



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

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

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

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

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List of Abbreviations

ABP	Afghan Border Police
AGEs	Anti-Government Elements
AIHRC	Afghanistan Independent Human Rights Commission
ALP	Afghan Local Police
ANA	Afghan National Army
ANP	Afghan National Police
ANSF	Afghan National Security Forces
ANSO	Afghanistan NGO Safety Office
APRP	Afghan Peace and Reintegration Program
AU	African Union
EVAW Law	Law on Elimination of Violence against Women
HPC	High Peace Council
IDP	Internally Displaced Person
IED	Improvised Explosive Device
IHL	International Humanitarian Law
IMF	International Military Forces
ISAF	International Security Assistance Force
NATO	North Atlantic Treaty Organisation
NDS	National Directorate of Security
NGO	Non-Governmental Organization
OAU	Organization of African Unity (succeeded by the AU)
OHCHR	Office of the United Nations High Commissioner for Human Rights
UAV	Unmanned Aerial Vehicle
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Programme
UNDSS	United Nations Department of Safety and Security
UNHCR	United Nations High Commissioner for Refugees
VSO	Village Stability Operations

I. Executive Summary

These Guidelines supersede the December 2010 *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*.¹ They are issued against a background of continuing concerns about the security situation in parts of Afghanistan and about widespread human rights abuses. They contain information on particular profiles for which international protection needs may arise in the current context in Afghanistan.

UNHCR has included in these Guidelines the most up-to-date information available at the time of writing, from a wide variety of sources.² The analysis contained in these Guidelines is informed by publicly available information as well as by information collected and obtained by UNHCR in the course of its operations in Afghanistan and elsewhere, as well as by other UN agencies and partner organizations.

All claims lodged by asylum-seekers need to be considered on their own merits according to fair and efficient status determination procedures and up-to-date and relevant country of origin information. This applies whether the claims are analysed on the basis of the refugee criteria contained in the 1951 Convention Relating to the Status of Refugees (“1951 Convention”)³, UNHCR’s mandate, regional refugee instruments, or on the basis of broader international protection criteria, including complementary forms of protection.

Refugee Status under the 1951 Convention

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

- (i) Individuals associated with, or perceived as supportive of, the Government and the international community, including the international military forces (IMF);
- (ii) Journalists and other media professionals;
- (iii) Men and boys of fighting age;
- (iv) Civilians suspected of supporting anti-government elements (AGEs);
- (v) Members of minority religious groups, and persons perceived as contravening Sharia law;
- (vi) Individuals perceived as contravening the Taliban’s interpretation of Islamic principles, norms and values;
- (vii) Women;
- (viii) Children;
- (ix) Victims of trafficking or bonded labour and persons at risk of being trafficked or of bonded labour;
- (x) Lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals;
- (xi) Members of (minority) ethnic groups;
- (xii) Individuals involved in blood feuds; and
- (xiii) (Family members of) business people and other people of means.

This listing is not necessarily exhaustive and is based on information available to UNHCR at the time of writing. Hence, a claim should not automatically be considered as without merit simply because it does not fall within any of the profiles identified here. Depending on the specific circumstances of the case, family members or other members of the households of individuals with these profiles may also be in need of international protection on the basis of their association with individuals at risk.

¹ UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, December 2010, <http://www.refworld.org/docid/4d0b55c92.html>.

² These Guidelines are based on information available to UNHCR as of 1 August 2013, unless otherwise stated.

³ 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>.

Afghanistan continues to be affected by a non-international armed conflict.⁴ Individuals fleeing harm or the threat of harm in the context of this conflict may meet the criteria for refugee status as contained in Article 1(A)(2) of the 1951 Convention. For this to be the case, there must be a reasonable possibility that the individual would experience serious harm amounting to persecution for reasons related to the grounds set out in Article 1(A)(2).

Human rights violations and other consequences of exposure to conflict-related violence may amount to persecution within Article 1(A)(2) of the 1951 Convention, either independently or cumulatively. In the context of the conflict in Afghanistan, relevant factors in assessing the human rights violations or other serious harm that would be reasonably possible for an individual fleeing the conflict include (i) the control over civilian populations by anti-government elements (AGEs), including through the imposition of parallel justice structures and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, restrictions on freedom of movement, and the use of extortion and illegal taxation; (ii) forced recruitment; (iii) the impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty and the destruction of livelihoods; (iv) increasing levels of organized crime and the ability of warlords and corrupt government officials to operate with impunity in government-controlled areas; (v) systematic constraints on access to education or basic health care; and (vi) systematic constraints on participation in public life, including in particular for women.⁵

For an individual who flees harm or the threat of harm in the context of the armed conflict in Afghanistan to meet the criteria for refugee status as contained in Article 1(A)(2) of the 1951 Convention, the persecution flowing from the violence must also be for reason of a 1951 Convention ground. In the context of Afghanistan, examples of circumstances where civilians are subjected to violence for a 1951 Convention ground include situations where violence is targeted at areas where civilians of specific ethnic, political or religious profiles predominantly reside, or at locations where civilians of such profiles predominantly gather (including markets, mosques, schools, or large social gatherings such as weddings). To qualify for refugee status there is no requirement that an individual be known personally to the agent(s) of persecution or be sought out personally by those agents. Similarly, entire communities may have a well-founded fear of persecution for one or more of the 1951 Convention grounds; there is no requirement that an individual suffer a form or degree of harm that differs from that suffered by other individuals with the same profile.⁶

Broader UNHCR Mandate Criteria, Regional Instruments and Complementary Forms of Protection

The 1951 Convention forms the cornerstone of the international refugee protection of regime. The criteria for refugee status in the 1951 Convention need to be interpreted in such a manner that individuals or groups of persons who meet these criteria are duly recognized and protected under that instrument. Only when an asylum-seeker is found not to meet the refugee criteria in the 1951 Convention should broader international protection criteria as contained in UNHCR's mandate and regional instruments be examined, including subsidiary protection.⁷

Individuals who flee situations of violence where there is no nexus with a 1951 Convention ground would not ordinarily come within the scope of the 1951 Convention. Such individuals may nevertheless come within the terms of UNHCR's broader mandate criteria, or the criteria set out in regional instruments.

⁴ See for example Robin Geiß and Michael Siegrist, "Has the Armed Conflict in Afghanistan Affected the Rules on the Conduct of Hostilities?", *International Review of the Red Cross*, Vol. 93, No. 881, March 2011, <http://www.refworld.org/docid/511e1ecc2.html>.

⁵ UNHCR, *Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence; Roundtable 13 and 14 September 2012, Cape Town, South Africa*, 20 December 2012, <http://www.refworld.org/docid/50d32e5e2.html>, paras. 10-12. See also A.H. Cordesman (Center for Strategic and International Studies), *Coalition, ANSF, and Afghan Casualties in the Afghan Conflict from 2001 through August 2012*, 4 September 2012, http://csis.org/files/publication/120904_Afghan_Iraq_Casualties.pdf, pp. 3, 6, 7. See also OCHA, *Afghanistan Common Humanitarian Action Plan 2013*, 26 December 2012, <http://www.refworld.org/docid/5118bc382.html>, p. 10.

⁶ See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, January 1992, <http://www.refworld.org/docid/3ae6b3314.html>, para. 164.

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

UNHCR's mandate encompasses individuals who meet the refugee criteria under the 1951 Convention and its 1967 Protocol,⁸ but has been broadened through successive UN General Assembly and ECOSOC resolutions to a variety of other situations of forced displacement, resulting from indiscriminate violence or public disorder.⁹ In light of this evolution, UNHCR's competence to provide international protection to refugees extends to individuals who are outside their country of origin or habitual residence and who are unable or unwilling to return there owing to serious threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.¹⁰

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

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

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

Afghans and others originating from Afghanistan who seek international protection in countries that are States parties to the Convention Governing the Specific Aspects of Refugee Problems in Africa ("1969 OAU Convention") may qualify for refugee status under Article I(2) of that instrument, on the grounds that they were compelled to leave their place of habitual residence owing to events seriously disturbing public order in either part or the whole of Afghanistan.¹¹ In the context of the 1969 OAU Convention, the phrase "events seriously disturbing public order" encompasses situations of conflict or violence that threaten civilians' lives, freedom or security, as well as other serious disruptions of the *ordre public*.¹² For the same reasons as above, UNHCR considers that areas of Afghanistan that

⁸ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, <http://www.refworld.org/docid/3be01b964.html> and UN General Assembly, Protocol Relating to the Status of Refugees, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, <http://www.refworld.org/docid/3ae6b3ae4.html>.

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

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

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

¹² On the meaning of the phrase "events seriously disturbing public order" in the 1969 OAU Convention, see Marina Sharpe, *The 1969 OAU Refugee Convention and the Protection of People fleeing Armed Conflict and Other Situations of Violence in the Context of Individual Refugee Status Determination*, January 2013, <http://www.refworld.org/docid/50fd3edb2.html>; Alice Edwards, "Refugee Status Determination in Africa", 14 *African Journal of International and Comparative Law* 204-233 (2006); UNHCR, *Extending the Limits or*

are affected by active conflict as part of the ongoing struggle for control between pro-government forces and AGEs, as well as areas of Afghanistan that are under the effective control of AGEs should be regarded as areas affected by events seriously disturbing public order. Consequently, UNHCR considers that individuals originating from such areas may be in need of international protection under the terms of Article I(2) of the 1969 OAU Convention, on the grounds that they were compelled to leave their place of habitual residence owing to threats to their lives, freedom or security as a result of events seriously disturbing public order.

Afghan asylum-seekers who seek international protection in any of the countries that have incorporated the Cartagena Declaration on Refugees (“Cartagena Declaration”) into their national legislation may qualify for refugee status on the grounds that their lives, safety or freedom have been threatened by generalized violence, internal conflict, massive violation of human rights or other circumstances that have seriously disturbed public order.¹³ Following similar considerations as for UNHCR’s broader mandate criteria and the 1969 OAU Convention, UNHCR considers that individuals originating from areas in Afghanistan affected by active conflict between pro-government forces and AGEs, or from areas under the effective control of AGEs, may be in need of international protection under the terms of the Cartagena Declaration, on the grounds that their lives, safety or freedom were threatened by circumstances that have seriously disturbed public order, either in the form of direct or indirect consequences of conflict-related violence, or as a result of serious and widespread human rights abuses committed by AGEs in areas under their effective control.

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

Given the fluid nature of the conflict in Afghanistan, applications by Afghans for international protection under UNHCR’s mandate or under the definitions contained in regional instruments should

Narrowing the Scope? Deconstructing the OAU Refugee Definition Thirty Years On, April 2005, ISSN 1020-7473, <http://www.refworld.org/docid/4ff168782.html>.

¹³ *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>. Unlike the OAU Convention, the Cartagena Declaration is not a binding legal instrument; its provisions acquire the force of law only through incorporation in national legislation.

¹⁴ Serious harm for the purposes of the Qualification Directive is defined as (a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict. European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 13 December 2011, <http://www.refworld.org/docid/4f06fa5e2.html>, arts 2(f), 15.

¹⁵ Under Article 24 of Afghanistan’s Penal Code, the death penalty may be imposed for felony crimes. *Penal Code* [Afghanistan], No. 1980, 22 September 1976, <http://www.refworld.org/docid/4c58395a2.html>. In November 2012, President Karzai approved the execution of 14 prisoners. UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/5113aeb2.html>, para. 11. See also New York Times, *Afghanistan Executes Six in Gesture on Taliban*, 21 November 2012, <http://www.nytimes.com/2012/11/22/world/asia/afghan-suicide-bomber-kills-3-near-us-embassy.html>. Under Article 1 of the Penal Code, those found guilty of *hudoob* crimes are to be punished in accordance with the principles of Hanafi jurisprudence of Sharia law; *hudoob* punishments include execution and stoning to death. Hossein Gholami, *Basics of Afghan Law and Criminal Justice*, undated, <http://www.auswaertiges-amt.de/cae/servlet/contentblob/343976/publicationFile/3727/Polizei-Legal-Manual.pdf>.

¹⁶ It should be noted that where applicants face a real risk of such treatment for reason of a 1951 Convention ground, they should be accorded refugee status under the Convention (unless they are to be excluded from the benefit of protection under the Refugee Convention under Article 1.F); only where there is no nexus between the risk of serious harm and one of the Convention grounds should the applicant be accorded subsidiary protection.

each be assessed carefully in light of the evidence presented by the applicant and other current and reliable information about the situation in Afghanistan, giving due weight to the future-oriented nature of assessments of protection needs.

Internal Flight or Relocation Alternative

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

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

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

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

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

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

Whether an IFA/IRA is "reasonable" must be determined on a case-by-case basis, taking fully into account the security, human rights and humanitarian environment in the prospective area of relocation at the time of the decision. In particular, the poor living conditions and precarious human rights situation of Afghans who are currently internally displaced in Afghanistan are relevant considerations that need to be taken into account in assessing the reasonableness of a proposed internal flight or relocation alternative. UNHCR considers that internal flight or relocation may be a reasonable alternative only where the individual can expect to benefit from meaningful support of his or her own (extended) family, community or tribe in the area of prospective relocation. The only exception to this requirement of external support are single able-bodied men and married couples of working age without identified vulnerabilities, who may in certain circumstances be able to subsist without family and community support in urban and semi-urban areas that have the necessary infrastructure and livelihood opportunities to meet the basic necessities of life and are under effective government

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

control. Given the breakdown in the traditional social fabric of society caused by decades of war, mass refugee flows and internal displacement, a case-by-case analysis will, nevertheless, be necessary.

Consideration of an internal flight or relocation alternative is not relevant for individuals who have been found to be in need of international refugee protection under the refugee criteria contained in Article I(2) of the 1969 OAU Convention.

Exclusion Considerations

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

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

II. Overview of the Situation in Afghanistan

A. Main Developments in Afghanistan (since December 2010)

A non-international armed conflict continues to affect Afghanistan, posing the Afghan National Security Forces (ANSF) assisted by the international military forces (IMF) against a number of anti-government elements (AGEs), notably the Taliban, the Haqqani Network and Hezb-e-Islami Gulbuddin Hekmatyar.¹⁸

The UN Assistance Mission in Afghanistan (UNAMA) reports that Afghans in rural communities perceive AGEs to be exercising *de facto* control over areas in many regions of Afghanistan; in some areas, such AGE control of territory was reported to have increased in the course of 2012.¹⁹ Afghan communities remark that in many districts the ANSF presence focuses primarily on protecting district centres. This allows AGEs to assume effective control of communities in other areas of the district, or to harass and intimidate local residents into supporting them.²⁰ UNAMA noted a prevalence of human rights abuses in areas with limited ANSF presence controlled or partially controlled by AGEs.²¹

The Government has established a number of peace and reintegration mechanisms. The Afghan Peace and Reintegration Programme (APRP) was created by the Government in June 2010 with the aim of bringing low-level insurgents back into local communities; concerns have been expressed about the vetting process for the APRP.²² The High Peace Council (HPC) is mandated to foster reconciliation

¹⁸ See for example Robin Geiß and Michael Siegrist, “Has the Armed Conflict in Afghanistan Affected the Rules on the Conduct of Hostilities?”, *International Review of the Red Cross*, Vol. 93, No. 881, March 2011, <http://www.refworld.org/docid/511e1ecc2.html>. The ANSF include the Afghan National Army (ANA) and the ANP.

¹⁹ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 6; UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 19. UNAMA notes (July 2012, footnote 46): “In the southern, southeast and eastern regions of Afghanistan, entire districts and in some cases, almost entire provinces are, to varying extents, controlled [by] Anti-Government Elements. Local residents informed UNAMA that large portions of Paktika and Khost provinces in the south-east are considered [...] as being almost completely controlled by Anti-Government Elements, with the exception of the district and provincial capitals. In the northern provinces of Balkh, Sari Pul, Faryab and Jawzjan communities described pockets or areas within specific districts. A similar situation was noted in specific districts in the central region provinces of Kabul (only in Surobi district), Kapisa, Parwan and in large areas of Logar and Maidan Wardak. Communities in the western provinces of Herat, Badghis, Ghor and Farah reported that Anti-Government Elements maintain a presence in some areas outside of the district centres. Interlocutors reported the presence of Anti-Government Elements in the northeastern provinces of Baghlan, Badakhshan, Kunduz and Takhar. In the central highlands region, there are no areas under the control of Anti-Government Elements. Civilians living in border areas with other provinces, however, are impacted by the presence of Anti-Government Elements along those borders.” UNAMA observes that this does not reflect a new trend, since many of these areas have been under the partial control of AGEs in recent years. See also UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/5113aeeb2.html>, para. 4. See also A.H. Cordesman (Center for Strategic & International Studies), *Meeting the Real World Challenges of Transition*, 23 January 2013, <http://csis.org/publication/afghanistan-meeting-real-world-challenges-transition>. Cordesman observes, “In far too many areas, the actual level of governance does not apply to much of a given district and the Taliban and other insurgents compete against weak government officials in the field.” *Ibid.*, p. 6. See also BBC, *Afghanistan’s Nuristan Province ‘At Mercy of the Taliban’*, 20 March 2013, <http://www.bbc.co.uk/news/world-asia-21035695>. The Afghanistan Analysts Network observed that, “Another trend in 2013 is that the Taleban attack and temporarily try to take over district centres in more peripheral areas, using concentrations of up to several hundred fighters. This seems to be happening for the first time since 2006/07 [...]. Allied airpower, so far, makes sure that today, if take-overs of district centres happen, the Taleban are pushed out soon again. [...] It cannot be excluded, however, that such attacks might turn into attempts to occupy territory longer term. All in all, however, the ANSF and their western allies are so far able to prevent territorial gains by the insurgents; the government still holds all provincial and most district capitals.” Afghanistan Analysts Network, *After the ‘Operational Pause’: How Big Is the Insurgents’ 2013 Spring Offensive?*, 2 June 2013, <http://aan-afghanistan.com/index.asp?id=3432>.

²⁰ UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, pp. 19-20. UNAMA notes that where ISAF and the ANSF conduct operations in AGE-controlled areas, they tend to draw back to district centres immediately, thus allowing AGEs to maintain a presence in the area. See also for example National Post, *Brian Hutchinson: Afghanistan Progress Slow Despite Canada’s Money and Spilled Blood*, 10 November 2012, <http://fullcomment.nationalpost.com/2012/11/10/brian-hutchinson-afghanistan-progress-slow-despite-canadas-money-and-spilled-blood/>. UNAMA notes furthermore that although civilian casualties and conflict-related violence between pro-government forces and AGEs decreased slightly in 2012 compared to 2011, this reduction did not necessarily result in a strengthened government presence or an improvement in protection of civilians in affected areas; on the contrary, throughout 2012 communities in some areas reported to UNAMA that AGEs were increasingly controlling territory. UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 6.

²¹ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 6.

²² UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/5113aeeb2.html>, para. 47; see also UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in*

with Afghan armed groups fighting the Government.²³ Reconciliation efforts suffered a significant setback with the assassination on 20 September 2011 of Burhanuddin Rabbani, the Chair of the HPC.²⁴ On 14 April 2012 his son, Salahuddin Rabbani was appointed as the new Chair of the Council. On 13 May 2012 senior HPC member Mawlawi Arsala Rahmani was assassinated, while on 1 May 2013 Shah Wali Khan, the head of the HPC in the key province of Helmand, was killed in a roadside bomb attack.²⁵

Talks about a framework for peace negotiations with the Taliban first got underway in 2011; little progress has been made since then.²⁶ Between June 2011 and the end of 2012, the UN Security Council delisted a total of 20 former Taliban from the sanctions list established pursuant to Security Council resolution 1988 (2011), as a step towards reconciliation and confidence-building with the Taliban.²⁷ Analysts and humanitarian actors have expressed doubts about the chances of success of the peace efforts.²⁸

Under a security transition strategy, the ANSF have gradually taken over responsibility for security in Afghanistan from ISAF.²⁹ All foreign combat forces are scheduled to be withdrawn from the country by the end of 2014.³⁰ Concerns have been expressed about the possibility of renewed violence in the

Afghanistan and Technical Achievements in the Field of Human Rights, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, para. 35. The APRP attracted significant donor funding to implement reconciliation and reintegration projects for former combatants and the communities to which they returned. However, concerns have been expressed about the lack of a rigorous vetting process for former combatants wishing to join the APRP to exclude known violators of human rights from benefiting from reconciliation and reintegration support without accountability. In July, 2011, the HPC's Joint Secretariat adopted some of the recommendations made by OHCHR/UNAMA in relation to the vetting process. The number of former combatants joining the programme has remained relatively small; by mid-November 2012 5,814 former insurgents were reported to have joined the APRP. UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/67/619 – S/2012/907, 6 December 2012, <http://www.refworld.org/docid/50f527ee2.html>, para. 10.

²³ *Resolution Adopted at the Conclusion of the National Consultative Peace Jirga*, 4 June 2010, <http://www.hpc.org.af/english/index.php/hpc/jirga/resolution>.

²⁴ BBC, *Afghan Peace Council Head Rabbani Killed in Attack*, 20 September 2011, <http://www.bbc.co.uk/news/world-south-asia-14985779>.

²⁵ AFP, *Senior Peace Envoy Killed in Afghanistan: Officials*, 1 May 2013, <http://reliefweb.int/report/afghanistan/senior-peace-envoy-killed-afghanistan-officials>; UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/855 – S/2012/462, 20 June 2012, <http://www.refworld.org/docid/5118c1152.html>, para. 4.

²⁶ Voice of America, *Despite Stumbles, Observers Say Momentum Remains for Afghan Peace Talks*, 12 July 2013, <http://www.voanews.com/content/observers-say-momentum-remains-for-afghan-peace-talks/1700393.html>; Inter Press Service, *Afghanistan Faces Slim Chance of Post-Occupation Peace Deal*, 9 July 2013, <http://www.ipsnews.net/2013/07/afghanistan-faces-slim-chance-of-post-occupation-peace-deal/>; Washington Post, *Afghan Peace Negotiations Remain Uncertain*, 4 July 2013, http://www.washingtonpost.com/world/asia_pacific/afghan-peace-negotiations-remain-uncertain/2013/07/04/c53fe4de-e405-11e2-bffd-37a36ddab820_story.html; AFP, *The Rocky Road to Afghan Peace Talks*, 20 June 2013, <http://reliefweb.int/report/afghanistan/rocky-road-afghan-peace-talks>; AP, *Karzai Suspends Talks With U.S. Over Taliban Move*, 19 June 2013, <http://world.time.com/2013/06/19/karzai-suspends-talks-with-u-s-over-taliban-move/>; NBC News, *US, Taliban to Meet in Qatar for 'Key Milestone' Toward Ending Afghanistan War*, 19 June 2013, <http://worldnews.nbcnews.com/news/2013/06/18/19021979-us-taliban-to-meet-in-qatar-for-key-milestone-toward-ending-afghanistan-war>; UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 13 June 2013, A/67/889 – S/2013/350, <http://www.refworld.org/docid/51c00fe74.html>, paragraph 9; Washington Post, *Afghan Peace Lost in Transition Worries*, 21 May 2013, http://www.washingtonpost.com/world/asia_pacific/afghan-peace-lost-in-transition-worries/2013/05/20/8af1780c-c09b-11e2-9aa6-fc21ae807a8a_story.html.

²⁷ Security Council, *Resolution 1988 (2011) Adopted by the Security Council at its 6557th Meeting*, S/RES/1988 (2011), 17 June 2011, <http://www.refworld.org/docid/4e0c2e092.html>. In June 2012, the UN Security Council also de-linked the Taliban from al-Qaida, dividing the sanctions list from its resolution 1267 (1999) into two separate sanctions lists under its resolution 1988 (2011) for Taliban and 1989 (2011) for Al-Qaida. UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/5113aeeb2.html>, para. 46. Some observers have expressed concerns about the possibility of those responsible for war crimes and other serious abuses being offered immunity from prosecution, following remarks by the HPC Chair Salahuddin Rabbani in November 2012 that Taliban officials who join peace negotiations with the Afghan Government will receive immunity from prosecution. Rabbani's remarks were followed by the release of Taliban officials from imprisonment in Pakistan at the request of the HPC. See Human Rights Watch, *Afghanistan: No Amnesty for Taliban Crimes*, 25 November 2012, <http://www.refworld.org/docid/50b5d10d2.html>.

²⁸ The 2013 Common Humanitarian Action Plan for Afghanistan notes that, "There are few positive indications that peace efforts will succeed." OCHA, *Afghanistan Common Humanitarian Action Plan 2013*, 26 December 2012, <http://www.refworld.org/docid/5118bc382.html>, p. 11; see also Stiftung Wissenschaft und Politik (German Institute for International and Security Affairs), *Afghanistan Halfway through the Transition Phase: Shortcomings of the Security Transition and Remaining Options for NATO*, January 2013, http://www.swp-berlin.org/fileadmin/contents/products/comments/2013C02_wmr.pdf.

