR considers that **protection afforded by individuals**, clans or militias with temporary control over an area cannot be a substitute for State protection. Irrespective of the child reaching the age of 18, State protection cannot be

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<sup>58</sup> UNHCR Kabul.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

considered available in the Eastern Region. UNHCR considers that no IFA/IRA is available in areas affected by active conflict such as the Eastern Region, regardless of the actor of persecution.<sup>61</sup>

43. As the proposed area of relocation is not considered practically and safely accessible according to the relevance test, it is not necessary to undertake an assessment of the **reasonableness** of the proposed IFA or IRA.

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<sup>61</sup> UNHCR, Eligibility Guidelines for Afghanistan.