²⁹ Responsibility for security in individual districts was handed over to Afghan forces in different tranches. Tranche 1 began in July 2011, tranche 2 in November 2011, tranche 3 in May 2012, tranche 4 in March 2013, and the fifth and final tranche in June 2013. AFP, *Afghan Forces to Take Over Nationwide Security: Officials*, 15 June 2013, <http://reliefweb.int/report/afghanistan/afghan-forces-take-over-nationwide-security-officials>; UN General Assembly / Security Council, *The Situation in Afghanistan and its Implications for International Peace and Security*, 5 March 2013, A/67/778-S/2013/133, <http://www.refworld.org/docid/514853842.html>, para. 12. See also Afghanistan NGO Safety Office (ANSO), *Quarterly Data Report, Q.4 2012*, <http://www.ngosafety.org/store/files/ANSO%20Q4%202012.pdf>, pp. 17-18.

³⁰ On 1 May 2012 Afghanistan and the US signed a Strategic Partnership Agreement, which provides for the possibility of US forces in Afghanistan after 2014, for the purposes of training Afghan forces and targeting the remnants of al-Qaeda. The White House, Office of the Press Secretary, *Fact Sheet: The U.S.-Afghanistan Strategic Partnership Agreement*, 1 May 2012, <http://www.whitehouse.gov/the-press>

wake of the withdrawal of international troops,³¹ and about the ability of the ANSF to provide protection to civilians.³² In-country UN actors and other observers foresee an intensification of the conflict between pro-government forces and AGEs in the wake of the international troops' withdrawal, should no peace agreement be reached before that time.³³ The UN Secretary-General has noted that the drawdown of international military forces and an expected reduction in development assistance to Afghanistan gives rise to uncertainty about the sustainability of developments to date in the security situation, human development, civil society and Afghan institutional frameworks.³⁴

These developments must be considered against a reported background of endemic corruption, difficulties in establishing and maintaining governmental authority, continuing concerns about weaknesses in the rule of law and an underperforming judicial system, widespread human rights

[office/2012/05/01/fact-sheet-us-afghanistan-strategic-partnership-agreement](#). See also The White House, *Joint Press Conference by President Obama and President Karzai*, 11 January 2013, <http://www.whitehouse.gov/the-press-office/2013/01/11/joint-press-conference-president-obama-and-president-karzai>; and Government of Afghanistan and US Department of State, *Joint Statement by Secretary Clinton and Foreign Minister Rassoul on the Inaugural Meeting of the US – Afghanistan Bilateral Commission*, 3 October 2012, <http://www.refworld.org/docid/511e29fa2.html>.

³¹ The 2013 Common Humanitarian Action Plan for Afghanistan states that, "Conflict is likely to escalate in 2013." OCHA, *Afghanistan Common Humanitarian Action Plan 2013*, 26 December 2012, <http://www.refworld.org/docid/5118bc382.html>, p. 19. The same document notes, "In 2013, Afghanistan will continue on the path of security transition from international forces to Afghan forces. [...] However, it is unlikely that this security transition, and the eventual withdrawal of international military forces by the end of 2014, will be matched by a transition from conflict to stability. The worsening conflict trends over the last five years indicate that civilians will continue to suffer because of armed violence and that the humanitarian situation will deteriorate." *Ibid.*, p. 1. See also Reuters, *Afghans Turn to AK-47, Fearing Taliban Return or Civil War*, 18 December 2012, <http://www.trust.org/alertnet/news/insight-afghans-turn-to-ak-47-fearing-taliban-return-or-civil-war/>; Voice of America, *Analysts: Ethnic, Political Divisions Pose Threat to Afghan Peace*, 26 November 2012, <http://www.voanews.com/content/analysts-say-ethnic-political-divisions-pose-threat-to-afghan-peace/1553028.html>; New York Times, *Afghan Warlord's Call to Arms Rattles Officials*, 12 November 2012, <http://www.nytimes.com/2012/11/13/world/asia/ismail-khan-powerful-afghan-stokes-concern-in-kabul.html>; Vanda Felbab-Brown (Brookings Institution), "Slip-Sliding on a Yellow Brick Road: Stabilization Efforts in Afghanistan", *Stability: International Journal of Security and Development*, Vol. 1, No. 1 (October/November 2012), pp. 4-19, http://www.stabilityjournal.org/article/view/sta.af/19_In_December_2012; New York Times, *Taliban Hits Region Seen as "Safest" for Afghans*, 30 October 2012, <http://www.nytimes.com/2012/10/31/world/asia/taliban-hits-region-seen-as-safest-for-afghans.html>; Reuters, *Afghanistan's Safest Province Falling Prey to Taliban*, 16 October 2012, <http://www.trust.org/alertnet/news/feature-afghanistans-safest-province-falling-prey-to-taliban>. The International Crisis Group notes, "Assurances from NATO and U.S. military commanders aside, there can be little doubt that levels of insecurity are likely to remain high, if not increase, ahead of the 2014 presidential election." International Crisis Group, *Afghanistan: The Long Hard Road to the 2014 Transition*, 8 October 2012, <http://www.refworld.org/docid/5072d5132.html>, p. 18. See also Gilles Dorransoro (Carnegie Endowment for International Peace), *Waiting for the Taliban in Afghanistan*, September 2012, http://www.carnegieendowment.org/files/waiting_for_taliban2.pdf; A.H. Cordesman (Center for Strategic & International Studies), *Statement before the House Armed Services Subcommittee on Oversight and Investigations*, 24 July 2012, http://armedservices.house.gov/index.cfm/files/serve?File_id=3b0df63f-54a4-45ad-8d2b-dc27ea4206da, p. 18; IRIN, *Fears of Northern Violence after Drawdown*, 14 June 2012, <http://www.refworld.org/docid/4fdb0d0e2.html>; Spiegel Online, *The West's Afghan Workers Fear NATO Withdrawal*, 18 May 2012 <http://www.spiegel.de/international/world/afghan-helpers-feel-threatened-by-withdrawal-of-german-troops-a-833878.html>. Note that according to ISAF, violence in the areas where the transition had been completed has decreased. Tolo News, *Violence Decreases in Areas Transferred to Afghan Forces: ISAF*, 23 October 2012, <http://tolonews.com/en/afghanistan/8074-violence-decreases-in-areas-transferred-to-afghan-forces-isaf->. See also AFP, *Karzai Attacks Gloomy Predictions of Afghan Future*, 4 October 2012, <http://www.google.com/hostednews/afp/article/ALeqM5hQ2NjB2Zl2Y2Fj9dw99z44hG3A?docId=CNG.e1f5e6d356aeea4af24c0352cd979d37.221>.

³² Voice of America, *US Audit Finds Afghanistan Incapable of Sustaining Security*, 1 November 2012, <http://www.voanews.com/us-audit-finds-afghanistan-incapable-of-sustaining-security/1537211.html>; A.H. Cordesman (Center for Strategic & International Studies), *Statement before the House Armed Services Subcommittee on Oversight and Investigations*, 24 July 2012, http://armedservices.house.gov/index.cfm/files/serve?File_id=3b0df63f-54a4-45ad-8d2b-dc27ea4206da, p. 6; and *Meeting the Real World Challenges of Transition*, 23 January 2013, <http://csis.org/publication/afghanistan-meeting-real-world-challenges-transition>, p. 35. Afghan activists for women's rights have expressed particular concerns about the position of women after the withdrawal of foreign troops. See for example, AFP, *Afghanistan: Don't Forget Us in Afghan Transition, Women Plead*, 8 October 2012, <http://www.google.com/hostednews/afp/article/ALeqM5iLz5jBo7YSNwzgYE2Ac0CxcXc4A?docId=CNG.292ddcff221210313506b09b3ac3844b.4d1>.

³³ OCHA, *Afghanistan Common Humanitarian Action Plan 2013*, 26 December 2012, <http://www.refworld.org/docid/5118bc382.html>. Foreword by the Deputy Special Representative and Humanitarian Coordinator for Afghanistan. See also Clingendael (Netherlands Institute of International Relations), *Afghanistan Post-2014: Groping in the Dark?*, 11 May 2013, <http://www.clingendael.nl/sites/default/files/Afghanistan%20post%202014%20Groping%20in%20the%20dark.pdf>; Civil-Military Fusion Centre, *Prospect for a Crisis in Post-2014 Afghanistan*, April 2013, <http://reliefweb.int/report/afghanistan/prospect-crisis-post-2014-afghanistan>; Institute for War and Peace Reporting, *Existential Fears in Afghanistan*, 5 February 2013, <http://www.refworld.org/docid/511506052.html>.

³⁴ UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/67/354 – S/2012/703, 13 September 2012, <http://www.refworld.org/docid/5065a16a2.html>, para. 62; UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/855 – S/2012/462, 20 June 2012, <http://www.refworld.org/docid/5118c1152.html>, para. 60. The economic impact of the international withdrawal has begun to make itself felt long before the completion of the security transition. See for example Civil-Military Fusion Centre, *Afghanistan Review, Week 44*, 30 October 2012, https://www.cimicweb.org/cmo/afg/Documents/Afghanistan_Review/CFC_Afghanistan-Review-30OCT12.pdf. According to Human Rights Watch, cuts in aid have already led to the closure of schools and health clinics. Human Rights Watch, *Afghanistan: Rights at Risk as Military Drawdown Advances*, 1 February 2013, <http://www.refworld.org/docid/5118bd4d2.html>.

violations, and a general climate of impunity.³⁵ The Fund for Peace, in its 2012 Failed States Index, ranked Afghanistan sixth lowest of 177 countries. The Fund identified five factors that contribute to instability in Afghanistan: the lack of security, the plethora of powerful political movements, the central Government's lack of authority, its inability to provide basic services, and weak development in rural areas.³⁶ In the 2013 Global Peace Index compiled by Vision of Humanity, Afghanistan is ranked last out of 162 countries.³⁷

Elections for the Provincial Councils and presidential elections are due to be held in 2014, while parliamentary elections are scheduled for 2015.³⁸

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

The security situation in Afghanistan remains unpredictable, with civilians continuing to bear the brunt of the conflict.³⁹ The Center for Strategic and International Studies has noted that, "There are few prospects of anything approaching local security in much of Afghanistan until long after 2014 – barring some 'peace' arrangement that gives insurgents *de facto* control over high threat areas."⁴⁰ In September 2012 the UN Secretary-General remarked that, "Improvements in the security situation have been registered against the record high incident levels of 2011. These gains have not, however, generated public perceptions of greater security and do not reflect improvements to the institutional structures required for longer-term stability. Little has changed in the underlying dynamics to mitigate a deep-seated cycle of conflict."⁴¹ In June 2013, the Secretary-General's Special Representative for Afghanistan, Ján Kubiš, noted that the security situation for civilians had deteriorated since the start of 2013.⁴²

With the ongoing security transition, the nature of the conflict has changed as AGEs have changed the focus of their attacks from the IMF to Afghan targets.⁴³ AGE attacks have shown a significant

³⁵ Special Inspector General for Afghanistan Reconstruction, *Quarterly Report to the United States Congress*, 30 January 2013, <http://www.sigar.mil/pdf/quarterlyreports/2013-01-30qr.pdf>, p. 95. See also, for example, International Crisis Group, *Afghanistan: The Long Hard Road to the 2014 Transition*, 8 October 2012, <http://www.refworld.org/docid/5072d5132.html>; Council on Foreign Relations, *Salvaging Governance Reform in Afghanistan*, 2 April 2012, <http://reliefweb.int/node/487156>.

³⁶ Fund for Peace, *Failed States Index*, 2012, 18 June 2012, <http://www.fundforpeace.org/global/?q=fsi>, pp. 3, 4, 17. The index draws on more than 110 political, social, and economic indicators. The World Bank refers to "worsening insecurity, spreading violence, uncertainty over Afghanistan's political future, falling business confidence, and worsening corruption and governance". World Bank (International Development Association and International Finance Corporation), *Interim Strategy Note for Islamic Republic of Afghanistan for the Period FY12-FY14* (Report No. 66862-AF), 9 March 2012, http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/04/02/000386194_20120402013035/Rendered/PDF/668620ISN0P1250Official0Use0Only090.pdf.

³⁷ The index is based on 22 different indicators. Vision of Humanity, *2013 Global Peace Index*, <http://www.visionofhumanity.org/#page/indexes/global-peace-index/2013>. Afghanistan is also ranked 3 out of 159 countries in the Terrorism Index, which reflects the five-year weighted average score measuring the impact of terrorism in countries around the world. Vision of Humanity, *Terrorism Index*, <http://www.visionofhumanity.org/#page/indexes/terrorism-index>.

³⁸ International Crisis Group, *Afghanistan's Parties in Transition*, 26 June 2013, <http://www.refworld.org/docid/51cbfee14.html>; and *Afghanistan: The Long Hard Road to the 2014 Transition*, 8 October 2012, <http://www.refworld.org/docid/5072d5132.html>, pp. i, 5, 6. See also UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 13 June 2013, A/67/889 – S/2013/350, <http://www.refworld.org/docid/51c00fe74.html>, paragraphs 3-8. The previous presidential and Provincial Council elections, held in August 2009, were marred by allegations of irregularities and fraud; the September 2010 parliamentary elections attracted a low voter turn-out and were similarly subject to allegations of irregularities, including voter intimidation and fraud.

³⁹ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, p. 8; UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/5113aeb2.html>, para. 52. The Fund for Peace notes, "Afghanistan's dire security conditions make it one of the most dangerous countries in the world." Fund for Peace, *Failed States Index 2012*, <http://www.fundforpeace.org/global/?q=fsi>, p. 17.

⁴⁰ A.H. Cordesman and S.T. Mann (Center for Strategic and International Studies), *The Failing Economics of Transition*, 20 July 2012, <http://csis.org/publication/afghanistan-failing-economics-transition>, pp. 132.

⁴¹ UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/67/354 – S/2012/703, 13 September 2012, <http://www.refworld.org/docid/5065a16a2.html>, para. 62. See also UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/67/619 – S/2012/907, 6 December 2012, <http://www.refworld.org/docid/50f527ee2.html>, para. 13.

⁴² UNAMA, *Press conference*, 11 June 2013, <http://reliefweb.int/report/afghanistan/unama-press-conference-11-june-2013>. See also Afghanistan Analysts Network, *After the 'Operational Pause': How Big Is the Insurgents' 2013 Spring Offensive?*, 2 June 2013, <http://aan-afghanistan.com/index.asp?id=3432>.

⁴³ Afghanistan Analysts Network, *After the 'Operational Pause': How Big Is the Insurgents' 2013 Spring Offensive?*, 2 June 2013, <http://aan-afghanistan.com/index.asp?id=3432>; Afghanistan NGO Safety Office (ANSO), *Quarterly Data Report, Q.1 2013*, <http://www.ngosafety.org/store/files/ANSO%20Q1%202013.pdf>, p. 9; and *Quarterly Data Report, Q.4 2012*, <http://www.ngosafety.org/store/files/ANSO%20Q4%202012.pdf>, pp. 1, 12.

increase in targeted killings of local civilian leaders and a general campaign of intimidation aimed at controlling communities in rural areas.⁴⁴ Moreover, the conflict, which had previously been concentrated in the south and east, has come to affect most parts of the country, including most notably the north,⁴⁵ but also provinces that had previously been considered as the most stable in the country, such as Panjsher province.⁴⁶ Similarly, while AGEs continue to carry out high-profile attacks in Kabul,⁴⁷ the violence is not limited to Kabul or more generally to urban centres; the Afghanistan Analysts Network notes that “much, and often extremely violent, insurgent activity is going on in the rural areas with relatively little coverage.”⁴⁸ UNAMA observes furthermore that AGEs appear to be focusing their efforts on holding ground in areas where government presence is minimal, which in turn has a significant impact on the protection of human rights of the affected communities (see Section II.C.1.b).⁴⁹

The proliferation of local militias and armed groups, both pro- and anti-government, particularly in the north, northeast and central highland regions, had a further negative impact on the security situation for civilians.⁵⁰ The presence or re-emergence of armed groups was reported frequently to result in reduced protection for civilians and increased human rights abuses. In the north and northeast regions in particular, the “blurring of lines” between government and non-government affiliation of armed groups, resulting from the widespread recruitment of armed group members into the ranks of the Afghan Local Police (ALP), was reported to contribute to unchecked proliferation of abusive practices and reduced protection for civilians.⁵¹ Civilians were also reported to be increasingly caught in the line of fire between pro-government armed groups and AGEs.⁵²

- ⁴⁴ Afghanistan NGO Safety Office (ANSO), *Quarterly Data Report, Q.1 2013*, <http://www.ngosafety.org/store/files/ANSO%20Q1%202013.pdf>, p. 9; OCHA, *Afghanistan Common Humanitarian Action Plan 2013*, 26 December 2012, <http://www.refworld.org/docid/5118bc382.html>, p. 10; UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/5113aeeb2.html>, paras. 2, 4.
- ⁴⁵ OCHA, *Afghanistan: Humanitarian Dashboard*, 13 June 2013, http://reliefweb.int/sites/reliefweb.int/files/resources/Cluster_Dashboard_final_13Jun2013.pdf; OCHA, *Update Conflict Displacement Faryab Province*, 22 May 2013, <http://reliefweb.int/report/afghanistan/update-conflict-displacement-faryab-province-22-may-2013>; UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 9; OCHA, *Afghanistan Common Humanitarian Action Plan 2013*, 26 December 2012, <http://www.refworld.org/docid/5118bc382.html>, p. 10. UNAMA notes that ground engagements between pro-government forces and AGEs caused higher numbers of civilian casualties in 2012 compared to 2011 in the central, central highlands, northeastern, northern and western regions, which coincided with an expansion of armed groups in these areas. *Ibid.*, p. 9.
- ⁴⁶ AFP, *Militant Attack in 'Peaceful' Afghan Province*, 29 May 2013, <http://reliefweb.int/report/afghanistan/militant-attack-peaceful-afghan-province>; Afghanistan Analysts Network, *After the 'Operational Pause': How Big Is the Insurgents' 2013 Spring Offensive?*, 2 June 2013, <http://aan-afghanistan.com/index.asp?id=3432>. Maps showing the geographic distribution of incidents targeting civilians across the country are available from iMMAP, based on data from UNDSS-SIOC reports, the British Embassy in Kabul and open sources; see for example iMMAP, *Local (Civilian) Population Targeted (Dead and Injured) in Security Incidents for the Period 01/01/2013 to 01/04/2013*, 10 May 2013, <http://www.immap.org/files/maps/1039.pdf>; *Local (Civilian) Population Targeted (Dead and Injured) in Security Incidents for the Year 2012*, 20 January 2013, <http://www.immap.org/files/maps/989.pdf>.
- ⁴⁷ See for example, BBC, *Kabul Blast: Suicide Bomber Targets Foreign Convoy*, 16 May 2013, <http://www.bbc.co.uk/news/world-asia-22549355>; AFP, *Policeman, Five Gunmen Killed in Kabul Taliban Attack*, 24 May 2013, <http://reliefweb.int/report/afghanistan/policeman-five-gunmen-killed-kabul-taliban-attack>.
- ⁴⁸ Afghanistan Analysts Network, *After the 'Operational Pause': How Big Is the Insurgents' 2013 Spring Offensive?*, 2 June 2013, <http://aan-afghanistan.com/index.asp?id=3432>.
- ⁴⁹ UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, pp. 8-9.
- ⁵⁰ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 54-56; ICRC, *Afghanistan: After Attack, ICRC Adapts to the Evolving Conflict*, 23 July 2013, <http://reliefweb.int/report/afghanistan/afghanistan-after-attack-icrc-adapts-evolving-conflict>. In May 2013 OCHA noted, “A growing number of local militia and other armed groups are targeting civilians through intimidation, coercion, extortion, abuse and targeted killings. Some of the intimidations are directly linked to the ongoing conflict, others are triggered by historical underlying tensions such as local rivalries, power play and tribal feuds.” OCHA, *Humanitarian Bulletin Afghanistan, Issue 16, 1-31 May 2013*, <http://reliefweb.int/sites/reliefweb.int/files/resources/May%20MHB%20Afghanistan.pdf>, p. 2. See also IRIN, *Security and Aid Work in Militia-Controlled Afghanistan*, 5 April 2013, <http://www.irinnews.org/Report/97788/Security-and-aid-work-in-militia-controlled-Afghanistan>; UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 10, 49-54; OCHA, *Afghanistan Common Humanitarian Action Plan 2013*, 26 December 2012, <http://www.refworld.org/docid/5118bc382.html>, p. 10.
- ⁵¹ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 55-56.
- ⁵² In 2012, UNAMA documented increasing human rights abuses against civilians by armed groups, including targeted killings, abductions, threats, intimidation and harassment, extortion of taxes, occupation of schools, threats against educators and rape. The majority of abuses documented by UNAMA took place in Faryab and Kunduz provinces. UNAMA notes that, “Proliferation of armed groups across the country coupled with minimal Government presence and intensified insurgent control in some areas often meant that civilians had nowhere

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

- (i) The control over civilian populations by AGEs, including through the imposition of parallel justice structures and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, restrictions on freedom of movement, and the use of extortion and illegal taxation;
- (ii) Forced recruitment;
- (iii) The impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty and the destruction of livelihoods (see section II.D);
- (iv) Increasing levels of organized crime and the ability of warlords and corrupt government officials to operate with impunity in government-controlled areas;
- (v) Systematic constraints on access to education or basic health care as a result of insecurity; and
- (vi) Systematic constraints on participation in public life, including in particular for women.⁵³

1. Civilian Casualties

UNAMA started tracking civilian casualties (comprising civilians who are either killed or injured as a result of conflict and other forms of violence) in 2007. The number of civilian casualties increased every year between 2007 and 2011.⁵⁴ UNAMA noted that while the total civilian casualty figure for 2012 represented a four per cent decrease compared to 2011, civilian casualties in the last half of 2012 increased by 13 per cent compared to the same period in 2011.⁵⁵ This upwards trend continued in 2013. In the first six months of 2013, UNAMA registered 3,852 conflict-related civilian casualties, an increase of 23 per cent compared to the same period of 2012 and representing a return to the record-high number of civilian casualties of 2011.⁵⁶

In its announcement of the start of its 2012 spring offensive, the Taliban explicitly listed among its targets civilians such as members of the National Assembly and the HPC, and officials from the Ministries of Defence, Intelligence and Interior.⁵⁷ As a result, UNAMA observed a shift in 2012 in the

to turn in the face of increasing threats." UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 10, 13.

⁵³ UNHCR, *Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence: Roundtable 13 and 14 September 2012, Cape Town, South Africa*, 20 December 2012, <http://www.refworld.org/docid/50d32e5e2.html>, paras. 10-12. See also A.H. Cordesman (Center for Strategic and International Studies), *Coalition, ANSF, and Afghan Casualties in the Afghan Conflict from 2001 through August 2012*, 4 September 2012, http://csis.org/files/publication/120904_Afghan_Iraq_Casualties.pdf, pp. 3, 6, 7. See also OCHA, *Afghanistan Common Humanitarian Action Plan 2013*, 26 December 2012, <http://www.refworld.org/docid/5118bc382.html>, p. 10.

⁵⁴ UNAMA notes that it is likely to be underreporting civilian casualties as a result of limitations associated with the operating environment in Afghanistan. UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. i. UNAMA also noted that civilian casualties caused by ANSF operations may be underreported due to continued reluctance on the part of ANSF leadership to acknowledge civilian casualties from ANSF operations and to conduct investigations into incidents. *Ibid.*, p. 8. For a comparison of casualty data produced by the US National Counterterrorism Center, the US Department of Defense, ISAF and the UN, see A.H. Cordesman (Center for Strategic and International Studies), *Back to the Body Count: The Lack of Reliable Data on the Wars in Iraq, Afghanistan, and Pakistan*, 10 September 2012, http://www.humansecuritygateway.com/documents/CSIS_BacktotheBodyCount.pdf.

⁵⁵ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 3. UNAMA notes that the decrease in civilian casualties in the first five months of 2012 compared to 2011 was due in large part to an unseasonably harsh winter which impeded insurgent movements and the effects of earlier military operations against AGEs.

⁵⁶ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, p. 1. See also the statistics produced by the Afghanistan NGO Safety Office (ANSO), which recorded a 47 per cent increase in AGE-initiated attacks in the first quarter of 2013 compared to the same quarter in 2012. Afghanistan NGO Safety Office (ANSO), *Quarterly Data Report, Q1 2013*, <http://www.ngosafety.org/store/files/ANSO%20Q1%202013.pdf>, p. 9. Based on the conflict pattern in previous years, ANSO predicted that 2013 was set to become the second most violent year after 2011.

⁵⁷ *Statement of Leadership Council of Islamic Emirate Regarding the Inception of Al-Farooq Spring Operation*, 2 May 2012, <http://theunjustmedia.com/Afghanistan/Statements/May12/Statement%20of%20Leadership%20Council%20of%20Islamic%20Emirate%20>

nature of the conflict-related violence, with fewer ground engagements between AGEs and pro-government forces, but significantly more targeted killings of civilians by AGEs. Civilian casualties resulting from targeted attacks increased by 108 per cent in 2012 compared to 2011, with UNAMA documenting the death of 698 civilians and the wounding of 379 others in incidents of (attempted) targeted killings.⁵⁸ As in 2012, the Taliban announcement of its 2013 spring offensive warned that civilians associated with President Karzai's government or its international allies would be at risk of attack.⁵⁹ The upward trend in the number of civilian casualties as a result of targeted attacks continued in 2013, with UNAMA reporting a further 29 per cent increase in civilian casualties as a result of such attacks in the first six months of 2013 compared to the same period in 2012.⁶⁰

In 2012, improvised explosive devices (IEDs) were responsible for 34 per cent of all civilian casualties (868 civilian deaths and 1,663 injuries). In the first six months of 2013, civilian deaths and injuries resulting from the use of IEDs by AGEs were up 34 per cent compared to the same period in 2012.⁶¹ In most cases of civilian casualties caused by IEDs, the IEDs appeared not to have been directed at specific military objectives or they were employed in such a way that their effects could not be limited to legitimate military targets, in violation of the requirements of international humanitarian law.⁶² AGEs were reported to continue to plant IEDs on roads routinely used by civilians, as well as in other public areas commonly used by civilians, such as markets and bazaars, government offices, in and around schools, shops and bus stations. AGEs also used IEDs in assassination attempts against civilians, frequently killing a high number of bystanders.⁶³

AGEs also continued to use suicide attacks to target public places, including crowded markets, mosques, social gatherings such as weddings, gatherings of tribal elders and civilian government offices, in violation of international humanitarian law. Suicide attacks ostensibly targeting IMF or Afghan forces also frequently lead to large numbers of civilian casualties.⁶⁴ In 2012 UNAMA documented 1,507 civilian casualties (328 deaths and 1,179 people injured) as a result of suicide and complex attacks.⁶⁵ In the period between 1 January and 6 June 2013, civilian casualties as a result of direct suicide attacks by AGEs were down 24 per cent compared to 2012, but the number of

[egarding%20the%20inception%20of%20Al-Farooq%20Spring%20operation.htm](#); The Long War Journal, *Taliban Announce Start of Al Farooq Spring Offensive*, 2 May 2012, http://www.longwarjournal.org/archives/2012/05/taliban_announce_beg_1.php.

⁵⁸ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 4, 22. See also Afghanistan NGO Safety Office (ANSO), *Quarterly Data Report, Q.1 2013*, <http://www.ngosafety.org/store/files/ANSO%20Q1%202013.pdf>, p. 9.

⁵⁹ *Statement of Leadership Council of Islamic Emirate Regarding 'Khalid bin Waleed' Spring Operation*, 27 April 2013, <http://shahamat-english.com/index.php/paighamooona/30919-statement-of-leadership-council-of-islamic-emirate-regarding-%E2%80%98khalid-bin-waleed%E2%80%99-spring-operation>; NBC News, *Taliban Marks Start of 'Monumental' Spring Offensive with Deadly Attack*, 28 April 2013, <http://worldnews.nbcnews.com/news/2013/04/28/17955309-taliban-marks-start-of-monumental-spring-offensive-with-deadly-attack>.

⁶⁰ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 4, 18-24.

⁶¹ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 3, 12-16. In June 2013 the UN Secretary-General noted that "Some devices found in the southern, eastern and central areas were more sophisticated than similar devices found previously. Industrial-grade material holds the potential for greater mass casualty events, and its volume and steady appearance pointed to the existence of stable transnational supply chains." UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 13 June 2013, A/67/889 – S/2013/350, <http://www.refworld.org/docid/51c00fe74.html>, paragraph 16.

⁶² UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 4, 15; UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 18.

⁶³ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, p. 15; UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 18-20. See also for example AFP, *Four Killed in Spate of Afghan Civilian Deaths*, 4 June 2013, <http://reliefweb.int/report/afghanistan/four-killed-spate-afghan-civilian-deaths>; AFP, *Afghan Roadside Bomb Kills 13 Civilians: Officials*, 13 May 2013, <http://reliefweb.int/report/afghanistan/afghan-roadside-bomb-kills-13-civilians-officials>.

⁶⁴ See for example, UNAMA, *UNAMA Strongly Condemns Deadly Attacks in Eastern Afghanistan*, 3 June 2013, <http://unama.unmissions.org/Default.aspx?tabid=12254&ctl=Details&mid=15756&ItemID=36903&language=en-US>; Special Representative of the Secretary General for Children and Armed Conflict, *SRSZ Zerrougui Condemns Child Casualties in Eastern Afghanistan*, 3 June 2013, <http://childrenandarmedconflict.un.org/press-releases/srsz-zerrougui-condemns-child-casualties-in-eastern-afghanistan/>; AFP, *7 Dead in Afghan Suicide Blast: Officials*, 22 May 2013, <http://reliefweb.int/report/afghanistan/7-dead-afghan-suicide-blast-officials>.

⁶⁵ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 20-21. UNAMA defines a complex attack as a deliberate and coordinated attack which includes a suicide device, more than one attacker and more than one type of device. See also Amnesty International, *Afghanistan: Urgent Need to Protect Civilians Following Fresh Attacks*, 9 April 2013, available at: <http://www.refworld.org/docid/5177d91f4.html>.

civilians killed and injured in complex attacks increased by 57 per cent in 2013 compared to 2012 (and by 800 per cent compared to the same period in 2011).⁶⁶

UNAMA received reports of AGEs forcing civilians to house fighters or to let fighters use their property for their operations. By implicating civilians in anti-government activities in the eyes of the ANSF and international military forces, such practices broaden the scope for civilian casualties.⁶⁷

Of the 587 civilian casualties (316 deaths and 271 people injured) caused by pro-government forces in 2012, aerial attacks were responsible for 204 civilian casualties (126 deaths and 78 injuries).⁶⁸ In the first six months of 2013, the number of civilian casualties from air strikes fell by 30 per cent compared to the same period in 2012.⁶⁹ In 2012, UNAMA documented 75 civilian casualties (54 deaths and 21 injuries) from search and seizure operations by pro-government forces, a decrease of 33 per cent compared with 2011; in the first six months of 2013 the number decreased by a further 14 per cent.⁷⁰ UNAMA notes that it may be under-reporting the number of civilian casualties from night search operations, as a result of the limitations linked to the operating environment and limited access to information.⁷¹ In the first six months of 2013 UNAMA documented 22 civilian casualties in incidents involving unmanned aerial vehicles (UAVs) that appeared to have targeted AGEs.⁷²

Incidents of cross-border shelling from Pakistan impacted areas in the eastern region of Afghanistan. In 2012, UNAMA documented 206 incidents of cross-border shelling, killing 12 Afghan civilians and injuring 63.⁷³ In the first six months of 2013, a total of 44 incidents of cross-border shelling resulted in 14 civilian casualties.⁷⁴

At the end of 2012, 670,000 Afghans were reported to live within 500 metres of areas contaminated by landmines, affecting more than 1,800 communities.⁷⁵ Furthermore, so-called legacy IEDs – planted but undetonated IEDs – continued to have a serious impact on Afghan civilians, with legacy IEDs in community spaces hindering access to health and education, and creating an environment of fear and insecurity, with civilians living under the constant threat of death, maiming, serious injury and destruction of property.⁷⁶

⁶⁶ UNAMA, *Press conference*, 11 June 2013, <http://reliefweb.int/report/afghanistan/unama-press-conference-11-june-2013>. See also UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 16-18.

⁶⁷ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 35-36; UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, pp. 26-27.

⁶⁸ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 30-31. Following an aerial attack in Logar province on 6 June 2012 that killed 18 civilians (including 16 women and children) and injured two women, ISAF implemented additional measures to prevent civilian casualties more effectively. UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, pp.6-7. On 30 November 2011 and 1 December 2011 ISAF issued two tactical directives concerning civilian casualties and the conduct of night search operations respectively. Since the issuance of these two tactical directives UNAMA has observed a reduction in civilian casualties in all tactics used by pro-government forces. *Ibid.*, p. 36. See also AFP, *UN Body 'Alarmed' by US Killings of Afghan Children*, 8 February 2013, <http://reliefweb.int/report/afghanistan/un-body-alarmed-us-killings-afghan-children>.

⁶⁹ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 5, 38.

⁷⁰ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 6, 43-44.

⁷¹ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, p. 43 (footnote 164).

⁷² UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 6, 40-42.

⁷³ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 13, 61-62; UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, pp. 8, 50. Incidents of cross-border shelling also led to the destruction of homes and mosques, burning of forests, and killing of livestock. A total of 774 families were forcibly displaced due to cross-border shelling, both within and outside the eastern region. *Ibid.*, February 2013, p. 13.

⁷⁴ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, p. 68.

⁷⁵ UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/67/619 – S/2012/907, 6 December 2012, <http://www.refworld.org/docid/50f527ee2.html>, para. 43. On average, 45 people are killed or injured as a result of landmines or other unexploded ordnance every month. Inter Press Service, *Afghanistan a Minefield for the Innocent*, 7 March 2013, <http://www.ipsnews.net/2013/03/afghanistan-a-minefield-for-the-innocent/>.

⁷⁶ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 7-8, 62-65. In June 2013 the UN Secretary-General reported that accidents involving

The Afghan Government administers three programmes to provide assistance to civilians who suffered conflict-related harm at the hands of any of the warring parties. However, many affected civilians, including civilians harmed by the ANSF, reportedly receive no help from these programmes.⁷⁷

2. Security Incidents

In 2012 ANSO recorded 19,769 incidents initiated by AGEs, the ANSF, or international military forces, a 24 per cent decrease over the 26,041 incidents recorded in 2011.⁷⁸ Of the 19,769 incidents, 10,468 were reported to be attacks initiated by AGEs, representing a decrease of 25 per cent compared to 2011. According to ANSO, the decrease did not reflect a loss of operational capacity on the part of AGEs, but rather a tactical and reversible response to the disengagement of international military forces.⁷⁹ This assessment was borne out by the fact that in the first quarter of 2013 the number of incidents initiated by AGEs was up by 47 per cent compared to the same period in 2012. Based on conflict patterns in previous years, ANSO predicted that 2013 was set to become the second-most violent year after 2011.⁸⁰

The 12 provinces with the highest incident totals in 2012 (more than 640 incidents) were Helmand, Kandahar and Uruzgan (southern region), Ghazni, Paktika and Khost (southeastern region), Nangarhar and Kunar (eastern region), Herat and Farah (western region), and Kabul and Wardak (central region).⁸¹ ANSO noted that the southern, southeastern and eastern region formed an increasingly contiguous battle space.⁸² The UN similarly noted that in the three-month period of August-October 2012, 70 per cent of all security incidents occurred in the south and east of the country.⁸³ Despite the overall decrease in the number of security incidents in 2012 compared to 2011, the provinces of Kandahar, Kunar, Nangarhar, Logar and Wardak saw notably higher security incident levels than in 2011.⁸⁴

C. Human Rights Situation

Despite the Afghan Government's stated commitment to upholding its national and international human rights obligations, its record in protecting human rights continues to be inconsistent. While improvements have been made, significant sectors of the population, including women, children,

mines and explosive remnants of war had killed or injured an average of 47 people per month since January 2013, up from an average of 30 per month in 2012. UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 13 June 2013, A/67/889 – S/2013/350, <http://www.refworld.org/docid/51c00fe74.html>, paragraph 40.

⁷⁷ Center for Civilians in Conflict, *Caring for Their Own: A Stronger Afghan Response to Civilian Harm*, 27 January 2013, <http://civiliansinconflict.org/resources/pr/afghan-government-must-strengthen-response-to-civilian-harm>. The report identifies a number of reasons for this situation, including bureaucratic inefficiencies and/or alleged corruption; the fact that eligible citizens do not apply for assistance because of the cumbersome application process, fears of retaliation from armed groups, or because they do not know about the assistance programmes. The civilians who do receive assistance are reportedly rarely satisfied, owing to frustrations with the application process, payment delays, insufficient levels of assistance, and extortion.

⁷⁸ Afghanistan NGO Safety Office (ANSO), *Quarterly Data Report, Q.4 2012*, <http://www.ngosafety.org/store/files/ANSO%20Q4%202012.pdf>, p. 12.

⁷⁹ Afghanistan NGO Safety Office (ANSO), *Quarterly Data Report, Q.4 2012*, <http://www.ngosafety.org/store/files/ANSO%20Q4%202012.pdf>, pp. 1, 12.

⁸⁰ Afghanistan NGO Safety Office (ANSO), *Quarterly Data Report, Q.1 2013*, <http://www.ngosafety.org/store/files/ANSO%20Q1%202013.pdf>, pp. 1, 9.

⁸¹ The regional designations used here are the same as those used by UNAMA, namely Central (provinces of Kabul, Panjsher, Wardak, Logar, Parwan and Kapisa), Central Highlands (Bamyan and Daikundi), Eastern (Nangarhar, Laghman, Kunar and Nuristan), Southeastern (Ghazni, Paktia, Paktika, Khost), Southern (Helmand, Kandahar, Nimroz, Uruzgan and Zabul), Northeastern (Kunduz, Takhar, Badakhshan and Baghlan), Northern (Balkh, Samangan, Jawzjan, Sari Pul and Faryab), and Western (Herat, Farah, Badghis and Ghor). These regional designations are slightly different from those used by ANSO, which divides the country in six regions (South, Central, East, Northeast, North and West).

⁸² Afghanistan NGO Safety Office (ANSO), *Quarterly Data Report, Q.2 2012*, <http://www.ngosafety.org/store/files/ANSO%20Q2%202012.pdf>, p. 1.

⁸³ UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/67/619 – S/2012/907, 6 December 2012, <http://www.refworld.org/docid/50f527ee2.html>, para. 14.

⁸⁴ UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/67/619 – S/2012/907, 6 December 2012, <http://www.refworld.org/docid/50f527ee2.html>, para. 14.

ethnic minorities, detainees, and others, reportedly continue to experience numerous human rights abuses by various actors.⁸⁵

1. Human Rights Abuses

Human rights violations on the part of the State and its agents reportedly occur routinely, particularly in areas of the country where government presence and rule of law institutions are weak or dysfunctional.⁸⁶ In government-controlled areas, warlords aligned with the Government are reportedly able to abuse human rights with impunity.⁸⁷ Conversely, in areas where the Government has limited presence and control, AGEs reportedly abuse human rights with impunity; the large number of attacks by AGEs limited the capability of the central Government to protect human rights in many districts, especially in the south.⁸⁸

a) Human Rights Violations by State Actors

Various State actors have been accused of committing serious human rights violations. The NDS, the ANP, the ALP and the Afghan Border Police (ABP) have reportedly committed unlawful killings. Government officials, security forces, detention centre authorities, and police have reportedly used torture or cruel, inhuman or degrading treatment or punishment. Police officers have reportedly raped female detainees. The ANSF have reportedly sexually abused and exploited children. Impunity for human rights violations committed by each of these State actors is reported to have remained widespread.⁸⁹

In two successive reports, UNAMA has documented the widespread use of torture and ill-treatment of conflict-related detainees held by the NDS, the ANP, the ALP and the Afghan National Army (ANA). Detainees reportedly also lack access to remedial mechanisms, including the right to *habeas corpus*, as well as meaningful access to defence counsel. Neither the NDS nor the ANP keep regular public statistics of their prison population.⁹⁰

The prison system run by the Central Prisons Directorate reportedly suffers from severe overcrowding, with pre-trial detention routinely stretching up to three months or longer. This situation is reported to be a contributing factor in the willingness of law enforcement agencies to use torture in order to coerce confessions from detainees, particularly conflict-related detainees.⁹¹

While the ALP has reportedly helped to improve security in the majority of areas where they are deployed,⁹² concerns remain about an alleged lack of accountability for ALP officers for past and

⁸⁵ Special Inspector General for Afghanistan Reconstruction, *Quarterly Report to the United States Congress*, 30 January 2013, <http://www.sigar.mil/pdf/quarterlyreports/2013-01-30qr.pdf>, pp. 120-121; and *Quarterly Report to the United States Congress*, 30 October 2012, <http://www.sigar.mil/pdf/quarterlyreports/2012-10-30qr.pdf>, pp. 123-125; and *Quarterly Report to the United States Congress*, 30 July 2012, <http://www.sigar.mil/pdf/quarterlyreports/2012-07-30qr.pdf>, p. 105; UK Foreign and Commonwealth Office, *Quarterly Updates: Afghanistan*, 30 September 2012, <http://www.fco.gov.uk/en/news/latest-news/?view=News&id=758877882>.

⁸⁶ UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 4.

⁸⁷ Human Rights Watch, *Afghanistan: Rights at Risk as Military Drawdown Advances*, 1 February 2013, <http://www.refworld.org/docid/5118bd4d2.html>.

⁸⁸ UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 18.

⁸⁹ US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>.

⁹⁰ UNAMA, *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On*, 20 January 2013, <http://www.refworld.org/docid/50ffe6852.html>; and OHCHR/UNAMA, *Treatment of Conflict-Related Detainees in Afghan Custody*, October 2011, <http://www.refworld.org/docid/4e93ecb22.html>. See also UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/5113aeeb2.html>, paras. 30-36; and UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, paras. 4, 40, 42.

⁹¹ UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/5113aeeb2.html>. In October 2012, the Central Prison Directorate reported that it was housing more than 24,000 prisoners and detainees in facilities that were designed for 10,000 people. *Ibid.*, paras 8, 30. See also UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, para. 40.

⁹² The Afghan Local Police was established in August 2010 by President Karzai, as part of the wider Village Stability Operations (VSO). The ALP is a village-focused initiative of the Ministry of Interior to train local Afghans in rural areas to defend their communities against threats

ongoing human rights violations, and about reported inconsistencies in the application of the policies and procedures required for ALP recruitment and vetting.⁹³ In 2012, UNAMA documented 62 civilian casualties involving ALP officers, including 24 deaths and 38 injuries; 13 of these casualties resulted from ground engagements, but the majority of the casualties arose from human rights violations reportedly committed by ALP officers against civilians, particularly in the northeastern and northern regions.⁹⁴ Examples of documented human rights violations with the reported direct involvement of ALP members in 2012 include cases of the practice of *baad* (the giving away of girls and women as compensation for criminal acts; see Section III.A.7),⁹⁵ rape, torture of detainees, ill-treatment, property seizure and forced labour.⁹⁶ In the first six months of 2013, UNAMA documented 14 civilian deaths and 23 wounded in incidents attributed to the ALP, an increase of 61 per cent compared to the same period in 2012.⁹⁷

UNAMA reported that in 2012 ISAF and the ANSF were involved in 11 incidents impacting education; the majority of these were occupations of schools. In the majority of these incidents, schools were used as bases of operations, sometimes temporarily. Use of schools in this manner essentially converts schools from protected civilian buildings into legitimate military targets and has a serious impact on children's safety, security and access to education.⁹⁸

Other reported human rights violations by State actors include the arrest and alleged maltreatment of peaceful protesters in Kabul on 2 May 2013. The protest had been organized by the Solidarity Party of Afghanistan to protest the government's failure to prosecute abusive warlords, including those now in official positions.⁹⁹

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

AGEs were reported to carry out extrajudicial executions, torture and ill-treatment; and prevent civilians from exercising their right to free movement, access to education, freedom of expression and the right to an effective remedy. In most instances these human rights abuses were reported to occur in areas with a limited government or ANSF presence.¹⁰⁰

from insurgents and other illegally-armed groups, including criminal groups. US Department of defense, *Report on Progress Towards Security and Stability in Afghanistan*, April 2012, http://www.defense.gov/pubs/pdfs/Report_Final_SecDef_04_27_12.pdf, pp. 64-66.

⁹³ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 50-53; UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 13 June 2013, A/67/889 – S/2013/350, <http://www.refworld.org/docid/51c00fe74.html>, paragraph 14; UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 9, 42-47; UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/5113aeeb2.html>, para. 23; AFP, *Local Police, an Uncertain Player in Afghan Future*, 31 December 2012, <http://reliefweb.int/report/afghanistan/local-police-uncertain-player-afghan-future>; UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/67/619 – S/2012/907, 6 December 2012, <http://www.refworld.org/docid/50f527ee2.html>, para. 18; UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 45. In September 2011, one year after the ALP was created, Human Rights Watch documented in detail human rights violations committed by the ALP, including unlawful killings, disappearance, torture, beatings, unlawful detention, forcible collection of illegal taxes, and theft. Human Rights Watch, *“Just Don’t Call It a Militia: Impunity, Militia and the Afghan Local Police”*, September 2011, <http://www.refworld.org/docid/511e32a92.html>.

⁹⁴ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 9.

⁹⁵ See for example New York Times, *Rape Case, in Public, Cites Abuse by Armed Groups in Afghanistan*, 1 June 2012, <http://www.nytimes.com/2012/06/02/world/asia/afghan-rape-case-is-a-challenge-for-the-government.htm>; and *Afghan Rape Case Turns Focus on Local Police*, 27 June 2012, <http://www.nytimes.com/2012/06/28/world/asia/afghan-rape-case-turns-focus-on-local-police.htm>; Radio Free Liberty, *Rape Case Tests Afghan Justice*, 5 June 2012, <http://www.refworld.org/docid/5124bd912.html>.

⁹⁶ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 44; UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, pp. 46-47. UNAMA noted that in a number of districts, illegally armed pro-government militias referred to themselves as ALP, making it difficult for victims to correctly identify perpetrators of human rights abuses. *Ibid.*, pp. 47-48.

⁹⁷ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, p. 50.

⁹⁸ In 2012, UNAMA received reports of 14 incidents of occupation of schools by both pro-government forces and AGEs. UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 12, 57-58; UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, pp. 32-33.

⁹⁹ Human Rights Watch, *Afghanistan: Peaceful Protest Suppressed*, 15 May 2013, <http://www.refworld.org/docid/519367334.html>.

¹⁰⁰ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 24.

In areas where AGEs exercise effective control, they are reported to take advantage of the absence of governmental justice mechanisms or services to enforce their own parallel “judicial” structures. UNAMA has noted that these structures are illegal and have no legitimacy under the laws of Afghanistan; the severe punishments meted out by these structures, including executions, amputations and mutilations, amount to criminal acts under Afghan laws and, in some cases, to war crimes.¹⁰¹ Due to the inherent illegality of these structures, UNAMA considers their existence and resulting punishments to be human rights abuses.¹⁰² In 2012 UNAMA documented 33 killings of civilians in 17 separate incidents of punishments carried out following a “hearing” or sentenced passed by AGEs.¹⁰³

AGEs reportedly place limitations on the right to freedom of expression. Civilians who speak out against AGEs, or in favour of the Government, face a risk of being subjected to summary trials in parallel and illegal judicial procedures operated by AGEs on the basis of accusations of “spying” for the Government; the punishment for such alleged “crimes” is usually execution (see Section III.A.1.d).¹⁰⁴

In areas where AGEs exercise effective control, they are also reported to routinely limit the right to freedom of movement through mobile or permanent checkpoints. This in turn impacts negatively on civilians’ livelihoods and employment, since the roads controlled by AGEs are often the only means to access district centres. Farmers who cannot travel to district centres to sell their produce are affected in particular.¹⁰⁵ AGEs are also reportedly imposing illegal taxes in almost all areas under their partial or full control.¹⁰⁶

Taliban public statements have emphasized their support for education, and have denied Taliban responsibility for attacks against schools. In a statement issued on 7 March 2012 the Taliban declared that promotion of education inside the country is one of their main objectives, and that they consider education to be “a need of the new generation”.¹⁰⁷ In some areas, AGEs have facilitated the reopening of schools and the resumption of education, albeit while interfering in or attempting to control the curriculum, including by appointing “controllers” in schools who are tasked with monitoring school curricula for adherence to AGE-approved criteria.¹⁰⁸

Nevertheless, in 2012 UNAMA verified 74 incidents of conflict-related violence directly impacting access to education in all regions of the country. The vast majority of these incidents were attributed to AGEs, including the Taliban. These incidents included burning of schools, targeted killings and intimidation of teachers and staff, IEDs in the vicinity of schools, rocket attacks against educational facilities, and closure of schools, particularly girls’ schools. Schools were also occupied and used for military purposes, compromising their protected status under international humanitarian law and

¹⁰¹ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 4; see also for example BBC, *In the Afghan Villages Where Taliban Still Rule*, 3 October 2011, <http://www.bbc.co.uk/news/world-south-asia-15154493>; Amnesty International, *Afghanistan: 100 Lashes for Teen Shows Why Climate of Violence against Women Must Be Tackled*, 20 September 2012, <http://www.refworld.org/docid/505c19522.html>.

¹⁰² UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, pp. 21-25. The UNAMA report includes details about a number of individuals against whom Taliban officials carried out punishments in violation of Afghan law and international human rights law, including murder, mutilation (cutting off an ear, cutting off a right hand), lashes, and illegal imprisonment. See also UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 22-23, where further examples of punishments imposed by Taliban parallel judicial structures are provided.

¹⁰³ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 4, 24.

¹⁰⁴ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 22-23; UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 4, 17, 24; UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 27.

¹⁰⁵ UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 25.

¹⁰⁶ UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 26.

¹⁰⁷ Islamic Emirate of Afghanistan (Leadership Council of the Taliban), “Promotion of Education inside the Country is One of the Main Objectives of the Islamic Emirate”, 7 March 2012, <http://www.globalindigo.com/uruknet-info-taliban-statement-promotion-of-education-inside-the-country-is-one-of-the-main-objectives-of-the-islamic-emirate>. For further analysis on denial of access to education by the Taliban, see also Section III.A.8.d.

¹⁰⁸ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 30-34; UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, pp. 32-34. For more detailed information, see Section III.A.8.d.

endangering children.¹⁰⁹ In the first six months of 2013 UNAMA documented 40 incidents of conflict-related violence affecting schools and direct attacks against schools and educational staff, representing an increase of 18 per cent compared to the first six months in 2012.¹¹⁰

Moreover, many schools remain closed in Afghanistan due to the prevailing local security conditions, the inability of local departments of education to access certain communities, and the inability of the Government to provide education materials to many schools, including text books and writing materials. According to the Ministry of Education, as of May 2012 over 590 schools were closed in vulnerable areas of Afghanistan. Many of the closed school are located in areas that are under partial or full control of AGEs.¹¹¹

AGEs are similarly reported to restrict access to health care, not only by direct attacks on health facilities and health workers, but also by disrupting awareness and vaccination campaigns against polio and measles.¹¹²

The right to freedom of religion is also reported to come under attack from AGEs, including through the use of threats and attacks against individuals and communities who are perceived to contravene AGEs's interpretation of Islamic principles, norms and values.¹¹³

In 2012, UNAMA reported 121 confirmed incidents of AGEs threatening, intimidating and harassing civilians, a 17 per cent increase compared with 2011. In many instances, such as death threats, assault and house burnings, the incidents amounted to human rights abuses. UNAMA noted that in all probability it was under-reporting such incidents, given restricted access to remote communities and difficulties faced by communities to report incidents.¹¹⁴ In the first six months of 2013 UNAMA documented 90 incidents of AGEs threatening, intimidating and harassing civilians, a 105 per cent increase compared with the first half of 2012.¹¹⁵

UNAMA has furthermore noted that community perceptions of insecurity, weak governance and the absence of civilian protection have a direct impact on the enjoyment of human rights, since such perceptions influence the extent to which people feel secure to exercise their rights to free movement, political participation, education and healthcare.¹¹⁶ In this regard, the tendency identified by UNAMA of AGEs refocusing their efforts on holding ground in areas where government presence is minimal,

¹⁰⁹ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 12; UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, pp. 30-34. The Country Task Force on Children and Armed Conflict received reports on 102 incidents of attacks against school and staff in 2012. Only 25 of these incidents could be verified, due to security constraints and lack of resources. UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/5113aeb2.html>, para. 28. UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp.

¹¹⁰ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 66-67.

¹¹¹ UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 33. The figure of 590 closed schools nevertheless represents an improvement compared to a year previously, when 1,200 schools were closed. *Ibid.*

¹¹² UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 12; UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/5113aeb2.html>, para. 4; The Guardian, *Taliban Stopping Polio Vaccinations, Says Afghan Governor*, 12 March 2013, <http://www.guardian.co.uk/world/2013/mar/12/taliban-stopping-polio-vaccinations-afghanistan>. For further details on conflict-related restrictions on access to health care, see Section II.D.

¹¹³ For further analysis of the situation of religious leaders who are at risk from AGEs, see Section III.A.1. For analysis of the situation of persons perceived as contravening the Taliban's interpretation of Islamic principles, norms and values, see Section III.A.6. For analysis of the specific situation of women who are perceived to contravene social mores, see Section III.A.7.

¹¹⁴ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 25.

¹¹⁵ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 27-29.

¹¹⁶ UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 18. See also for example Afghan Women's Network, *Afghan Women Towards Bonn and Beyond: Position Paper*, 6 October 2011, http://www.afghanwomensnetwork.af/Latest%20Updates/AWN_Position_Paper_FINAL_FINAL_English.pdf, p. 3, which states, "The presence of gunmen and militias in the transitioned areas are of huge concern to families. These security threats lead parents to prevent their sons and daughters from going to school and accessing other critical services."

and the attendant deterioration in communities' perception of security in these areas, has a significant impact on the protection of human rights for the affected communities.¹¹⁷

AGEs also severely restrict the enjoyment of basic human rights through the widespread use of IEDs. In IED-affected areas, civilians face limitations on their rights to freedom of movement, access to education and healthcare, livelihoods, and political participation.¹¹⁸

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

Even where the legal framework provides for the protection of human rights, the implementation of Afghanistan's commitments under national and international law to promote and protect these rights in practice frequently remains a challenge.¹¹⁹ Afghan governance is perceived as particularly weak.¹²⁰ High levels of corruption, ineffective governance and a climate of impunity are all reported by observers as factors that weaken the rule of law and undermine the ability of the State to provide protection from human rights violations.¹²¹ Accountability for human rights violations is reported to remain weak, and little or no political support has materialized for the advancement of transitional justice mechanisms, despite past commitments on the part of the Government.¹²² As noted above, a number of State actors tasked with protecting human rights, including the ANP and ALP, are themselves reported to commit human rights abuses with impunity in certain parts of the country.¹²³ Moreover, in most areas the police are not linked to a functioning justice system, and in many areas there is no effective governance backing up the police.¹²⁴ In June 2013 the UN High Commissioner

¹¹⁷ UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 8.

¹¹⁸ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, p. 8; UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 62-64.

¹¹⁹ Foreign and Commonwealth Office, *Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report*, April 2012, <http://www.fco.gov.uk/en/news/latest-news/?view=News&id=758877882>, pp. 165-166; UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, para. 41.

¹²⁰ Congressional Research Service, *Afghanistan: Post-Taliban Governance, Security, and U.S. Policy*, 3 May 2012, <http://www.refworld.org/docid/50f7b5502.html>. Afghanistan is placed 172nd out of 177 countries in the *Failed States Index 2012*, produced by the Fund for Peace. The index places Afghanistan within the five worst performers in terms of state legitimacy. Fund for Peace, *Failed States Index 2012*, <http://www.fundforpeace.org/global/?q=fsi>, p. 17.

¹²¹ US Department of Defense, *Report on Progress Toward Security and Stability in Afghanistan*, December 2012, http://www.defense.gov/news/1230_Report_final.pdf, p. 112; US Department of Defense, *Report on Progress Towards Security and Stability in Afghanistan*, April 2012, pp. 64-66, http://www.defense.gov/pubs/pdfs/Report_Final_SecDef_04_27_12.pdf, p. 74; A.H. Cordesman (Center for Strategic & International Studies), *Statement before the House Armed Services Subcommittee on Oversight and Investigations*, 24 July 2012, http://armedservices.house.gov/index.cfm/files/serve?File_id=3b0df63f-54a4-45ad-8d2b-dc27ea4206da. A commentary by the International Crisis Group noted that a number of individuals facing credible accusations of war crimes or crimes against humanity committed during Afghanistan's civil war continue to occupy positions of power, including Vice-Presidents Mohammad Fahim and Karim Khalili. Similarly, a number of individuals who have been accused of serious human rights violations committed since 2001 continue to occupy positions of power. International Crisis Group (Nick Grono), *Afghanistan's Injustice System*, 1 February 2012, <http://www.crisisgroup.org/en/regions/asia/south-asia/afghanistan/op-eds/afghanistans-injustice-system.aspx>.

¹²² UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/5113aeeb2.html>, para. 9; UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, para. 5. See also UN News Centre, *Afghanistan: UN Concerned over Appointment of New Human Rights Commissioners*, 18 June 2013, <http://www.un.org/apps/news/story.asp?NewsID=45207&Cr=afghan&Cr1=#.UcHLxtLdd8F>; Human Rights Watch, *Afghanistan: A Decade of Missed Opportunities*, 5 December 2011, <http://www.refworld.org/docid/4eddc8727.html>.

¹²³ UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, pp. 44-48. In 2012 human rights content has been inserted into the training curriculum for new ALP recruits, in order to help ALP units better understand how protecting human rights is part of their core protection function. However, given that the ALP training is predominantly focused on teaching recruits military-style tactics, UNAMA observed that it remained unclear whether human rights training would make a practical difference in the performance of the ALP or their respect for human rights on the ground. *Ibid.*, pp. 45-46. The US Department of Defense noted that while progress is being made in building up the various Afghan police forces, many serious challenges remain. US Department of Defense, *Report on Progress Towards Security and Stability in Afghanistan*, April 2012, http://www.defense.gov/pubs/pdfs/Report_Final_SecDef_04_27_12.pdf, sections 2.5 (pp. 64-66) and 4.5. Cordesman notes that the ANP is essentially being trained to become a light paramilitary counter-insurgency force, with little in the way of traditional police training. A.H. Cordesman (Center for Strategic & International Studies), *Statement before the House Armed Services Subcommittee on Oversight and Investigations*, 24 July 2012, http://armedservices.house.gov/index.cfm/files/serve?File_id=3b0df63f-54a4-45ad-8d2b-dc27ea4206da, p. 5.

¹²⁴ A.H. Cordesman (Center for Strategic & International Studies), *Statement before the House Armed Services Subcommittee on Oversight and Investigations*, 24 July 2012, http://armedservices.house.gov/index.cfm/files/serve?File_id=3b0df63f-54a4-45ad-8d2b-dc27ea4206da, pp. 6-8. Cordesman notes current assessments of the security transition tend to claim blanket success for entire districts or even provinces, whereas a credible assessment must take into account the fact that there are substantial areas with no effective governance, justice system or policing. *Ibid.*, p. 7. See also A.H. Cordesman (Center for Strategic & International Studies), *Meeting the Real World Challenges of Transition*, 23 January 2013, <http://csis.org/publication/afghanistan-meeting-real-world-challenges-transition>, p. 44.

for Human Rights warned that “recent appointments to the Afghanistan Independent Human Rights Commission (AIHRC) compromise its independence and effectiveness”.¹²⁵

Corruption is reported to affect many parts of the state apparatus, on the national, provincial and local levels.¹²⁶ In 2012, half of all Afghan citizens who had contact with public officials reportedly had to pay bribes to access public services.¹²⁷ Within the police, corruption is reported to be endemic, as is the abuse of power and extortion.¹²⁸ The justice system is similarly reported to suffer from systemic corruption.¹²⁹

The ongoing conflict negatively affects the Government’s ability to protect human rights, including in particular in areas under the effective control of AGEs.¹³⁰ 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

¹²⁵ OHCHR, *Pillay Urges Reconsideration of New Appointments for the Afghan Human Rights Commission*, 28 June 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13495&LangID=E>.

¹²⁶ A 2012 article by Vanda Felbab-Brown (the Brookings Institution) argued that, “Characteristically, official and unofficial powerbrokers issue exceptions from law enforcement to their networks of clients, who are thus able to reap high economic benefits, and can get away even with major crimes. Murder, extortion, and land-grabbing, often perpetrated by those in the government, have gone unpunished. Many Afghans believe that they live under unaccountable mafia rule.” Vanda Felbab-Brown, “Slip-Sliding on a Yellow Brick Road: Stabilization Efforts in Afghanistan”, *Stability: International Journal of Security and Development*, Vol. 1, No. 1 (October/November 2012), pp. 4-19, <http://www.stabilityjournal.org/article/view/sta.af/19>. In December 2012, a parliamentary commission of the Afghan parliament stated that 1.25 million acres of land have been confiscated illegally in Afghanistan in recent years, mostly by powerful figures. Wadsam, *Powerful Figures Involved in Land Grabbing: Parliament Commission*, 29 December 2012, <http://www.wadsam.com/powerful-figures-involved-in-land-grabbing-parliament-commission-2324/>. A report published in July 2012 by the Independent Joint Anti-Corruption Monitoring and Evaluation Committee, set up by presidential decree in 2010, warned that corruption continued to be a major challenge to Afghanistan’s national development, international aid, and the legitimacy of the Afghan government. The report was highly critical of the High Office of Oversight, whose role is to lead the anti-corruption efforts. UNAMA, *Anti-Graft Panel Says Corruption Poses ‘Major Challenge’ to Afghanistan’s Development, Aid Delivery*, 28 August 2012, <http://www.refworld.org/docid/5124d0df2.html>. See also: Special Inspector General for Afghanistan Reconstruction, *Quarterly Report to the United States Congress*, 30 October 2012, <http://www.sigar.mil/pdf/quarterlyreports/2012-10-30qr.pdf>, pp. 119-123; and *Quarterly Report to the United States Congress*, 30 July 2012, <http://www.sigar.mil/pdf/quarterlyreports/2012-07-30qr.pdf>, p. 101; US Department of Defense, *Report on Progress Towards Security and Stability in Afghanistan*, April 2012, pp. 64-66, http://www.defense.gov/pubs/pdfs/Report_Final_SecDef_04_27_12.pdf, p. 70. The Department of Defense noted in its April 2012 report: “During the reporting period, Afghan leaders – including President Karzai – made limited progress in addressing corruption and instituting reforms in cooperation with the international community. Afghanistan’s principal anti-corruption institutions, the HOOAC and the Attorney General’s Office (AGO), continue to have only minimal political support for enforcing transparency and accountability within the Afghan Government.” *Ibid.*, p. 80. In Transparency International’s 2012 *Corruption Index*, Afghanistan was placed last out of 176 countries (jointly with Somalia and North Korea): <http://www.transparency.org/cpi2012/results>. In March 2012, the World Bank noted, “we recognize that corruption is pervasive in Afghanistan, that there is an attitude of tolerance and that enforcement capacity is very low. In looking at the forms of corruption driving various perception indices, these are principally bribery, extortion and grand corruption and patronage”. World Bank (International Development Association and International Finance Corporation), *Interim Strategy Note for Islamic Republic of Afghanistan for the Period FY12-FY14* (Report No. 66862-AF), 9 March 2012, http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/04/02/000386194_20120402013035/Rendered/PDF/668620ISN0P1250Official0Use0Only090.pdf, p. 22. See also Afghanistan Research and Evaluation Unit, *Corrupting the State or State-Crafted Corruption? Exploring the Nexus between Corruption and Subnational Governance*, June 2010, <http://www.refworld.org/docid/4c21cd102.html>; and IRIN, *Afghanistan: Running on Drugs, Corruption and Aid*, 10 May 2010, <http://www.refworld.org/docid/4be90b62c.html>.

¹²⁷ UN Office on Drugs and Crime, *Despite Fewer People Paying Bribes, the Total Corruption Cost Increased to US\$ 3.9 Billion*, 7 February 2013, <http://www.refworld.org/docid/511e44b12.html>. The total amount of bribes paid by Afghan citizens in 2012, estimated at US\$ 3.9 billion, was reported to be double the amount of Afghanistan’s domestic revenue. The total of US\$ 3.9 billion also represented a 40 per cent increase in real terms since the previous survey in 2009. *Ibid.* See also UN Office on Drugs and Crime, *Corruption in Afghanistan: Recent Patterns and Trends*, December 2012, <http://www.refworld.org/pdfid/5114eedc2.pdf>.

¹²⁸ A.H. Cordesman and S.T. Mann (Center for Strategic and International Studies), *The Failing Economics of Transition*, 20 July 2012, <http://csis.org/publication/afghanistan-failing-economics-transition>, p. 94. Many community members consulted by UNAMA in May 2012 expressed reservations about the ability of the official justice system to resolve cases in a fair, timely or transparent manner, citing corruption and incompetence as key factors for their doubts. UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 22.

¹²⁹ The US Special Inspector General for Afghanistan Reconstruction refers to “rampant corruption within the judiciary”. Special Inspector General for Afghanistan Reconstruction, *Quarterly Report to the United States Congress*, 30 January 2013, <http://www.sigar.mil/pdf/quarterlyreports/2013-01-30qr.pdf>, p. 113. The July 2012 report stated, “Corruption and criminal patronage networks have negatively affected the judicial system. Afghan officials’ commitment and ability to address such issues varies by jurisdiction. Some prosecutors and judges have reportedly demanded payment of bribes from those who are accused.” Special Inspector General for Afghanistan Reconstruction, *Quarterly Report to the United States Congress*, 30 July 2012, <http://www.sigar.mil/pdf/quarterlyreports/2012-07-30qr.pdf>, p. 99. See also, US Department of Defense, *Report on Progress Towards Security and Stability in Afghanistan*, April 2012, pp. 64-66, http://www.defense.gov/pubs/pdfs/Report_Final_SecDef_04_27_12.pdf, p. 76; Institute for War and Peace Reporting, *Local Officials Play Truant in Afghan North*, 15 February 2012, <http://www.refworld.org/docid/4f3e4ff32.html>. According to Transparency International, the judiciary is the institution perceived to be the most affected by corruption in Afghanistan. Transparency International, *Global Corruption Barometer 2010/2011*, 28 November 2012, <http://blog.transparency.org/2012/11/28/police-corruption-would-you-confront-your-local-law-enforcer/>.

¹³⁰ UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, pp. 18-30.

effectively and reliably adjudicate civil and criminal disputes.¹³¹ 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.¹³² As noted above, AGEs take advantage of this rule of law vacuum to enforce their own parallel “judicial” structures, which are illegal. Punishments such as executions and amputations meted out by these structures are criminal acts under Afghan law. Victims of the human rights abuses carried out by these parallel justice structures reportedly do not have access to government redress mechanisms. UNAMA notes that the Government’s inability to hold perpetrators of the crimes committed in the framework of parallel justice structures to account may itself amount to a violation of human rights under the principle of due diligence.¹³³

D. Humanitarian Situation

The ongoing conflict in Afghanistan is reported to be exacting an increasingly heavy toll on the humanitarian situation in the country.¹³⁴ As a result of the general rise in insecurity, with the conflict spreading to previously unaffected areas, notably the north,¹³⁵ humanitarian access to affected populations has diminished,¹³⁶ with the UN having direct access to less than half the country.¹³⁷ The

¹³¹ “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, <http://www.sigar.mil/pdf/quarterlyreports/2012-07-30qr.pdf>, p. 98.

¹³² US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>; US Department of Defense, *Report on Progress Toward Security and Stability in Afghanistan*, December 2012, http://www.defense.gov/news/1230_Report_final.pdf, p. 103.

¹³³ UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, pp. 21-22.

¹³⁴ Feinstein International Center, *Afghanistan: Humanitarianism in Uncertain Times*, November 2012, <http://sites.tufts.edu/feinstein/files/2012/12/Afghan-uncertain-times.pdf>, p. 5. In October 2012, the outgoing Head of the ICRC Delegation in Afghanistan warned that the impact of the conflict in Afghanistan on civilians had reached new levels of severity. ICRC, *Afghanistan: Outgoing ICRC Head Warns of Humanitarian Crisis*, 8 October 2012, <http://www.refworld.org/docid/5124d1f92.html>.

¹³⁵ New York Times, *Taliban Kill 17 Afghan Soldiers in Once-Quiet Area*, 6 March 2013, http://www.nytimes.com/2013/03/07/world/asia/taliban-kill-17-afghan-soldiers.html?_r=0.

¹³⁶ OCHA, *Humanitarian Bulletin Afghanistan, Issue 17, 1-30 June 2013*, http://reliefweb.int/sites/reliefweb.int/files/resources/June_MHB_2013.pdf, p. 2; UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 13 June 2013, A/67/889 – S/2013/350, <http://www.refworld.org/docid/51c00fe74.html>, paragraph 39; UNHCR, *Update on the Solutions Strategy for Afghan Refugees: Islamic Republic of Afghanistan – Promoting Sustainable Reintegration*, September 2012, <http://www.refworld.org/docid/511e470e2.html>, p. 2. See also OCHA, “Humanitarian Space Under Pressure as Complexity of Conflict Intensifies”, *Humanitarian Bulletin Afghanistan, Issue 16, 1-31 May 2013*, <http://reliefweb.int/sites/reliefweb.int/files/resources/May%20MHB%20Afghanistan.pdf>; ICRC, *Afghanistan: Many Cut Off from Humanitarian Aid*, 18 April 2013 (News Release 13/70), <http://www.icrc.org/eng/resources/documents/news-release/2013/04-18-afghanistan-humanitarian-aid.htm>; OCHA, *Humanitarian Bulletin, Issue 14, 1-31 March 2013*, <http://reliefweb.int/sites/reliefweb.int/files/resources/MHB%20March%202013.pdf>, pp. 1-2; and *Humanitarian Bulletin, Issue 13, 1-28 February 2013*, <http://reliefweb.int/sites/reliefweb.int/files/resources/MHB%20February%202013.pdf>, pp. 2-3; Secure Livelihoods Research Consortium (Adam Pain), *Livelihoods, Basic Services and Social Protection in Afghanistan*, July 2012, <http://www.refworld.org/docid/511e49632.html>, p. 6. See also the statement by the Head of the ICRC delegation in Afghanistan, referring to the fact that due to the deteriorating security situation, it is increasingly difficult for ICRC as a humanitarian organization to reach people in need in remote areas of the country. ICRC, *People Affected by the Conflict Remain Our Priority*, 27 February 2013, <http://reliefweb.int/report/afghanistan/people-affected-conflict-remain-our-priority>. Maps showing the geographic distribution of security incidents affecting humanitarian access are available at <http://afg.humanitarianresponse.info>. See for example OCHA, *Afghanistan: Summary of Reported Incidents Directly Affecting Humanitarian Access, 1 January - 30 September 2012*, http://afg.humanitarianresponse.info/sites/default/files/afg_violence_humanitarian_actors_Jan_Sep2012.pdf. The UN Secretary-General reported that between mid-September and mid-December 2012, convoys of the UN and implementing partners were attacked in Faryab, Balkh, Heart, Ghor, Nimroz and Parwan provinces, while abductions of and threats to national staff occurred in Balkh, Faryab, Heart, Badghis, Kandahar, Nangarhar, Kabul and Bamyan provinces. UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/67/619 – S/2012/907, 6 December 2012, <http://www.refworld.org/docid/50f527ee2.html>, para. 15. According to the 2012 *Aid Worker Security Report*, in 2011 (the latest full year for which verified data are available) Afghanistan had the highest number in the world of attacks on aid workers. *Humanitarian Outcomes, Aid Worker Security Report*, December 2012, <http://www.humanitarianoutcomes.org/sites/default/files/resources/AidWorkerSecurityReport20126.pdf>, p. 3.

¹³⁷ UNHCR, *2012 UNHCR Country Operations Profile – Afghanistan*, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486eb6>. As a result of the lack of humanitarian access, published figures for humanitarian and development indicators often fail to capture the full extent of the impact of the conflict on civilians, because surveys fail to collect data for areas most severely affected by insecurity. Feinstein International Center, *Afghanistan: Humanitarianism in Uncertain Times*, November 2012, <http://sites.tufts.edu/feinstein/files/2012/12/Afghan-uncertain-times.pdf>, pp. 5, 7. The lack of reliable data also makes it difficult to target humanitarian aid at the most vulnerable Afghans. For further analysis of humanitarian access in Afghanistan, including an analysis of humanitarian needs versus humanitarian access in various parts of the country, see *Afghanistan Common Humanitarian Action Plan 2013*, 26 December 2012, <http://www.refworld.org/docid/5118bc382.html>, pp. 31-34.

limited presence of humanitarian actors in conflict-affected areas inhibits access for Afghanistan's most vulnerable people to life-saving assistance.

Decades of conflict and recurrent natural disasters have left Afghanistan's population in a state of deep vulnerability, with many people's coping mechanisms having been exhausted. The ongoing conflict further exacerbates these vulnerabilities through the destruction of livelihoods and the loss of livestock, growing rates of communicable diseases, increased displacement, continuous human rights abuses, and higher crime levels.¹³⁸ Observers note that the economic impact of the security transition could place further strains on an already highly vulnerable population against a backdrop of rapidly shrinking humanitarian funding for Afghanistan.¹³⁹

Natural disasters, including floods, mudslides, earthquakes, droughts and severe winter weather, are a further cause of vulnerability.¹⁴⁰ Disaster preparedness, risk reduction and emergency response mechanisms are reportedly weak or absent as a result of the protracted conflict, poor governance and weak or corrupt institutions.¹⁴¹

Humanitarian indicators are critically low in Afghanistan. 10 per cent of children die before their fifth birthday.¹⁴² 36 per cent of the population lives below the national poverty line.¹⁴³ 34 per cent of the Afghan population is food insecure.¹⁴⁴ 43 per cent of the population has no sustainable access to improved water sources.¹⁴⁵ Afghanistan remains the poorest country in the region, ranking 172 out of 187 countries in the 2011 UN Human Development Index.¹⁴⁶

The ongoing conflict has had particularly serious consequences for access to health care, including as a result of direct attacks on health workers and health facilities, but also because general insecurity has impeded access to health care facilities, particularly in areas under the control or influence of AGEs.¹⁴⁷ Nearly one in six Afghans has no access to even basic health facilities.¹⁴⁸ Afghanistan is the

¹³⁸ Afghanistan Common Humanitarian Action Plan 2013, 26 December 2012, <http://www.refworld.org/docid/5118bc382.html>, pp. 1, 12, 19. The Global Needs Assessment conducted by the EU's Directorate General for Humanitarian Aid and Civil Protection (ECHO) groups Afghanistan among the 15 countries that are either vulnerable or extremely vulnerable and which at the same time have a crisis level of 3. ECHO, *Management Plan 2013*, 21 December 2012, http://ec.europa.eu/atwork/synthesis/amp/doc/echo_mp_en.pdf, p. 10.

¹³⁹ The UN Emergency Relief Coordinator noted that "Humanitarian needs are likely to increase as a result of the withdrawal of the international military presence and its effects on the political, economic and security sectors." OCHA, *Emergency Relief Coordinator's Key Messages on Afghanistan*, 1 July 2013, <http://reliefweb.int/report/afghanistan/emergency-relief-coordinator%E2%80%99s-key-messages-afghanistan-1-july-2013-%C2%B7-issue>. See also UN General Assembly / Security Council, *The Situation in Afghanistan and its Implications for International Peace and Security*, 5 March 2013, A/67/778-S/2013/133, <http://www.refworld.org/docid/514853842.html>, para. 64.

¹⁴⁰ On average, Afghanistan is affected by more than eight significant natural disasters per year, displacing an average of 590,000 people every year. Emergency Events Database (EMDAT), 2010, based on a ten-year average for the period 2000–2009, <http://www.emdat.be/>; quoted in Feinstein International Center, *Afghanistan: Humanitarianism in Uncertain Times*, November 2012, <http://sites.tufts.edu/feinstein/files/2012/12/Afghan-uncertain-times.pdf>, p. 17.

¹⁴¹ *Ibid.*, p. 17. The impact of natural disasters is aggravated by the ongoing conflict in other ways too. For example, only 12 per cent of Afghanistan's land area is suitable for cultivation, due in large part to conflict-related factors such as the presence of landmines and unexploded ordnance and damage to irrigation systems. This fact, coupled with demographic pressures and unresolved issues relating to land tenure, have led many Afghans to settle in disaster-prone locations. *Ibid.*

¹⁴² Afghanistan Common Humanitarian Action Plan 2013, 26 December 2012, <http://www.refworld.org/docid/5118bc382.html>, p. 3.

¹⁴³ World Bank, *Afghanistan: World Development Indicators*, http://data.worldbank.org/country/afghanistan#cp_wdi.

¹⁴⁴ Afghanistan Common Humanitarian Action Plan 2013, 26 December 2012, <http://www.refworld.org/docid/5118bc382.html>, p. 3.

¹⁴⁵ UNICEF, *Use of an Improved Drinking Water Source in Afghanistan (MICS 2010-2011)*, 9 August 2012, <http://www.refworld.org/docid/511e4c272.html>.

¹⁴⁶ Human Development Index, 2011 rankings, <http://hdr.undp.org/en/statistics/>.

¹⁴⁷ According to the Health Cluster in Afghanistan, the period January to April 2013 saw a 40 per cent increase compared to the same period in 2012 in security incidents involving public health facilities, staff and patients. OCHA, *Humanitarian Bulletin Afghanistan, Issue 16, 1-31 May 2013*, <http://reliefweb.int/sites/reliefweb.int/files/resources/May%20MHB%20Afghanistan.pdf>, p. 4. See also ICRC, *Afghanistan: ICRC Strongly Condemns Attack on its Jalalabad Office*, 29 May 2013, <http://www.icrc.org/eng/resources/documents/news-release/2013/05-29-afghanistan-attack-jalalabad.htm>; Thomson Reuters Foundation, *Thousands Lack Health Services Since Attack on Afghan Red Crescent*, 28 May 2013, <http://www.trust.org/item/20130528165900-1pb3>; The Guardian, *Afghan Violence Cutting More Civilians Off from Healthcare, Warns Red Cross*, 18 April 2013, <http://www.guardian.co.uk/world/2013/apr/18/afghanistan-red-cross-violence-healthcare-warning>; UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 12, 58-60; OCHA, *Humanitarian Bulletin, Issue 13, 1-28 February 2013*, <http://reliefweb.int/sites/reliefweb.int/files/resources/MHB%20February%202013.pdf>, p. 2; Feinstein International Center, *Afghanistan: Humanitarianism in Uncertain Times*, November 2012, <http://sites.tufts.edu/feinstein/files/2012/12/Afghan-uncertain-times.pdf>, pp. 7-9. ICRC, *Afghanistan: Outgoing ICRC Head Warns of Humanitarian Crisis*, 8 October 2012, <http://www.refworld.org/docid/5124d1f92.html>. During the first ten months of 2012, 540 health facilities were forced to suspend activities owing to insecurity or lack of funding, representing more than 30 per cent of the 2,600 facilities providing various types of health care in the country. UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/67/619 – S/2012/907, 6 December 2012, <http://www.refworld.org/docid/50f527ee2.html>, para. 42.

second-worst country in the world for expectant and new mothers, according to Save the Children's global ranking.¹⁴⁹

E. Conflict-Induced Displacement, Returns and Relocation

Conflict and insecurity continue to be major drivers of displacement in Afghanistan, affecting all areas of the country.¹⁵⁰ By the end of 2012 about 486,000 Afghans were internally displaced by conflict, a seven per cent increase over 2011.¹⁵¹ The total number of conflict-displaced people included about 94,000 people who were newly displaced in 2012.¹⁵² By the end of June 2013, the figure for the total number of conflict-related internally displaced people (IDPs) had risen to 574,327.¹⁵³ However, official figures for the number of IDPs are widely considered to underrepresent the scale of the displacement problem in Afghanistan, as they exclude those dispersed in urban and semi-urban areas,¹⁵⁴ as well as those displaced to rural locations in areas inaccessible to humanitarian actors.¹⁵⁵

IDPs are among the most vulnerable groups in Afghanistan; many are beyond the reach of humanitarian organizations.¹⁵⁶ Urban IDPs are more vulnerable than the non-displaced urban poor, as

¹⁴⁸ Afghan National Development Strategy (ANDS), *Health and Nutrition Sector Strategy 2007/08–2012/13*, February 2008. In the south, between 50 and 60 per cent of the population has very limited or no access to basic health care. UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/67/619 – S/2012/907, 6 December 2012, <http://www.refworld.org/docid/50f527ee2.html>, para. 42.

¹⁴⁹ Save the Children, *State of the World's Mothers 2012*, May 2012, <http://www.refworld.org/docid/50f7f7a62.html>. In Afghanistan, every two hours a pregnant woman dies. Afghanistan Common Humanitarian Action Plan 2013, 26 December 2012, <http://www.refworld.org/docid/5118bc382.html>, p. 2.

¹⁵⁰ As of 31 May 2013, the top ten provinces hosting the largest IDP populations were Herat, Helmand, Nangarhar, Kandahar, Faryab, Ghor, Kunar, Ghazni, Uruzgan and Badghis. The top ten provinces of origin of IDPs were Helmand, Badghis, Ghor, Kandahar, Herat, Kunar, Faryab, Ghazni, Nangarhar and Kapisa. UNHCR, *Conflict-Induced Internal Displacement – Monthly Update*, May 2013, <http://www.refworld.org/docid/51b603634.html>.

¹⁵¹ OCHA, *Humanitarian Bulletin*, Issue 13, 1–28 February 2013, <http://reliefweb.int/sites/reliefweb.int/files/resources/MHB%20February%202013.pdf>; UNHCR, *Conflict-Induced Internal Displacement – Monthly Update*, December 2012, <http://www.refworld.org/docid/510b83582.html>.

¹⁵² UNHCR, *Conflict-Induced Internal Displacement – Monthly Update*, December 2012, <http://www.refworld.org/docid/510b83582.html>. In the first half of 2012 a further 74,500 Afghans were newly displaced by natural disasters. Assessment Capacities Project (ACAPS), *Afghanistan: Conflict and Displacement*, 10 October 2012, http://www.acaps.org/resourcescats/downloader/afghanistan_conflict_and_displacement, p. 3. Against the background of rising internal displacement, in 2012 the Afghan government requested the Ministry of Refugees and Repatriation to develop a national policy to tackle the causes of displacement, strengthen prevention, protection and assistance and to develop durable solutions for displaced people. UN General Assembly / Security Council, UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/67/354 – S/2012/703, 13 September 2012, <http://www.refworld.org/docid/5065a16a2.html>, para. 49. By mid-2013 the draft policy had not yet been adopted.

¹⁵³ UNHCR, *Conflict-Induced Internal Displacement – Monthly Update*, June 2013, <http://www.refworld.org/docid/51fa9a6a4.html>.

¹⁵⁴ As many as 35,000 urban IDPs are estimated to live in slum areas in Kabul alone. Amnesty International, *Fleeing War, Finding Misery: The Plight of the Internally Displaced in Afghanistan*, 23 February 2012, <http://www.refworld.org/docid/4f48e3862.html>, p. 10. A map of informal settlements in Kabul is available at OCHA, *Kabul Informal Settlements*, 15 October 2012, http://afg.humanitarianresponse.info/sites/default/files/Kabul_City_KIS_3W_2012Oct_A1.pdf; see also iMMAP, *Afghanistan: Informal Settlements in Kabul City and Surroundings: A Reference List Subject to Regular Improvement and Updating - Date at 30 September 2012*, 25 October 2012, http://www.immap.org/index.php?do=map_view&id=955&cat=10.

¹⁵⁵ UNHCR, *Conflict-Induced Internally Displaced Persons in Afghanistan: Interpretation of Data as of 31 May 2012*, July 2012, <http://www.refworld.org/docid/5035f0fe2.html>, p. 4; OCHA, *Afghanistan Consolidated Appeal – Mid-Year Review*, 20 July 2012, <http://www.refworld.org/docid/511e4ea02.html>, p. 1; Internal Displacement Monitoring Centre (IDMC), *Comprehensive Response Urgently Required as Displacement Crisis Worsens*, 25 March 2013, <http://www.refworld.org/docid/515222142.html>, p. 6; IDMC, *Afghanistan: Durable Solutions Far from Reach amid Escalating Conflict*, 16 April 2012, <http://www.refworld.org/docid/511e50cd2.html>, p. 4; World Bank and UNHCR, *Research Study on IDPs in Urban Settings – Afghanistan*, May 2011, <http://www.refworld.org/docid/511e51382.html>, p. 6. It should also be noted that the non-displaced population in Afghanistan includes some of the poorest and most vulnerable Afghans who are unable to leave their country or even to flee their homes. IDMC, *ibid.*, 16 April 2012, p. 4.

¹⁵⁶ In July 2013 OCHA noted that “Inaccessibility to a number of remote AGEs-controlled locations has hindered the ability of the Protection and Emergency Shelter (ES) and the Non-food items (NFI) Clusters to carry out assessments, gather information on affected and displaced populations and provide timely delivery of humanitarian assistance. The situation is particularly precarious in the southeastern, northeastern and northwestern regions of Afghanistan where there are reports of growing numbers of IDPs and limited access to these populations in need.” OCHA, *Mid-Year Review of the 2013 Common Humanitarian Action Plan*, 1 July 2013, <http://reliefweb.int/report/afghanistan/mid-year-review-common-humanitarian-action-plan-afghanistan-2013>, p. 9. In May 2012 UNHCR reported that, “Lack of humanitarian access remains a key constraint almost in all regions across the country, e.g. in the South-East, humanitarian actors do not have access to almost 95% of the IDP locations; in the northern region humanitarian access is estimated at 80% while in the Northeast it is at 55%.” UNHCR, *Conflict-Induced Internally Displaced Persons in Afghanistan: Interpretation of Data as of 31 May 2012*, July 2012, <http://www.refworld.org/docid/5035f0fe2.html>, pp. 19-20; See also Internal Displacement Monitoring Centre, *Afghanistan: Durable Solutions Far from Reach amid Escalating Conflict*, 16 April 2012, <http://www.refworld.org/docid/511e50cd2.html>, p. 1; UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/728 – S/2012/133, 5 March 2012, <http://www.refworld.org/docid/4fb60732.html>, para. 52.

they are particularly affected by unemployment, limited access to adequate housing, limited access to water and sanitation, and food insecurity.¹⁵⁷

Pakistan and Iran continue to host the largest Afghan refugee populations, totalling an estimated 5.3 million people.¹⁵⁸ Since 2002, more than 5.8 million Afghan refugees have returned to Afghanistan, representing about 25 per cent of the Afghan population.¹⁵⁹ More than 40 per cent of returnees have been unable to reintegrate into their home communities, resulting in significant secondary displacement, mostly to urban areas.¹⁶⁰ In total, up to 60 per cent of returnees are experiencing difficulties in rebuilding their lives in Afghanistan.¹⁶¹ Estimates suggest that a quarter of urban IDPs are returning refugees ending up in secondary displacement.¹⁶² Obstacles to return for both IDPs and returning refugees include on-going insecurity in their home areas; loss of livelihoods; lack of access to health care and education; and challenges in reclaiming land and property.¹⁶³

¹⁵⁷ Danish Refugee Council, *New Report: Chronic Emergency in Urban Afghanistan*, 18 March 2013, <http://www.drc.dk/news/news/artikel/new-report-chronic-emergency-in-urban-afghanistan/>; Samuel Hall Consulting, *Challenges of IDP Protection: Research Study on the Protection of Internally Displaced Persons in Afghanistan*, November 2012, <http://reliefweb.int/report/afghanistan/challenges-idp-protection-research-study-protection-internally-displaced-persons>; Humanitarian Policy Group, *Sanctuary in the City? Urban Displacement and Vulnerability in Kabul*, June 2012, <http://www.refworld.org/docid/511e53042.html>; Internal Displacement Monitoring Centre, *Afghanistan: Durable Solutions Far from Reach amid Escalating Conflict*, 16 April 2012, <http://www.refworld.org/docid/511e50cd2.html>, pp. 1, 6; Amnesty International, *Fleeing War, Finding Misery: The Plight of the Internally Displaced in Afghanistan*, 2012, <http://www.refworld.org/docid/4f48e3862.html>, p. 12; World Bank and UNHCR, *Research Study on IDPs in Urban Settings – Afghanistan*, May 2011, <http://www.refworld.org/docid/511e51382.html>, pp. 31-37. Limited shelter options and a lack of access to basic services and income generation opportunities have left urban IDPs extremely vulnerable to harsh winter conditions. Tens of individuals, mostly children, living in informal settlements in Kabul died in early 2012 as a result of exposure to the cold; the pattern repeated itself in early 2013. Amnesty International, *Children among 17 Dead in Camps amid Harsh Winter Conditions*, 21 January 2013, <http://www.refworld.org/docid/50ffdb382.html>; OCHA, *More Funds, Long-Term Solutions Needed to Help Urban Poor*, 4 January 2013, <http://www.refworld.org/docid/5124d4ef2.html>; UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/728 – S/2012/133, 5 March 2012, <http://www.refworld.org/docid/4fbf60732.html>, para. 52.

¹⁵⁸ Pakistan is host to 1.9 million registered Afghan refugees and an estimated 1 million undocumented Afghans. Iran is host to 1 million registered Afghan refugees and an estimated 1.4 million undocumented Afghans. OCHA, *Humanitarian Bulletin, Issue No. 11*, December 2012, <http://www.refworld.org/docid/511e55642.html>.

¹⁵⁹ UNHCR, *Progress Report on the Solutions Strategy for Afghan refugees: A Multilateral Approach – Gathering Momentum*, September 2012, <http://www.unhcr.org/50927e7c6.html>, p. 3; UNAMA, *Afghanistan, Pakistan and UNHCR Discuss Voluntary Repatriation of Afghan Refugees from Pakistan*, 20 September 2012, <http://www.refworld.org/docid/5124d5f92.html>. See also Civil-Military Fusion Centre, *Afghan Refugees and IDPs*, March 2012, https://www.cimicweb.org/cmo/afg/Documents/Afghanistan-RDPs/CFC_Afghanistan_IDPs-and-Refugees_Mar2012.pdf.

¹⁶⁰ UNHCR, *2012 UNHCR Country Operations Profile – Afghanistan*, 2012, <http://www.unhcr.org/pages/49e486eb6.html>.

¹⁶¹ UNHCR, *Progress Report on the Solutions Strategy for Afghan refugees: A Multilateral Approach – Gathering Momentum*, September 2012, <http://www.unhcr.org/50927e7c6.html>, p. 4; UNHCR, *Solutions Strategy for Afghan Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries*, May 2012, <http://www.unhcr.org/pages/4f9016576.html>, p. 11. See also Norwegian Refugee Council, *Afghanistan: Refugee Returnees: The Realities of Return*, 20 June 2012, <http://www.nrc.no/?did=9656667>. Some of the returning refugees have left Afghanistan again after failing to reintegrate in their home areas in Afghanistan. See for example, UNHCR, *Update on the Solutions Strategy for Afghan Refugees: Islamic Republic of Afghanistan – Promoting Sustainable Reintegration*, September 2012, <http://www.refworld.org/docid/511e470e2.html>, p. 3; and Voice of America, *Afghan Refugees in Pakistan Anxious as Year-End Looms*, 19 June 2012, <http://www.voanews.com/content/afghan-refugees-in-pakistan-anxious-as-year-end-looms/1213115.html>. The Afghanistan Independent Human Rights Commission (AIHRC) reported that returnees may face discrimination by State institutions, most notably in education. AIHRC, *Fifth Report: Situation of Economic and Social Rights in Afghanistan – 2011*, <http://www.refworld.org/docid/511e58cf0.html>, p. 109. Returnees may also face social marginalization, rejection and exclusion, because their behaviour and appearance is at odds with socially accepted norms in Afghanistan. AIHRC, *ibid.*, pp. 106, 109; Afghanistan Research and Evaluation Unit, *From Disappointment to Hope: Transforming Experiences of Young Afghans Returning “Home” from Pakistan and Iran*, November 2008, <http://www.refworld.org/docid/491abf592.html>.

¹⁶² Internal Displacement Monitoring Centre, *Afghanistan: Durable Solutions Far from Reach amid Escalating Conflict*, 16 April 2012, <http://www.refworld.org/docid/511e50cd2.html>, p. 5. In Kabul the proportion of returnees among IDPs may be even higher; one source suggests that out of 35,000 IDPs living in Kabul’s slums, as many as 80 per cent may be returning refugees. International Rescue Committee, *Afghanistan: The Perilous Road Ahead*, June 2012, <http://www.rescue.org/sites/default/files/resource-file/IRC%20Afghanistan%20Perilous%20Road%20Ahead%20June%202012.pdf>, p. 7. In interviews conducted by UNHCR with Afghan refugees returning from Iran and Pakistan between 1 January and 31 October 2012, significant numbers of returnees indicated that they were not planning to return to their areas of origin (1,013 returnees from Pakistan out of a total of 3,373 interviewees (30 per cent), and 71 returnees from Iran out of a total of 240 interviewees (30 per cent)). Among the most important reasons given were lack of housing, insecurity, lack of livelihoods, and lack of public services. UNHCR, *Afghanistan Update on VolRep and Border Monitoring*, October 2012, <http://www.refworld.org/docid/50aa19b52.html>.

¹⁶³ UNHCR, *Afghanistan Update on VolRep and Border Monitoring*, October 2012, pp. 2-3; UNHCR, *Update on the Solutions Strategy for Afghan Refugees: Islamic Republic of Afghanistan – Promoting Sustainable Reintegration*, September 2012, <http://www.refworld.org/docid/511e470e2.html>, p. 2; Internal Displacement Monitoring Centre, *Afghanistan: Durable Solutions Far from Reach amid Escalating Conflict*, 16 April 2012, <http://www.refworld.org/docid/511e50cd2.html>, pp. 4-6; Danish Refugee Council, *Afghan Refugees Return to Absolutely Nothing*, 13 April 2012, <http://www.drc.dk/news/news/artikel/afghan-refugees-return-to-absolutely-nothing>. See further the series of research articles on IDPs and returnees published by the Afghanistan Study Group at the Middle East Institute, available at <http://www.refugeecooperation.org/studyGroups/afghanistan.php>. In relation to land disputes triggered by the claims of returning refugees, see Afghanistan Research and Evaluation Unit, *Land Conflict in Afghanistan: Building Capacity to Address*

In May 2012 the Governments of Afghanistan, Iran and Pakistan signed a regional, multi-year Solutions Strategy for Afghan Refugees, facilitated by UNHCR and focusing on three pillars for coordinated engagement: support for voluntary repatriation, sustainable reintegration, and assistance to host countries.¹⁶⁴ Facilitation by UNHCR of voluntary repatriation to Afghanistan supports individuals who, being fully informed of the situation in their places of origin, choose voluntarily to return. UNHCR's role in the facilitation of voluntary repatriation movements to Afghanistan and UNHCR's involvement in efforts aimed at sustainable reintegration for returnees and IDPs in Afghanistan should not be construed as implying an assessment on the part of UNHCR that Afghanistan is safe for every individual, regardless of personal profile or personal circumstances. It should be noted in this regard that voluntary repatriation and forced return are processes of fundamentally different characters, engaging different responsibilities on the parts of the various actors involved.

Among all asylum-seekers who applied for asylum in 44 countries in Europe, North America, Oceania and Asia in 2012, asylum-seekers from Afghanistan remained the largest group. Provisional data indicated that about 36,600 Afghans applied for asylum in these countries.¹⁶⁵

III. Eligibility for International Protection

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

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

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

Afghanistan continues to be affected by a non-international armed conflict.¹⁶⁶ Individuals fleeing violence or the threat of violence in the context of this conflict may also meet the criteria for refugee status as contained in Article 1(A)(2) of the 1951 Convention. For this to be the case, the feared persecution flowing from the violence must be for reason of a 1951 Convention ground. In the context of Afghanistan, examples of circumstances where civilians are subjected to violence for a 1951 Convention reason include situations where violence is targeted at areas where civilians of specific ethnic, political or religious profiles predominantly reside, or at locations where civilians of such profiles predominantly gather (including markets, mosques, schools, or large social gatherings such as weddings). To qualify for refugee status there is no requirement that an individual be known personally to the agent(s) of persecution or be sought out personally by those agents. Similarly, entire

Vulnerability, April 2009, <http://www.refworld.org/docid/4ebabd582.html>; and International Crisis Group, *Afghanistan: What Now for Refugees*, 31 August 2009, <http://www.refworld.org/docid/4a9b95512.html>.

¹⁶⁴ The strategy aims at i) creating conditions conducive to voluntary repatriation through community-based investments in areas of high return; ii) building Afghan refugee capital based on livelihood opportunities in Afghanistan in order to facilitate return; and iii) preserving asylum space in host countries, including enhanced support for refugee-hosting communities, alternative temporary stay arrangements for the residual caseload, and resettlement in third countries. UNHCR, *Solutions Strategy for Afghan Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries*, May 2012, <http://www.unhcr.org/pages/4f9016576.html>; UNHCR, *Progress Report on the Solutions Strategy for Afghan Refugees: A Multilateral Approach – Gathering Momentum*, September 2012, <http://www.unhcr.org/50927e7c6.html>; UNHCR, *Update on the Solutions Strategy for Afghan Refugees: Islamic Republic of Afghanistan – Promoting Sustainable Reintegration*, September 2012, <http://www.refworld.org/docid/511e470e2.html>.

¹⁶⁵ UNHCR, *Asylum Levels and Trends in Industrialized Countries*, 21 March 2013, <http://www.unhcr.org/5149b81e9.html>, p. 16. In 2011, 36,200 Afghans applied for asylum in the same 44 countries. Worldwide, Afghanistan was the second country of origin, with 48,900 asylum applications (based on individual asylum applications lodged in 2012, not including information on mass influxes of refugees, nor on those granted refugee status on a group or prima facie basis). UNHCR, *Global Trends Report 2012*, <http://unhcr.org/globaltrends/june2013/>, p. 26.

¹⁶⁶ See for example Robin Geiß and Michael Siegrist, "Has the Armed Conflict in Afghanistan Affected the Rules on the Conduct of Hostilities?", *International Review of the Red Cross*, Vol. 93, No. 881, March 2011, <http://www.refworld.org/docid/511e1ecc2.html>.

communities may have a well-founded fear of persecution for one or more of the 1951 Convention grounds; there is no requirement that an individual suffer a form or degree of harm above that suffered by other individuals with the same profile.¹⁶⁷

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

- (i) the control over civilian populations by anti-government elements (AGEs), including through the imposition of parallel justice structures and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, restrictions on freedom of movement, and the use of extortion and illegal taxation;
- (ii) forced recruitment;
- (iii) the impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty and the destruction of livelihoods;
- (iv) increasing levels of organized crime and the ability of warlords and corrupt government officials to operate with impunity in government-controlled areas;
- (v) systematic constraints on access to education or basic health care as a result of insecurity; and
- (vi) systematic constraints on participation in public life, including in particular for women.¹⁶⁸

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

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

- (i) If there are indications, in an individual case, that there are grounds for cancellation of refugee status which was wrongly granted in the first instance;
- (ii) Revocation of refugee status on the grounds of Article 1F of the 1951 Convention; or
- (iii) Cessation of refugee status on the basis of Article 1C(1-4) of the 1951 Convention.¹⁶⁹

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

¹⁶⁷ See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, January 1992, <http://www.refworld.org/docid/3ae6b3314.html>, para. 164.

¹⁶⁸ UNHCR, *Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence; Roundtable 13 and 14 September 2012, Cape Town, South Africa*, 20 December 2012, <http://www.refworld.org/docid/50d32e5e2.html>, paras. 10-12. See also A.H. Cordesman (Center for Strategic and International Studies), *Coalition, ANSF, and Afghan Casualties in the Afghan Conflict from 2001 through August 2012*, 4 September 2012, http://csis.org/files/publication/120904_Afghan_Iraq_Casualties.pdf, pp. 3, 6, 7. See also OCHA, *Afghanistan Common Humanitarian Action Plan 2013*, 26 December 2012, <http://www.refworld.org/docid/5118bc382.html>, p. 10.

¹⁶⁹ 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>.

A. Potential Risk Profiles

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

AGEs are reported to systematically target civilians who are associated with, or who are perceived to be supporting the Afghan Government and the international community in Afghanistan, including the IMF and international humanitarian and development actors.¹⁷⁰ As noted above, in 2012 this campaign of systematic targeting intensified, with UNAMA documenting the deaths of 698 civilians and the wounding of 379 others in incidents of targeted killings or attempted targeted killings.¹⁷¹ The first six months of 2013 saw a further 29 increase in civilian casualties as a result of such attacks compared to the same period in 2012, with 312 civilians killed and 131 injured.¹⁷² Among the primary targets of such attacks are national and local political leaders, government officials, teachers and other civil servants, off-duty police officers, tribal elders, religious leaders, women in the public sphere, civilians accused of spying for pro-government forces, human rights activists, humanitarian and development workers, construction workers, and persons supporting the peace process.¹⁷³

On 2 May 2012, the Taliban announced that their “Al-Farooq” Spring offensive would specifically aim to kill civilian targets, including high ranking government officials, Members of Parliament, High Peace Council members, contractors and “all those people who work against the Mujahideen”.¹⁷⁴ As in 2012, the Taliban announcement of its 2013 spring offensive warned that civilians associated with President Karzai’s government or its international allies would be at risk of attack.¹⁷⁵

Apart from targeted killings, AGEs are also reported to use threats, intimidation and abductions to intimidate communities and individuals and thus extend their influence and control, targeting those who challenge their authority and ideas.¹⁷⁶

¹⁷⁰ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 18-26; UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/43f30fbd0.html>, para. 14.

¹⁷¹ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 4. See also UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/43f30fbd0.html>, para. 21; UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/67/619 – S/2012/907, 6 December 2012, <http://www.refworld.org/docid/4b66f4e30.html>, paras. 13, 25. The UN Secretary-General noted that the increase in targeted killings of civilians occurred despite a 24 October 2012 statement, purportedly from the Taliban leader Mullah Omar on the occasion of Eid al-Fitr emphasizing the need to protect civilians. *Ibid.*, para. 25.

¹⁷² UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, p. 19.

¹⁷³ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 4; UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 16.

¹⁷⁴ UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 16; *Statement of Leadership Council of Islamic Emirate Regarding the Inception of Al-Farooq Spring Operation*, 2 May 2012, <http://theunjustmedia.com/Afghanistan/Statements/May12/Statement%20of%20Leadership%20Council%20of%20Islamic%20Emirate%20Regarding%20the%20Inception%20of%20Al-Farooq%20Spring%20operation.htm>; The Long War Journal, *Taliban announce start of Al Farooq spring offensive*, 2 May 2012, http://www.longwarjournal.org/archives/2012/05/taliban_announce_beg_1.php. In a further statement released in August 2012, the Taliban identified civilian government employees as lawful targets. UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 17.

¹⁷⁵ *Statement of Leadership Council of Islamic Emirate Regarding ‘Khalid bin Waleed’ Spring Operation*, 27 April 2013, <http://shahamat-english.com/index.php/paighamoonaa/30919-statement-of-leadership-council-of-islamic-emirate-regarding-%E2%80%98khalid-bin-waleed%E2%80%99-spring-operation>; NBC News, *Taliban Marks Start of ‘Monumental’ Spring Offensive with Deadly Attack*, 28 April 2013, <http://worldnews.nbcnews.com/news/2013/04/28/17955309-taliban-marks-start-of-monumental-spring-offensive-with-deadly-attack>. See an analysis of Taliban public statements on civilian casualties, see UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 29-33.

¹⁷⁶ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 27-29; UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/22/37, 28 January 2013, <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/22/37>, para. 4; UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/67/619 – S/2012/907, 6 December 2012, <http://www.refworld.org/docid/50f527ee2.html>, para. 57.

a) *Government Officials and Civil Servants*

Targeted killings and injuries by AGEs of government civilian employees increased by 700 per cent in 2012 compared to 2011.¹⁷⁷ In the first six months of 2013, UNAMA documented a further 76 increase in civilian casualties from AGEs targeting civilian government employees, government offices, district headquarters and other civilian structures.¹⁷⁸

AGEs have targeted politicians and government officials at the local, provincial and national levels of government, as well as their family members.¹⁷⁹ Those targeted include Members of Parliament,¹⁸⁰ members of the HPC,¹⁸¹ and provincial and district governors and council members.¹⁸²

Targeted individuals also include government-appointed judges and prosecutors.¹⁸³ Officials working in the justice system are reportedly often unable to remain in communities described by local residents

¹⁷⁷ In 2012 UNAMA documented 47 separate incidents of targeted killings of civilian Government workers, which killed 107 civilians and injured 148. In 2011 UNAMA documented 23 such incidents which killed 23 civilians and injured 11. While targeted killings of government authorities increased in the eastern, central, northern, and southern regions, the dramatic increase in civilian casualties in 2012 was due in large part to two large attacks in the northern region. An attack targeting parliamentarians and Government officials in Aybak city in Samangan province on 14 July 2012 killed 23 civilians and injured 45. An attack on 26 October 2012 in Maimana city in Faryab province targeting the Provincial Governor killed 40 civilians and injured 59. UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 4, 22.

¹⁷⁸ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, p. 23.

¹⁷⁹ The Afghanistan Analysts Network (AAN) counted 11 successful assassination attacks (of which three with multiple targets) against government and military officials, as well as pro-government figures on the subnational level in the period between 1 January 2013 and the announcement by the Taliban of the start of its spring offensive on 27 April 2013. Between 28 April and 2 June 2013, the AAN counted seven successful assassination attacks, and five unsuccessful assassination attempts. The AAN notes that many of these attacks also caused the deaths of numerous civilians and policemen. AAN, *After the 'Operational Pause': How Big Is the Insurgents' 2013 Spring Offensive?*, 2 June 2013, <http://aan-afghanistan.com/index.asp?id=3432>. In an attack outside Lashkar Gah, the provincial capital of Helmand province, on 4 July 2013, four girls were reported to have been killed at a wedding in an attack carried out by Taliban rebels aimed at government employees. AFP, *Bomb Kills 4 Girls at Afghan Wedding: Officials*, 4 July 2013, <http://reliefweb.int/report/afghanistan/bomb-kills-4-girls-afghan-wedding-officials>.

¹⁸⁰ On 14 July 2012 in Samangan province, a suicide bomber blew himself up at a wedding party for the daughter of commander Ahmad Khan Samangani, a member of parliament. Samangani, an ethnic Uzbek and prominent anti-Taliban politician, was killed in the attack, together with 22 other people, including General Mohammed Khan, the national security director for Samangan province. BBC, *Afghanistan Suicide Bomb Kills Prominent MP at Wedding*, 14 July 2012, <http://www.bbc.co.uk/news/world-asia-18839768>; Reuters, *Suicide Bomber Kills Top Official, 22 More at Afghan Wedding*, 14 July 2012, <http://www.reuters.com/article/2012/07/14/us-afghanistan-attack-idUSBRE86D02N20120714>; Voice of America, *Suicide Bomber Kills 23 in Northern Afghanistan*, 14 July 2012, <http://www.voanews.com/content/suicide-bomber-kills-17-in-afghan-samangan-province/1404752.html>. In 2011 two Members of Parliament were killed, Hashim Watanwal (Uruzgan Province) and Mutaleb Bek (Takhar Province). UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/728 – S/2012/133, 5 March 2012, <http://www.refworld.org/docid/50f527ee2.html>, para. 9. On 15 April 2012, AGEs attacked the Parliament building in Kabul. New York Times, *Complex Attack by Taliban Sends Message to the West*, 15 April 2012, <http://www.nytimes.com/2012/04/16/world/asia/attacks-near-embassies-in-kabul.html>.

¹⁸¹ On 20 September 2011 Burahuddin Rabanni, former President of Afghanistan and Chairman of the High Peace Council, was killed in Kabul. UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/22/37>, para. 13. On 13 May 2012 unknown gunmen shot and killed HPC member Mawlawi Arsalah Rahmani. UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/855 – S/2012/462, 20 June 2012, <http://www.refworld.org/docid/50f527ee2.html>, para. 4. On 1 May 2013 Shah Wali Khan, the head of the HPC in the key province of Helmand, was killed in a roadside bomb attack. AFP, *Senior Peace Envoy Killed in Afghanistan: Officials*, 1 May 2013, <http://reliefweb.int/report/afghanistan/senior-peace-envoy-killed-afghanistan-officials>.

¹⁸² On 20 May 2013, Rasoul Mohseni, the head of Baghlan's provincial council, was killed in a suicide attack. AFP, *Afghan Suicide Attack Kills 14, Including Politician*, 20 May 2013, <http://reliefweb.int/report/afghanistan/afghan-suicide-attack-kills-least-11-police>. On 4 December 2012 in Mehtarlam district, Laghman province, a remote-controlled IED was detonated in a targeted attack on the Alishing district governor. UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 20. On 26 October 2012, a 15-year-old suicide bomber wearing an ANA uniform detonated his explosives at the entrance to a mosque in Maimana in Faryab province, killing 40 civilians, including 6 children, and injuring 59 people, including 4 children. The attack was reportedly aimed at the Faryab Provincial Governor and high-ranking security officials. On 4 September 2012, in Dur Buba district in Nangarhar province, a suicide attacker detonated his suicide vest at a funeral ceremony, targeting the district governor. As a result of the attack, 22 civilians were killed and 69 others were wounded. UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 21. On 17 May 2012, four attackers targeted the Governor's compound in Farah. On 28 April 2012 militants attacked the Governor in Kandahar; the attack was thwarted when two militants were killed in a shoot-out. UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/855 – S/2012/462, 20 June 2012, <http://www.refworld.org/docid/50f527ee2.html>, para. 17.

¹⁸³ In the first six months of 2013, UNAMA documented four separate attacks directly targeting judicial authorities and institutions in Farah, Kabul, Faryab and Helmand provinces, which resulted in 57 civilian deaths and 145 injuries (202 civilian casualties). UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, p. 24. On 11 June 2013, a suicide bomb attack in Kabul killed at least 15 people and injured more than 40 others outside the Supreme Court. The attacker drove a car packed with explosives at buses that were carrying court staff, including judges. The Taliban reportedly claimed responsibility for the attack, saying it had killed judges who "obey Western powers" and threatening further attacks on the judiciary if it

as under the effective control of the Taliban, due to insecurity. Targeted killings, abduction and intimidations have created a climate of fear among officials and deter them from taking up positions and working in these areas.¹⁸⁴

Teachers, school guards and officials of the Department of Education have also been widely targeted,¹⁸⁵ as have health workers,¹⁸⁶ other civil servants and even contracted workers.¹⁸⁷

Family members of government officials have reportedly been threatened and kidnapped by AGEs to force government employees to quit their jobs; in other cases relatives of government employees are reported to have been killed by AGEs as an act of retaliation against these employees.¹⁸⁸

b) *Members of the ANP and ALP*

Afghan security forces, particularly the ANP, are increasingly the object of targeted campaigns.¹⁸⁹ ANP police officers have been targeted both on duty and off duty.¹⁹⁰ In Nuristan, Taliban enforcer squads were reported to hunt down government officials and ANP employees.¹⁹¹

continued to sentence to death members of its militia. BBC, *Afghanistan: Deadly Explosion at Kabul Supreme Court*, 11 June 2013, <http://www.bbc.co.uk/news/world-asia-22860144>; AFP, *Taliban Bomber Kills 15 at Top Afghan Court*, 11 June 2013, <http://reliefweb.int/report/afghanistan/car-bomber-targets-afghan-court-staff-14-dead>. On 3 April 2013 the Taliban reportedly killed at least 44 civilians, including two judges and six prosecutors, when they attacked a court in Farah town, in Farah province. The Taliban were reported to have claimed responsibility for the attack, stating that they intended to target civilian government employees, in particular workers in the courts and prosecutors' offices. UNAMA, *United Nations Condemns Deliberate Targeting of Civilians in Farah Attack*, 4 April 2013, <http://reliefweb.int/report/afghanistan/united-nations-condemns-deliberate-targeting-civilians-farah-attack>; AFP, *Taliban Kill at least 44 at Afghan Court: Officials*, 3 April 2013, <http://reliefweb.int/report/afghanistan/taliban-kill-least-44-afghan-court-officials>.

¹⁸⁴ In the eastern region, UNAMA documented targeted killings of judges in Bishud district of Nangarhar province and Qarghayi district of Laghman province, as well as the abduction of a district prosecutor in Dara-i-Pech, Kunar province. UNAMA reports that in many districts in Uruzgan province, there are currently no officially appointed judges and prosecutors present in their districts largely due to insecurity and threats. UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, pp. 21-22. On 9 July 2012, AGEs shot and killed the Ghazni provincial prosecutor in Ghazni centre, Ghazni province. UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 23.

¹⁸⁵ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 12. In the first six months of 2012 UNAMA documented six incidents of targeted killings of teachers, school guards and department of education officials by AGEs in Khost, Paktya, Ghazni, Uruzgan and Logar provinces. UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, pp. 5, 32. On 1 and 8 May 2012, AGEs attacked the convoy of the head of the Paktika Department of Education. The second attack left five civilians dead and seven injured. UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/855 – S/2012/462, 20 June 2012, <http://www.un.org/Docs/journal/asp/ws.asp?m=A/66/855>, para. 34. See also UNICEF, *UNICEF Condemns Deadly Attack on Monitoring Team Working to Provide Better Education to the Children of Afghanistan*, 10 May 2012, <http://js.static.reliefweb.int/node/495810>. For further information on the treatment of female teachers and pupils, see Section III.A.7 and III.A.8.

¹⁸⁶ In 2012 UNAMA documented 21 incidents of direct attacks against health facilities or staff, resulting in 12 civilian casualties. These incidents involved IEDs, targeted killings, abductions, threats, intimidations and harassment. UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 12. In December 2012, a schoolgirl was reportedly shot dead by local Taliban members in eastern Kapisa province, allegedly on the grounds that she was a volunteer worker for the polio campaign administered by the Ministry of Public Health. The Taliban has publicly opposed the polio campaign in parts of Afghanistan and Pakistan. Tolo News, *Schoolgirl Shot to Death in Kapisa*, 4 December 2012, <http://www.tolonews.com/en/afghanistan/8598-schoolgirl-shot-to-death-in-kapisa>. See also General Assembly / Security Council, *Report of the Secretary-General on Children in Armed Conflict*, 26 April 2012, A/66/782–S/2012/261, para. 17.

¹⁸⁷ On 2 May 2012 in Sharana district, Paktika province, AGEs shot and killed a contracted cleaner for the municipality. On 28 November 2011 in Qala-e-Naw district in Badghis provinces, AGEs shot and killed two agriculture employees. UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 23.

¹⁸⁸ Landinfo, *Afghanistan: Human Rights and Security Situation (Report by Dr. Antonio Giustozzi)*, 9 September 2011, http://www.landinfo.no/asset/1745/1/1745_1.pdf, p. 12.

¹⁸⁹ AFP, *Twin Bombs Kill 9, Wound 60 in Afghan South: Officials*, 17 May 2013, <http://reliefweb.int/report/afghanistan/twin-bombs-kill-9-wound-60-afghan-south-officials>; AFP, *Taliban Kill Six Afghan Police, Three Civilians*, 21 April 2013, <http://reliefweb.int/report/afghanistan/taliban-kill-six-afghan-police-three-civilians>; Tolo News, *8 Children Killed in Khost Suicide Attack*, 9 March 2013, <http://tolonews.com/en/afghanistan/9714>; AFP, *Suicide Attack Kills 'Several' in Northeast Afghanistan*, 26 January 2013, <http://reliefweb.int/report/afghanistan/suicide-attack-kills-several-northeast-afghanistan>; AFP, *Taliban Suicide Squad Attacks Kabul Police Complex*, 21 January 2013, <http://reliefweb.int/report/afghanistan/taliban-suicide-squad-attacks-kabul-police-complex>; UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 8. In the three-month period between 1 February and 30 April 2012, the ANP were reportedly targeted in almost 70 per cent of all incidents against Afghan security forces, accounting for some 875 casualties, or 70 per cent of the total casualties in the security forces, and for the largest number of targeted assassinations. UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/855 – S/2012/462, 20 June 2012, <http://www.refworld.org/docid/5118c1152.html>, para. 18. In view of the need to maintain the civilian and humanitarian character of asylum, applications for international refugee protection by *combatants* should not be considered unless it is established that they have genuinely and permanently renounced military and armed activities. UNHCR Executive Committee, No. 94 (LIII) - 2002, *Conclusion on the civilian and humanitarian character of asylum*, 8 October 2002, <http://www.refworld.org/docid/3dafdd7c4.html>. For guidance on how to establish the genuineness and permanence of renunciation, see

ALP members have also been targeted.¹⁹² In the period between the creation of the ALP programme in August 2010 and June 2012, 224 ALP members were reported to have been killed, while 234 ALP members were reported to have been injured in AGE attacks across the country.¹⁹³ AGEs are also reported to target NDS officers and retired ANA members,¹⁹⁴ as well as family members of ANSF members.¹⁹⁵

c) *Civilians Associated with or Perceived as Supportive of the ANSF or the IMF*

AGEs have reportedly threatened and attacked Afghan civilians who work for the IMF as drivers, interpreters or in other civilian capacities.¹⁹⁶ AGEs are also widely reported to target civilians who are

UNHCR, Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum, September 2006, <http://www.refworld.org/docid/452b9bca2.html>.

¹⁹⁰ On 5 July 2013, at least 12 people were killed and five wounded in a suicide attack at a police station in Uruzgan. Most of the victims were reported to be police officers who were having lunch at the time of the attack. BBC, *Afghan Suicide Bomber 'Kills 12' at Uruzgan Police Station*, 5 July 2013, <http://www.bbc.co.uk/news/world-asia-23193422>. In March 2013, at least 12 ANP officers were reportedly killed or injured when a landmine, allegedly planted by the Taliban, exploded in Khak-e-Safid district in Farah province. Khaama Press, *12 Afghan Police Killed or Injured in Farah Province*, 7 March 2013, <http://www.khaama.com/12-afghan-police-killed-or-injured-in-farah-province-1454>. In December 2012, General Mohammad Musa Rasoli, the provincial police chief of Nimroz, died as a result of a bomb attack on his vehicle in Adraskan district of Herat province, while he was heading to Nimroz on his way to work. Al Jazeera, *Two Officials Assassinated in Afghanistan*, 10 December 2012, <http://www.aljazeera.com/news/asia/2012/12/201212106318879255.html>. On 26 November 2012 in Khost city, Khost province, a remote-controlled IED attached to a bicycle reportedly targeted ANP officers guarding the market. At least 26 civilians were injured in the attack. UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 19. On 1 September 2012 in Sayedabad district centre, Maidan Wardak province, two suicide attacks killed nine civilians and injured 68. The first suicide attacker exploded a body-borne IED at the gate of the ANP HQ, while the second suicide attacker exploded a tanker loaded with explosives between the district governor's compound, the international military base and the ANP district HQ. On 14 August 2012, three body-borne IEDs simultaneously targeted ANP vehicles at different civilian-populated points in Zaranj city in Nimruz province, which resulted in at least 30 civilian deaths and 130 others injured. UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 21. On 15 March 2012, AGEs reportedly shot and killed an off duty ANP officer at his home in Garmser district, Helmand province. The victim was on holiday with his family. UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 17.

¹⁹¹ The Guardian, *Taliban Enforcer Squads Accused of Ruthless Control in Nuristan*, 1 May 2012, <http://www.guardian.co.uk/world/2012/may/01/taliban-squads-control-nuristan-afghanistan>.

¹⁹² For example, on 28 February 2013, eight police officers and two civilians were killed in a roadside bomb attack in Dangam district in Kunar province. AFP, *28 February 2013*, <http://reliefweb.int/report/afghanistan/afghan-blast-kills-eight-policemen-two-civilians>. On 27 February 2013 at least sixteen people died, including at least ten policemen, in an attack on an ALP checkpoint in Andar district in Ghazni province. AFP, *Taliban Kill 16 at Afghan Police Checkpoint*, 27 February 2013, <http://reliefweb.int/report/afghanistan/taliban-kill-16-afghan-police-checkpoint>. On 14 August 2012 in Dasht-e-Archi district in Kunduz province, an IED rigged to a motorbike targeted ALP members. The IED, which exploded in a busy square, killed 12 civilians including two girls, and injured 22. UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 20.

¹⁹³ UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 47.

¹⁹⁴ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 23; AFP, *Taliban Suicide Squad Attacks Kabul Police Complex*, 21 January 2013, <http://reliefweb.int/report/afghanistan/taliban-suicide-squad-attacks-kabul-police-complex>; UNAMA-OHCHR, *Protection of Civilians in Armed Conflict: Annual Report 2011*, February 2012, p. 18. <http://www.refworld.org/docid/4f2fa7572.html>; Afghanistan Analysts Network, *Talking and Killing in Early 2012*, 21 January 2012, <http://aan-afghanistan.com/index.asp?id=2453>; Ariana News, *Two NDS Employees Killed and Wounded in Nangarhar*, 18 November 2011, <http://ariananews.af/regional/two-nds-employees-killed-and-wounded-in-nangarhar/>; PAN, *NDS Officer Killed in Jalalabad Blast*, 20 August 2011, <http://www.pajhwok.com/en/2011/08/20/nds-officer-killed-jalalabad-blast/>; The Telegraph, *Attacks Kill Five Nato Soldiers and Five Afghans*, 12 January 2011, <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/8255334/Attacks-kill-five-Nato-soldiers-and-five-Afghans.html>.

¹⁹⁵ For example, on 29 August 2012 the Taliban abducted and beheaded a 12-year-old boy in Kandahar Province in retaliation against his brother, an officer in the local police. General Assembly / Security Council, *Report of the Secretary-General on Children and Armed Conflict*, 15 May 2013, A/67/845-S/2013/245, <http://www.refworld.org/docid/51b9864e4.html>, paragraph 27. See also for example *RRT Case No. 1215134*, [2013] RRTA 93, Refugee Review Tribunal of Australia, 31 January 2013, <http://www.refworld.org/docid/516eaa1e4.html>.

¹⁹⁶ On 18 July 2013, Taliban gunmen were reported to have shot dead eight Afghan workers on their way to their jobs at a US military base south of Kabul. AFP, *Taliban Kill Eight Afghan Workers en Route to US Base: Officials*, 18 July 2013, <http://reliefweb.int/report/afghanistan/taliban-kill-eight-afghan-workers-en-route-us-base-officials>. On 19 April 2013, AGEs were reported to have amputated a hand and a foot of each of two private security guards employed by the IMF in Herat. UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 13 June 2013, A/67/889 – S/2013/350, <http://www.refworld.org/docid/51c00fe74.html>, paragraph 27. On 26 October 2012 in Andar district, Ghazni province, the Taliban abducted five civilian day laborers employed at the international military base, sentenced them to death, and killed them. UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 24. See also for example BBC, *New Zealand to Resettle Afghan Interpreters*, 6 October 2012, www.bbc.co.uk/news/world-asia-20092012, reporting on 23 Afghan interpreters who had worked for New Zealand troops in Bamiyan province having been offered resettlement by New Zealand; some of the interpreters had reportedly received threats from the Taliban. Several national jurisdictions have recognized that Afghan asylum-seekers associated with the international community, including ISAF, may be at risk of persecution in Afghanistan. See for example *RRT Case No. 1002233*, [2010] RRTA 588, Refugee Review Tribunal of Australia, 19 July 2010, <http://www.refworld.org/docid/4c84d16a2.html>, where the applicant, an Afghan national of Hazara ethnicity, claimed that he had been contracted as a truck driver to deliver goods for the Afghan Government and that the Taliban had sought to harm him for this reason. In light

suspected of collaborating with, or “spying for” the ANSF or the IMF.¹⁹⁷ UNAMA reports having documented many cases of AGEs murdering or mutilating persons suspected of collaborating with pro-government forces.¹⁹⁸ Communities in districts with a high prevalence of improvised explosive devices (IEDs) are reported to face serious repercussions from AGEs when they seek to report IED locations to the ANSF.¹⁹⁹

In some instances civilians, including children, are reported to be targeted on the basis of suspicions that members of their families worked for the ANSF.²⁰⁰

d) Human Rights Activists, Humanitarian Workers and Development Workers

AGEs are reported to target civilians who are employees of international or Afghan humanitarian organizations,²⁰¹ including Afghan nationals working for UN organizations;²⁰² employees of international development agencies;²⁰³ employees of national and international non-governmental organizations (NGOs);²⁰⁴ and truck drivers, construction workers and individuals involved in mining

of country information indicating that the Taliban targeted persons who worked for the Government, and in light of the fact that outside the district of Jaghouri, Ghazni province, the Taliban were active, the Tribunal could not discount the real possibility that the local Mullah with ties to the Taliban might seek to seriously harm the applicant by reason of an imputed political opinion on his return to Afghanistan in the reasonably foreseeable future. See also The Guardian,

Britain Has 'Moral Obligation' to Offer Afghan Interpreters Asylum, 6 April 2013, <http://www.guardian.co.uk/uk/2013/apr/06/britain-moral-obligation-afghan-interpreters>.

¹⁹⁷ On 8 November 2012 in Marawara district in Kunar province, a group of Taliban “arrested” a man for allegedly spying on behalf of the IMF; on 9 November 2012 a Taliban shadow court sentenced the man to death and subsequently killed him. UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 4, 22, 24.

¹⁹⁸ On 1 February 2012, a Taliban court in Badghis province reportedly convicted a local teenager on charges of spying for ANSF and cut his ear off in punishment. In December 2011, a Taliban court in Kapisa province reportedly convicted a man on charges of spying for the IMF and executed him. In September 2011, AGEs in Nangarhar province reportedly executed a man on the basis of suspicions that he delivered fuel to pro-government Forces. The victim’s eyes were reported to have been removed post-mortem. UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, pp. 21, 24-25.

¹⁹⁹ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 4. UNAMA reported that on 12 May 2012, a group of AGEs shot and killed a civilian in Alishing district, Laghman province, after the man allegedly threatened to inform ANSF about plans to plant IEDs near his home. UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 17.

²⁰⁰ The UN Secretary-General reported, “Children were abducted for the purposes of [...] intimidation in cases in which families worked or were perceived to be working for the Government or the international military forces.” General Assembly / Security Council, *Report of the Secretary-General on Children and Armed Conflict*, 15 May 2013, A/67/845-S/2013/245, <http://www.refworld.org/docid/51b9864e4.html>, paragraph 27. UNAMA reports that in February 2012 the Taliban abducted a man and amputated his right hand on the basis of suspicions that members of his family worked for the ANSF. UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, pp. 24-25. Family members of ANA soldiers have also been reported to receive threats. Landinfo, *Afghanistan: Human Rights and Security Situation (Report by Dr. Antonio Giustozzi)*, 9 September 2011, http://www.landinfo.no/asset/1745/1/1745_1.pdf, p. 12.

²⁰¹ OCHA, “Humanitarian Space Under Pressure as Complexity of Conflict Intensifies”, *Humanitarian Bulletin Afghanistan, Issue 16, 1-31 May 2013*, <http://reliefweb.int/sites/reliefweb.int/files/resources/May%20MHB%20Afghanistan.pdf>. On 29 May 2013 the ICRC compound in Jalalabad came under attack, killing an Afghan guard and wounding another ICRC worker. Jason Lyall, *The Attack on the ICRC and the Changing Conflict in Afghanistan*, 4 June 2013, <http://politicalviolenceatagance.org/2013/06/04/the-attack-on-the-icrc-and-the-changing-conflict-in-afghanistan/>. On 24 May 2013 an IOM guesthouse was attacked by the Taliban. BBC, *Afghan Taliban Battle Police in Central Kabul*, 24 May 2013, <http://www.bbc.co.uk/news/world-asia-22656758>.

²⁰² Between January and September 2012, OCHA recorded 113 incidents of direct and indirect attacks/violence against humanitarian personnel, assets and facilities across 26 provinces. Seven deaths and 13 injuries were recorded; one third of these were attributed to criminality and nearly two-thirds to AGE-related activities. OCHA, *Afghanistan Common Humanitarian Action Plan 2013*, 26 December 2012, <http://www.refworld.org/docid/5118bc332.html>, p. 33. See also for example IRIN, *Afghanistan: The World’s Most Dangerous Place for Aid Workers*, 18 April 2013, <http://www.irinnews.org/Report/97874/Afghanistan-the-world-s-most-dangerous-place-for-aid-workers>; AFP, *Two Red Crescent Staffers Killed in Afghanistan*, 17 April 2013, <http://reliefweb.int/report/afghanistan/two-red-crescent-staffers-killed-afghanistan>.

²⁰³ In December 2012, the brother of a former USAID employee was reported to have been kidnapped for ransom by the Taliban. Boston Globe, *The U.S. is Abandoning its Loyal Friends in Afghanistan*, 7 December 2012, http://www.washingtonpost.com/opinions/the-us-is-abandoning-its-loyal-friends-in-afghanistan/2012/12/06/cc8b7416-38b5-11e2-8a97-363b0f9a0ab3_story.html.

²⁰⁴ The Afghanistan NGO Safety Office reports that a total of 58 NGO staff were abducted in 2012. Afghanistan NGO Safety Office (ANSO), *Quarterly Data Report, Q.4 2012*, <http://www.ngosafety.org/store/files/ANSO%20Q4%202012.pdf>, p. 7. See also US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>. On 4 July 2013 three Afghan members of staff of the Norwegian Refugee Council were reported to have been kidnapped by unknown gunmen. Khaama Press, *Gunmen Kidnap Aid Workers in Herat Province of Afghanistan*, 4 July 2013, <http://www.khaama.com/gunmen-kidnap-aid-workers-in-herat-province-of-afghanistan-1626>. The Taliban’s Book of Rules (*Layeha*), which is also referred to as the Taliban’s code of conduct, is reported to state, “[t]he NGOs that came in the country under the infidel’s government are just like of the government. They came here under the slogan of helping the people but in fact they are part of this regime. That’s why their every activity will be banned, whether it is building a road, bridge, clinic, school or madrasa or anything else.” See Newsweek, *The Taliban’s Book of Rules*, 11 December 2006, <http://www.newsweek.com/2006/12/11/the-taliban-s-book-of-rules.html>.

projects and other development projects.²⁰⁵ Individuals with these profiles have been killed, abducted, and intimidated; family members of such individuals, including children, have also been targeted.²⁰⁶

Women's human rights defenders are reportedly increasingly facing threats, intimidation and attacks, especially in areas undergoing security transition or under the control of the Taliban.²⁰⁷ In areas where the security transition has already been completed, women's organizations have reportedly come under pressure to close down their activities.²⁰⁸

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

AGEs are reported to kill civilians deliberately to punish them for supporting the government, with the killings intended to serve as a warning to others.²⁰⁹ AGEs are also reported to use "night letters" (*shab nameha*), threatening text messages and local radio broadcasts to warn civilians against supporting the Government.²¹⁰ In locations where AGEs have been unable to win public support, they are reported to harass and intimidate local communities, and to mete out punishments against the local population for supporting the Government.²¹¹ Civilians accused of "spying for" the Government are reportedly subjected to summary trials in parallel and illegal judicial procedures operated by AGEs; the punishment for such alleged "crimes" is usually execution.²¹²

Civilians suspected of participating in government-supported uprisings against the Taliban and other AGEs have reportedly been subjected to brutal reprisals, including targeted killings of civilians.²¹³

²⁰⁵ OCHA, *Humanitarian Bulletin Afghanistan, Issue 16, 1-31 May 2013*, <http://reliefweb.int/sites/reliefweb.int/files/resources/May%20MHB%20Afghanistan.pdf>, p. 2; UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 16. The Anti-Crime Police at the Ministry of Interior reported 102 abductions in 2012 of teachers, construction workers and employees of mining projects, and citizens perceived to be cooperating with the international community. The US State Department notes that "the actual number of cases may have been much higher." US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>.

²⁰⁶ The UN Secretary-General reported, "Children were abducted for the purposes of [...] intimidation in cases in which families worked or were perceived to be working for the Government or the international military forces." General Assembly / Security Council, *Report of the Secretary-General on Children and Armed Conflict*, 15 May 2013, A/67/845-S/2013/245, <http://www.refworld.org/docid/51b9864e4.html>, paragraph 27. See also for example Danish Immigration Service, *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process – Report from Danish Immigration Service's fact finding mission to Kabul, Afghanistan, 25 February to 4 March 2012*, May 2012, <http://www.nyidanmark.dk/NR/rdonlyres/3FD55632-770B-48B6-935C-827E83C18AD8/0/FFMrapportenAFGHANISTAN2012Final.pdf>, pp. 19-25.

²⁰⁷ Amnesty International, *Strengthening the Rule of Law and Protection of Human Rights, Including Women's Rights, Is Key to Any Development Plan for Afghanistan*, ASA 11/012/2012, 26 June 2012, <http://www.refworld.org/docid/512231782.html>, pp. 3-4; and Amnesty International, *Afghanistan: Don't Trade Away Women's Rights*, October 2011, <http://www.refworld.org/docid/5122511f2.html>. Similarly, ActionAid reports that "attacks on women are becoming more frequent as tension grows in the run-up to NATO troop withdrawal." ActionAid, *Afghan Women's Rights on the Brink: Why the International Community Must Act to End Violence Against Women in Afghanistan*, June 2012, http://www.actionaid.org.uk/doc_lib/on_the_brink_afghan_womens_rights.pdf.

²⁰⁸ Afghan Women's Network, *Afghan Women Towards Bonn and Beyond: Position Paper*, 6 October 2011, http://www.afghanwomensnetwork.af/Latest%20Updates/AWN_Position_Paper_FINAL_FINAL_English.pdf, pp. 2, 4. Women's groups have also reported cases of insurgents who had reintegrated under the APRP resuming violence and creating further threats for the communities in which they have returned. Civil-Military Fusion Centre, *The Peace Process and Afghanistan's Women*, April 2012, https://www.cimicweb.org/cmo/afg/Documents/Governance/Afghanistan_Women_Reconciliation.pdf, p. 3.

²⁰⁹ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 21-23.

²¹⁰ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 21-23, 27-29; UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 27. ANSO provides numerous examples of such practices; see for example ANSO, *ANSO Report, Issue 89*, 1-15 January 2012, <http://www.ngosafety.org/2012.html>, p. 9, documenting night letters in Chaparhar, Nangarhar, intimidating and threatening the population to quit working for the Government.

²¹¹ For example in Andar district of Ghazni province, following local communities' opposition to Taliban actions, Taliban forces burned down four local houses on 20 and 23 June 2012. UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p.20.

²¹² UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 21-23; AFP, *Taliban Accused of Beheading Two Afghan Boys*, 10 June 2013, <http://reliefweb.int/report/afghanistan/taliban-accused-beheading-two-afghan-boys>; UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 4, 17, 24.

²¹³ Several uprisings against the Taliban and other AGEs were reported in 2012 in the central, northern, southeastern and eastern regions. The most significant of these took place in Andar district, Ghazni province. Started in April 2012 and initially led by Hezb-e-Islami, from October 2012 ANSF forces were deployed to Andar to support the uprising. According to UNAMA, "Taliban reprisals against civilians in Andar have been brutal, including through the intentional and direct targeting of civilians. For example, community members from Andar district informed UNAMA that a local Taliban judge issued a fatwa against members of the uprising, instructing the mujahedin to kill all of them and take their wives. Reprisals also took the form of targeted killings. Five incidents of targeted killings were documented in this

f) *Tribal Elders and Religious Leaders*

AGEs are reported to target local traditional leaders such as tribal elders who are perceived as supporters of the Government or the international community, or as non-supportive of AGEs.²¹⁴ Relatives of village elders who are perceived as pro-government have reportedly been killed by AGEs in retaliation.²¹⁵

AGEs are also reported to target religious leaders who are perceived as pro-government, or on the basis of their particular interpretations of Islam.²¹⁶ Imams have reportedly been targeted for performing funeral ceremonies for members of the ANSF, and for individuals who have been killed by the Taliban.²¹⁷

g) *Women in the Public Sphere*

Although women have attained some leadership roles in Afghan Government and civil society since 2001, including as judges and members of parliament, women in the public sphere and those holding public office have been increasingly subjected to threats, intimidation and violent attacks.²¹⁸ There are widespread reports of the targeting of women in the public sphere, including female parliamentarians, provincial council members, civil servants, journalists, lawyers, teachers, human rights activists and women working for international organizations. They have been targeted by AGEs, particularly in areas under their *de facto* control;²¹⁹ local traditional and religious power-holders; community members; and in some instances by government authorities. Women who seek to engage in public life are often perceived as transgressing social norms and condemned as “immoral” and targeted for intimidation, harassment, or violence by the Taliban and other AGEs.²²⁰ Women in the public sphere are reported to receive death threats by means of phone calls or night letters, warning them to stop

period, in which Taliban killed community members for their alleged involvement in the uprising. Under international humanitarian law, civilian populations or individual civilians may not be the object of reprisals.” UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 48-49 [footnotes omitted].

²¹⁴ AGEs are reportedly targeting places where tribal elders gather with IEDs. UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 21. See also AFP, *Twin Suicide Attack at Afghan Tribal Meeting Kills Five*, 6 January 2013, <http://reliefweb.int/report/afghanistan/twin-suicide-attack-afghan-tribal-meeting-kills-five>. On 29 November 2012 in Panjwai district, Kandahar province, a tribal elder was abducted, tortured and killed by AGEs. On 25 November 2012 in Wata Pur district in Kunar province, AGEs kidnapped a tribal elder, his son and two other civilians from the same village. On 21 November 2012 the same group of AGEs had abducted the tribal elder’s nephew. All five men were shot dead. UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 23-24. On 15 May 2012, AGE members reportedly opened fire on a group of tribal elders who were en route to a community meeting in Shindand district, Herat province, killing three and wounding one. UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 17.

²¹⁵ Landinfo, *Afghanistan: Human Rights and Security Situation (Report by Dr. Antonio Giustozzi)*, 9 September 2011, http://www.landinfo.no/asset/1745/1/1745_1.pdf, p. 12.

²¹⁶ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 4, 24-26; US Department of State, *2012 Report on International Religious Freedom - Afghanistan*, 20 May 2013, <http://www.refworld.org/docid/519dd4ec77.html>; US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>; UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/855 – S/2012/462, 20 June 2012, <http://www.un.org/Docs/journal/asp/ws.asp?m=A/66/855>, para. 17. In May 2012 the home of the *mullah* of the Eidgah mosque was targeted with an IED; the *mullah* was known as the “PRT *mullah*” for his perceived cooperation with the IMF and had been the target of previous IED attacks. ANSO, *ANSO Report, Issue 98*, 16-31 May 2012, <http://www.ngosafety.org/2012.html>, p. 13.

²¹⁷ UNAMA, *Afghanistan: Mid-Year Report 2013, Protection of Civilians in Armed Conflict*, July 2013, <http://www.refworld.org/docid/51f8c0604.html>, pp. 24-26. On 3 August 2012 the imam of Dawlat Zai village of Nangarhar province was killed in an IED attack. The attack followed previously made threats after the imam had performed funeral prayers for a private security guard who had been killed by the Taliban. UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/22/37>, paras. 18, 21.

²¹⁸ UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/5113aeeb2.html>, para. 44. See also Afghan Women’s Network, *Women Leaders in Government and Civil Society Are under Constant Attacks*, 6 October 2011, http://www.afghanwomensnetwork.af/Latest%20Updates/AWN_Position_Paper_FINAL_FINAL_English.pdf, p. 3. For further analysis of the situation of women perceived as contravening social mores, see Section III.A.7.c.

²¹⁹ Amnesty International reports having received credible information that Afghan women, particularly women’s human rights defenders, increasingly face threats, intimidation and attacks, especially in areas undergoing security transition or under the control of the Taliban. Amnesty International, *Strengthening the Rule of Law and Protection of Human Rights, Including Women’s Rights, Is Key to Any Development Plan for Afghanistan*, ASA 11/012/2012, 26 June 2012, <http://www.refworld.org/docid/512231782.html>, pp. 3-4.

²²⁰ US Commission on International Religious Freedom, *USCIRF Annual Report 2013 - Tier 2: Afghanistan*, 30 April 2013, <http://www.refworld.org/docid/51826ef1b.html>. For further information on the treatment of women perceived as transgressing social norms, see Section III.A.6 and III.A.7.

working or risk being targeted.²²¹ There are also numerous reports of women in the public sphere having been killed.²²²

According to human rights activists, in many instances law enforcement agencies failed to combat impunity for harassment and attacks against women in the public sphere.²²³

h) Summary

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

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

2. Journalists and Other Media Professionals

The Constitution guarantees the right to freedom of expression, and the right to print and publish without prior submission to State authorities.²²⁴ However, concerns remain about threats to the rights to freedom of expressions and access to information. The 2009 Media Law includes a broadly-worded provision prohibiting production, reproduction, print, and publishing of works and materials contrary to the principles of Islam or offensive to other religions and sects. While there were no reports of prosecutions under this provision of the law, media outlets, including radio and television journalists, were reported to face pressure due to the passage of the law and by societal actors who object to particular content.²²⁵

²²¹ Radio Free Europe / Radio Liberty, *Fatal Afghan Shooting Highlights Risks For Female Health Workers*, 7 December 2012, <http://www.refworld.org/docid/5124d7e42.html>.

²²² For example, on 3 July 2013 the most senior female police officer in Helmand province, Lieutenant Islam Bibi, was shot dead when she left her home in the morning. The Telegraph, *Helmand's Top Female Police Officer Shot Dead*, 4 July 2013, <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/10159122/Helmands-top-female-police-officer-shot-dead.html>. On 10 December 2012, the acting head of the Department of Women's Affairs of Laghman province, Najia Sediqi, was shot and killed by unknown gunmen as she travelled to work. On 13 July 2012, her predecessor as head of the Department of Women's Affairs in Laghman province, Hanifa Safi, was killed by a remote-controlled explosive device. Several members of her family were injured. Human Rights Watch, *Afghanistan: Rights at Risk as Military Drawdown Advances*, 1 February 2013, <http://www.refworld.org/docid/5118bd4d2.html>; UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/5113aceb2.html>, para. 21. In May 2011, Khan Mohammad, the head of a girls' school in Logar province, was killed. Amnesty International, *Afghanistan: don't trade away women's human rights*, August 2011, <http://www.refworld.org/docid/512233d32.html>.

²²³ Afghanistan Rights Monitor, *Forgotten Heroes: Afghan Women Leaders Killed in Impunity, Ignored in Justice*, December 2012, <http://reliefweb.int/report/afghanistan/forgotten-heroes-afghan-women-leaders-killed-impunity-ignored-justice>.

²²⁴ Article 34 of the Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>. Article 34 qualifies the right to print and publish without prior submission to State authorities by means of the phrase "according to provisions of law".

²²⁵ US Commission on International Religious Freedom, Annual Report 2012, March 2012, <http://www.refworld.org/docid/4f71a66d32.html>, p. 284. Freedom House reports that some independent outlets and publications have been criticized by conservative clerics for airing programs that "oppose Islam and national values," or fined by the authorities for similar reasons. Freedom House, *Freedom in the World 2012: Afghanistan*, <http://www.refworld.org/docid/4f6b210837.html>. On 22 April 2013, President Karzai reportedly gave orders to the information and culture ministry, for the second time in less than two months, to prevent the dissemination of films and broadcasts that are "contrary to Islamic values and the values of Afghan society." The presidential directive was reportedly issued in response to a request by the Ulema Shura. Reporters Without Borders, *Journalists Still Targeted by Violence, Threats and Censorship*, 25 April 2013, <http://www.refworld.org/docid/517e69f64.html>. In 2012 the government put forward amendments to the law that would have imposed further restrictions on the media. While these proposals were later dropped, President Karzai then issued a decree directing the Information and Culture Ministry to develop an action plan to impose quality standards on both state-run and private media, including by ensuring that the media respect Afghan traditions and customs. The decree gave rise to concerns that its loosely-worded definitions would create scope for blanket repression of the media. UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/67/354 – S/2012/703, 13 September 2012, <http://www.refworld.org/docid/5065a16a2.html>, para. 35; Institute for War and Peace Reporting, *Afghan Journalists Alarmed by Media Decree*, 9 August 2012, <http://www.refworld.org/docid/5026a072227.html>; UNAMA, *Journalist Community Demands 19 Amendments in Existing Afghan Media Law*, 18 July 2012, <http://www.refworld.org/docid/5124ee262.html>; Human Rights Watch, *Draft Law Threatens Media Freedom*, 2 July 2012, <http://www.refworld.org/docid/4ffedf6b2.html>. The Ministry of Information and Culture (MOIC) has the authority to regulate the press and media; however, both the Ministry of Hajj and Religious Affairs, and the Ulema Shura (Council of Clerics) reportedly attempted to regulate or constrict the media. Although complaints and alleged violations of media regulations are meant to be passed to the MOIC by the Media Complaints Commission, the Ministry of Hajj and Religious Affairs reported in May 2011 that it would establish a Vice and Virtue Department to control "un-Islamic" and "immoral" media programmes. Moreover, following what the Ulema Shura and the MOIC

The defamation provision of the Media Law is reportedly sometimes used as a pretext to suppress criticism of government officials.²²⁶ Politicians, security officials, and others in positions of power reportedly arrested, threatened, or harassed a growing number of journalists as a result of their coverage, in particular those who reported on impunity, war crimes, corruption and other failings by government officials and powerful local figures, and drug trafficking.²²⁷ Journalists and media organizations also reportedly continue to face a risk of arrest, detention and prosecution for reporting on issues considered as sensitive by the authorities, such a bribery allegations.²²⁸ Journalists were reported to revert to self-censorship due to fears of reprisals.²²⁹

Violence against journalists remained a concern, with State authorities reportedly responsible for the majority of incidents.²³⁰ The perpetrators of violence against journalists frequently enjoy impunity, and journalists accused the Government of failing to protect them.²³¹

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- saw as a trend in negative programming, both threatened to revoke the licenses of any media groups that failed to comply with the law. US Department of State, *2011 Country Reports on Human Rights Practices - Afghanistan*, 24 May 2012, <http://www.refworld.org/docid/4fc75ac3c.html>. In October 2012 the Council of Ministers tasked the Ministry of Information and Culture with ensuring that Afghan media did not violate "national interests". Journalists expressed concerns that the lack of clarity about the scope of "national interests" meant that criticisms of the Government might be interpreted as violating "national interests". UNAMA, *Afghan Journalists Miffed by Government Orders to 'Control' Media Coverage*, 5 October 2012, <http://www.refworld.org/docid/5124ee952.html>.
- ²²⁶ On 11 June 2012, the Attorney-General's Office reportedly initiated an investigation of the Pajhwok Afghan News agency after Pajhwok published a series of articles alleging that Members of Parliament accepted Iranian bribes to affect their views. The Ministry of Information and Culture reportedly claimed that the Pajhwok articles defamed the Members of Parliament, in violation of article 45 of the Media Law. US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>; Human Rights Watch, *Draft Law Threatens Media Freedom*, 2 July 2012, <http://www.refworld.org/docid/4ffedf6b2.html>; Reporters Without Borders, *News Outlets Prosecuted for Reporting that Iran Bribed Parliamentarians*, 13 June 2012, <http://www.refworld.org/docid/4fdb07fd2.html>.
- ²²⁷ UNAMA noted that, "Although Afghanistan has made remarkable achievements in the field of media, Afghan journalists are still facing daily threats, intimidation and arrests that undermine their ability to operate professionally." UNAMA, *Press Freedom Key to Credible Elections in Afghanistan*, 2 May 2013, <http://reliefweb.int/report/afghanistan/press-freedom-key-credible-elections-afghanistan>. The UK Foreign and Commonwealth Office noted that "journalists continued to face intimidation and restrictions." United Kingdom: Foreign and Commonwealth Office, *Human Rights and Democracy: The 2012 Foreign & Commonwealth Office Report - Afghanistan*, 15 April 2013, <http://www.refworld.org/docid/516fb7d14f.html>. See also US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>; Ariana News, *Violence Against Journalists on Rise in Takhar*, 26 October 2012, <http://ariananews.af/regional/violence-against-journalists-on-rise-in-takhar/>; Reuters, *Besieged Afghan Media Appeals to Karzai for Protection*, 4 May 2012, <http://www.reuters.com/article/2012/05/04/us-afghanistan-media-restrictions-idUSBRE8430HM20120504>.
- ²²⁸ For example, Abdolrahman Sakhizadeh, a reporter for the Kabul-based newspaper Mandegar, was arrested on 5 July 2013 following the publication on 15 May 2013 of a story about alleged corruption involving senior officials within the government's anti-corruption department. The newspaper's editor, Nazari Paryani, was given a 30-month jail sentence for reporting alleged fraud during the 2009 presidential election. Reporters Without Borders, *Reporter Arrested Arbitrarily, Editor Gets Jail Term*, 11 July 2013, <http://www.refworld.org/docid/51e003904.html>. In April 2012 television journalist Nasto Naderi was detained and charged with making false accusations against officials, following programmes he had made about corruption and criminality, often implicating officials. Amnesty International, *Afghan Journalist Freed*, 11 May 2012, ASA 11/010/2012, <http://www.amnesty.org/fr/library/asset/ASA11/010/2012/fr/891b6265-5c06-4229-8d0b-caff24d0b5ea/asa110102012en.html>. Freedom House reports that "a growing number of journalists have been arrested, threatened, or harassed by politicians, security services, and others in positions of power as a result of their coverage." Freedom House, *Freedom in the World 2012: Afghanistan*, <http://www.refworld.org/docid/4f6b210837.html>. See also Reporters Without Borders, *Journalists Still Targeted by Violence, Threats and Censorship*, 25 April 2013, <http://www.refworld.org/docid/517e69f64.html>.
- ²²⁹ US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>; Reuters, *Besieged Afghan Media Appeals to Karzai for Protection*, 4 May 2012, <http://www.reuters.com/article/2012/05/04/us-afghanistan-media-restrictions-idUSBRE8430HM20120504>; Foreign and Commonwealth Office, *Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report*, April 2012, <http://www.fco.gov.uk/en/news/latest-news/?view=News&id=758877882>, p. 159; Article 19, *Afghanistan: Each Time a Journalist Is Killed, the Truth Dies With Them*, 7 October 2011, <http://www.refworld.org/docid/5124d9bd2.html>; Nai, *Journalists Say Peace Process Causes Self Censorship*, 17 August 2011, <http://nai.org.af/en/blog/journalists-say-peace-process-causes-self-censorship>.
- ²³⁰ For example, on 9 July 2013 at least four journalists were reported to have been attacked in separate incidents in Kabul, including Mohammad Fahim Fetrat, a reporter for Channel 1 TV, and his cameraman, who were hit by police while doing a report on police mistreatment of street vendors. Reporters Without Borders, *Reporter Arrested Arbitrarily, Editor Gets Jail Term*, 11 July 2013, <http://www.refworld.org/docid/51e003904.html>. The Afghan media rights group Nai reported that it had documented 40 cases of violence against journalists between January and April 2013, a 100 per cent increase compared 2012, when it documented 20 cases. UNAMA, *Afghan Media Rights Group Reports Sharp Rise in Violence Against Journalists*, 5 May 2013, <http://reliefweb.int/report/afghanistan/afghan-media-rights-group-reports-sharp-rise-violence-against-journalists>; and *Press Freedom Key to Credible Elections in Afghanistan*, 2 May 2013, <http://reliefweb.int/report/afghanistan/press-freedom-key-credible-elections-afghanistan>. The Afghan Journalists Safety Committee claims the government is the main perpetrator of violence against journalists. Voice of America, *Violence Against Journalists in Afghanistan Increasing*, 27 May 2013, <http://www.voanews.com/content/afghanistan-journalists-attacks-free-press/1669241.html>. Two journalists were reportedly insulted and beaten by NDS officers while they were reporting a suicide attack in Nangarhar province on 24 February 2013. Khaama Press, *Afghan Media: Hopes and Challenges*, 8 March 2013, <http://www.khaama.com/afghan-media-hopes-and-challenges-1452>. Reporters Without Borders ranked Afghanistan 128th out of 179 countries in its World Press Freedom Index 2013, noting that this was a considerable improvement on its ranking a year earlier, when it was ranked 150th. It noted however that "violence against journalists did not disappear completely and the government neglected to tackle the issue of impunity. No journalists were killed in 2012 and arrests of media workers declined. The withdrawal of some foreign troops from the international coalition and deteriorating conditions in neighbouring

Violence and intimidation of journalists and media outlets at the hands of AGEs also remain of concern and have the effect of limiting journalists' ability to report on current affairs without restrictions.²³² Journalists who published stories supportive of the Government and its policies reportedly received threats from the Taliban.²³³ At the provincial level, many of the broadcasting stations and print media were reportedly owned by warlords, who used such ownership to constrain freedom of speech.²³⁴

In light of the foregoing, UNHCR considers that journalists and other media professionals who engage in critical reporting on what are perceived to be sensitive issues by either state or non-state actors, including but not limited to the armed conflict, political corruption and other government failings, and drug trafficking, may be in need of international refugee protection on the ground of their (imputed) political opinion or religious views. Depending on the specific circumstances of the case, family members of individuals with this profile may also be in need of international protection on the basis of their association with individuals at risk.

3. Men and Boys of Fighting Age

In areas where AGEs exercise effective control, they are reported to use a variety of mechanisms to recruit fighters, including recruitment mechanisms based on coercive strategies.²³⁵ In a traditional form of war mobilization known as *lashkar*, every household is expected to contribute a man of fighting age.²³⁶ In areas where AGEs exercise effective control, as well as in IDP settlements in Afghanistan, they are reported to use threats and intimidation to enforce this mechanism to recruit

Pakistan meant these improvements were precarious.” Reporters Without Borders, *World Press Freedom Index - 2013*, 30 January 2013 <http://www.refworld.org/docid/5108f621e.html>. Nai Mediawatch reported 23 incidents of violence against journalists in 2012, against 72 incidents in 2011, the highest number since 2001. Between 2001 and 2012, 25 journalists are reported to have been killed. Nai Mediawatch, *Incidents of Violence Against Journalists in Afghanistan 2001-2012*, <http://data.nai.org.af/>. The Committee to Protect Journalists (CPJ) provides slightly lower figures for the number of journalists who have been killed in Afghanistan: according to the CPJ, 24 journalists have been killed in Afghanistan since 1992, 12 of whom were murdered, while the others were killed in cross fire or in the course of dangerous assignments. Committee to Protect Journalists, *12 Journalists Murdered in Afghanistan Since 1992*, <http://www.cpj.org/killed/asia/afghanistan/murder.php>; and *24 Journalists Murdered in Afghanistan Since 1992*, <http://www.cpj.org/killed/asia/afghanistan/> (both undated; accessed 18 September 2012). The number of abductions of journalists, which had spiked in 2009 and 2010, was reported to have declined in 2011. See also Committee to Protect Journalists, *Attacks on the Press in 2011 - Afghanistan*, 22 February 2012, <http://www.refworld.org/docid/4f4cc9982d.html>; and Freedom House, *Freedom in the World 2012: Afghanistan*, <http://www.refworld.org/docid/4f6b210837.html>. Article 19 states that at least 200 journalists were physically assaulted in the decade to 2011, while scores more either left the profession or fled the country as a result of threats to their safety. Article 19, *Afghanistan: Each Time a Journalist Is Killed, the Truth Dies With Them*, 7 October 2011, <http://www.refworld.org/docid/5124d9bd2.html>. By the end of 2012, the motives for the murder in February 2012 of Samid Khan Bahadarzai, manager of the Melma Radio station in Orgun District in Paktika province, remained unresolved. Committee to Protect Journalists, *Journalists Killed in 2012 - Motive Unconfirmed: Samid Khan Bahadarzai*, 18 December 2012, available at: <http://www.refworld.org/docid/5107a098c.html>.

²³¹ Committee to Protect Journalists, *Getting Away With Murder: CPJ's 2013 Impunity Index*, 2 May 2013, <http://reliefweb.int/report/world/getting-away-murder-cpj%E2%80%99s-2013-impunity-index>; Reuters, *Besieged Afghan Media Appeals to Karzai for Protection*, 4 May 2012, <http://www.reuters.com/article/2012/05/04/us-afghanistan-media-restrictions-idUSBRE8430HM20120504>; UNAMA, *Press in Eastern Afghanistan Urge Greater Access and Safety for Fellow Journalists*, 3 May 2012, <http://www.refworld.org/docid/5124ecd82.html>; Nai, *Radio Station Manager Beheaded by Unknown Assailants*, 26 February 2012, <http://www.nai.org.af/en/blog/radio-station-manager-beheaded-unknown-assailants>; Article 19, *Afghanistan: Each Time a Journalist Is Killed, the Truth Dies With Them*, 7 October 2011, <http://www.refworld.org/docid/5124d9bd2.html>.

²³² Reporters Without Borders, *Journalists Still Targeted by Violence, Threats and Censorship*, 25 April 2013, <http://www.refworld.org/docid/517e69f64.html>; Reporters Without Borders, *2012 Predators of Press Freedom: Afghanistan/Pakistan - Mollah Mohammad Omar, Taliban Chief*, 4 May 2012, <http://www.refworld.org/docid/4fa77ce816.html>.

²³³ Journalists reportedly avoided criticizing the insurgency in their reporting because they feared Taliban retribution. US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>.

²³⁴ US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>. In addition, according to the US State Department private Iranian, Pakistani, and Gulf state citizens sought to influence the Afghan media by means of both ownership and threats, while Iran was alleged to intimidate reporters in the western provinces to increase anti-government reporting while limiting the number of anti-Iranian articles. US Department of State, *ibid*.

²³⁵ For example, in a survey carried out in Helmand province in March 2010, the International Council on Security and Development (ICOS), 34 per cent of respondents stated that men join the Taliban because they are coerced into doing so. ICOS, *Operation Moshtarak: Lessons Learned*, May 2010, <http://www.icosgroup.net/2010/report/operation-moshtarak-lessons-learned/>, p. 7. The European Asylum Support Office quotes a number of local, anonymous sources who give evidence about the use of threats, intimidation and violence by the Taliban for the purposes of recruitment. EASO, *Afghanistan: Taliban Strategies – Recruitment*, July 2012, <http://www.refworld.org/docid/4ffc30a82.html>, footnote 110 (local correspondent based in Helmand), 113 (local correspondent based in the east of Afghanistan) and footnote 115 (local contact based in Khost).

²³⁶ Landinfo, *Afghanistan: Human Rights and Security Situation*, 9 September 2011, <http://www.refworld.org/docid/4e8eadc12.html>, p. 7.

fighters for the insurgency.²³⁷ People who resist recruitment are reportedly at risk of being accused of being a government spy and being killed or punished.²³⁸ There are reports of families linked to the insurgency giving boys to AGEs as suicide bombers, in the hope of gaining status with the AGE in question.²³⁹

ALP commanders have also been reported to forcibly recruit local community members, including both adult men and children, into ALP forces.²⁴⁰

In light of the foregoing, UNHCR considers that, depending on the specific circumstances of the case, men and boys of fighting age living in areas under the effective control of AGEs, or in areas where pro-government forces and AGEs are engaged in a struggle for control, may be in need of international refugee protection on the ground of their membership of a particular social group. Depending on the specific circumstances of the case, men and boys of fighting age living in areas where ALP commanders are in a sufficiently powerful position to forcibly recruit community members into the ALP may equally be in need of international refugee protection on the ground of their membership of a particular social group. Men and boys who resist forced recruitment may also be in need of international refugee protection on the ground of their (imputed) political opinion. Depending on the specific circumstances of the case, family members of men and boys with this profile may be in need of international protection on the basis of their association with individuals at risk.

4. *Civilians Suspected of Supporting Anti-Government Elements*

The Constitution provides that no one shall be arrested or detained without due process of law. It also contains an absolute prohibition on the use of torture.²⁴¹ Despite these legal guarantees, concerns have been raised about arbitrary detention, as well as the use of torture and cruel, inhuman or degrading treatment against detainees, especially conflict-related detainees, in detention facilities operated by the NDS and the ANP.²⁴² UNAMA reported that in two NDS facilities, six ANP facilities and one ABP location, the use of torture was systematic.²⁴³ Among the detainees who were found to have been subjected to torture were children.²⁴⁴ UNAMA also received reports of the alleged disappearance of

²³⁷ For example, UNAMA quotes a village chief in a district of Balkh province as saying, “The Taliban also calls young men into their movement’s army of insurgents, and threatens to kill those who are unwilling to serve for their movement.” UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 18. See also Afghanistan Research and Evaluation Unit (Antonio Giustozzi), *Thirty Years of Conflict: Drivers of Anti-Government Mobilisation in Afghanistan 1978-2011*, January 2012, <http://www.refworld.org/docid/4f157c6a2.html>, p. 55; and Landinfo, *Afghanistan: Human Rights and Security Situation*, 9 September 2011, <http://www.refworld.org/docid/4e8eadc12.html>, p. 7.

²³⁸ Landinfo, *Afghanistan: Human Rights and Security Situation*, 9 September 2011, <http://www.refworld.org/docid/4e8eadc12.html>, p. 8.

²³⁹ European Union: European Asylum Support Office (EASO), *EASO Country of Origin Information Report. Afghanistan. Taliban Strategies – Recruitment*, 10 July 2012, <http://www.refworld.org/docid/4ffc30a82.html>, p. 29.

²⁴⁰ In 2011, UNAMA received reports of forced recruitment by ALP commanders of local residents including children in some districts in Paktika, Farah and Uruzgan provinces. In the Shah-Wali-Kot district in Uruzgan province, a local ALP commander reportedly demanded that each family provide a son to join his ALP unit; as a result, numerous families reportedly fled their homes to avoid recruitment into the ALP. UNAMA, *Annual Report 2011: Protection of Civilians in Armed Conflict*, February 2012, <http://www.refworld.org/docid/4f2fa7572.html>, pp. 6, 34.

²⁴¹ Articles 27 and 29 of the Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>.

²⁴² Between October 2011 and October 2012, UNAMA interviewed 635 conflict-related detainees held by the ANP, NDS, ANA and ALP. More than half of these detainees (326 people) experienced ill-treatment and torture, particularly in 34 ANP and NDS detention facilities. The incidence of torture and ill-treatment in ANP facilities increased compared to the previous 12-month reporting period, while the incidence decreased in NDS facilities compared to the previous period. UNAMA, *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On*, 20 January 2013, <http://www.refworld.org/docid/50ffe6852.html>. In March 2012 the AIHRC also reported on the use of torture in NDS and ANP detention facilities, as well as “widespread and deliberate violations of detainees’ fundamental due process rights”. AIHRC and Open Society Foundations, *Torture, Transfers, and Denial of Due Process: The Treatment of Conflict-Related Detainees in Afghanistan*, 17 March 2012, <http://www.refworld.org/docid/512241ec2.html>. The report noted, (p. 10), “While mistreatment is a problem for detainees throughout the Afghan justice system, research and experience have shown that conflict-related detainees are particularly vulnerable to abuse and torture.” See also UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, paras. 4, 40-45. This report notes that it is especially conflict-related detainees who are at risk of illegal detention and of being tortured (para. 4).

²⁴³ UNAMA, *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On*, 20 January 2013, <http://www.refworld.org/docid/50ffe6852.html>, pp. 4-5.

²⁴⁴ UNAMA, *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On*, 20 January 2013, <http://www.refworld.org/docid/50ffe6852.html>, pp. 33-34, 38-41, 46, 48, 51, 54.

81 individuals who had been taken into ANP custody in Kandahar province.²⁴⁵ UNAMA's findings were corroborated in February 2013 by an official investigation ordered by President Karzai following the publication of the January 2013 UNAMA report.²⁴⁶

UNAMA reported that detainees lacked access to remedial mechanisms, including the right to *habeas corpus*, as well as meaningful access to defence counsel.²⁴⁷ Criminal courts reportedly routinely allowed confessions obtained by means of torture to be used as evidence.²⁴⁸ UNAMA "found a persistent lack of accountability for perpetrators of torture with few investigations and no prosecutions or loss of jobs for those responsible for torture or ill-treatment."²⁴⁹

In response to a previous UNAMA report, ISAF put in place a six-phase remedial scheme to support the Afghan authorities in reforming their interrogation and detainee treatment practices,²⁵⁰ while the NDS established a human rights department to investigate allegations of abuse and torture and issued instructions reminding staff of their responsibility to adhere to national and international standards.²⁵¹ However, in its second report UNAMA noted that the impact of the remedial scheme had been limited and that any improvements may only have been temporary.²⁵² Other observers have also continued to express concerns about Afghanistan's criminal justice system. The UN Secretary-General noted in June 2012 that the prison population continued to grow significantly,²⁵³ while the UN High Commissioner for Human Rights had earlier noted that the increasing strains caused by the growing prison population on the already overcrowded prison system "has been a contributing factor in the willingness of law enforcement agencies to use torture in order to coerce confessions from detainees, particularly conflict-related detainees."²⁵⁴

Concerns were expressed too about the transfer of about 3,100 detainees previously held by US forces at the Bagram detention facility to Afghan authorities. Human rights observers contended that in the absence of evidence that the systemic issues in the Afghan justice system had been fully addressed,

²⁴⁵ UNAMA, *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On*, 20 January 2013, <http://www.refworld.org/docid/50ffe6852.html>, pp. 53-54.

²⁴⁶ AFP, *Kabul Inquiry Finds Evidence of Prison Torture*, 10 February 2013, <http://reliefweb.int/report/afghanistan/kabul-inquiry-finds-evidence-prison-torture>.

²⁴⁷ UNAMA, *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On*, 20 January 2013, <http://www.refworld.org/docid/50ffe6852.html>, pp. 17, 69, 75.

²⁴⁸ UNAMA, *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On*, 20 January 2013, <http://www.refworld.org/docid/50ffe6852.html>, pp. 72-73.

²⁴⁹ UNAMA, *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On*, 20 January 2013, <http://www.refworld.org/docid/50ffe6852.html>, p. 9. The AIHRC report of 17 March 2012 came to a similar conclusion, stating that "the Afghan government has thus far largely failed to hold individuals responsible for detainee abuse accountable." AIHRC and Open Society Foundations, *Torture, Transfers, and Denial of Due Process: The Treatment of Conflict-Related Detainees in Afghanistan*, 17 March 2012, <http://www.refworld.org/docid/512241ec2.html>, p. 3. Afghanistan's Representative to the UN Human Rights Council rejected the accusations of systematic torture of detainees in Afghan detention facilities, but acknowledged the existence of "weaknesses" in Afghanistan's criminal justice system. Human Rights Council, 19th Regular Session, Geneva, 27 February – 23 March 2012, *Statement by M. Sharif Ghalib, Deputy Permanent Representative, Charge d'Affaires, a.i.*, pp. 4-5 (on file with UNHCR); see also Human Rights Watch, *Afghanistan: Decree Increases Detainees' Risk of Torture*, 10 January 2012, <http://www.refworld.org/docid/4f0fe0b72.html>.

²⁵⁰ UNAMA, *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On*, 20 January 2013, <http://www.refworld.org/docid/50ffe6852.html>, pp. 76-81. The six-phase plan included on-site facility inspection, training on human rights and detainee treatment, monitoring detention facilities, supporting accountability actions by the Government and facilitating transparency between ISAF and government detention operations.

²⁵¹ UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/728-S/2012/133, 5 March 2012, <http://www.refworld.org/docid/4fbf60732.html>, para. 33.

²⁵² UNAMA, *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On*, 20 January 2013, <http://www.refworld.org/docid/50ffe6852.html>, pp. 79-81.

²⁵³ UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/728-S/2012/133, 5 March 2012, <http://www.refworld.org/docid/4fbf60732.html>, para. 33.

²⁵⁴ Human Rights Council, Nineteenth Session, *Report of the United Nations High Commissioner for Human Rights on the Human Rights situation in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, para. 40. Concerns were furthermore expressed about the transfer in January 2012 of control over Afghanistan's prisons from the Justice Ministry to the Interior Ministry. UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/855 – S/2012/462, 20 June 2012, <http://www.refworld.org/docid/5118c1152.html>, para. 33; Human Rights Watch, *Afghanistan: Decree Increases Detainees' Risk of Torture*, 10 January 2012, <http://www.refworld.org/docid/4f0fe0b72.html>. Human Rights Watch noted that in 2003 control of Afghanistan's prisons had been transferred from the Interior Ministry to the Justice Ministry, in what was seen at the time as a crucial reform of the justice system. Human Rights Watch expressed concern that placing all prisoners under Interior Ministry control would increase the likelihood that the Afghan police would have direct authority over criminal suspects during interrogation. The organization expressed concern that, in light of the police's record of reliance on abusive law enforcement methods, this would increase the risk of torture and cruel, inhuman or degrading treatment in prisons. *Ibid.* See also UNAMA, *Amid Challenges, UN Supports Afghan Efforts to Improve Corrections Facilities*, 8 July 2013, <http://unama.unmissions.org/Default.aspx?tabid=12254&ctl=Details&mid=15756&ItemID=37016&language=en-US>.

the transfers would put detainees at risk of torture or cruel, inhuman and degrading treatment;²⁵⁵ and that the considerable increase in the number of detainees whose cases needed to be prosecuted by the national security criminal court would exacerbate the existing capacity problems, thus increasing the risk of prolonged pre-trial detention and due process violations.²⁵⁶

In light of the foregoing, UNHCR considers that individuals suspected of supporting AGEs may be in need of international refugee protection on the ground of (imputed) political opinion, depending on their individual profile and circumstances of the case. In view of the need to maintain the civilian and humanitarian character of asylum, former armed elements should only be considered as asylum-seekers if it has been established that they have genuinely and permanently renounced military activities.²⁵⁷ Claims by persons with the aforementioned profile, may, furthermore, give rise to the need to examine possible exclusion from refugee status. In view of the particular circumstances and vulnerabilities of children, the application of the exclusion clauses to children needs to be exercised with great caution.²⁵⁸ Where children associated with armed groups are alleged to have committed crimes, it is important to bear in mind that they may be victims of offences against international law and not just perpetrators.²⁵⁹

- ²⁵⁵ Amnesty International, *Afghanistan-US Prison Transfer Gets Go-Ahead Despite Torture Risks*, 5 April 2012, <http://www.amnesty.org/zh-hant/node/30730>. The transfer of prisoners followed the conclusion of a memorandum of understanding in March 2012 between the US Government and the Government of Afghanistan. New York Times, *U.S. and Afghanistan Agree on Prisoner Transfer as Part of Long-Term Agreement*, 9 March 2012, <http://www.nytimes.com/2012/03/10/world/asia/us-and-afghanistan-agree-on-detainee-transfer.html>. The transfer of the detainees held at Bagram to Afghan authorities had been scheduled to be completed by September 2012, but disagreements between the American and Afghan authorities about whether the detainees should be put on trial or should continue to be held indefinitely without trial led to repeated delays in the handover. A handover ceremony was finally held in March 2013, following Afghan government assurances that detainees who are deemed to pose a danger to Afghans and international forces will continue to be detained under Afghan law. UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 13 June 2013, A/67/889 – S/2013/350, <http://www.refworld.org/docid/51c00fe74.html>, paragraph 29; Wall Street Journal, *U.S. Hands Prison Over to Afghans*, 25 March 2013, <http://online.wsj.com/article/SB10001424127887324789504578382320464998116.html>; Aljazeera, *US Hands Over Bagram Prison to Afghanistan*, 26 March 2013, <http://www.aljazeera.com/news/asia/2013/03/201332534437116216.html>. Specific concerns were raised about the transfer of up to 100 high-risk juveniles to the Kabul Juvenile Rehabilitation Centre, a facility which was already overcrowded and which was, moreover, not intended to house high-level security detainees. UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/67/354–S/2012/703, 13 September 2012, <http://www.refworld.org/docid/5065a16a2.html>, para. 44. The first group of detainees captured by British forces in Afghanistan was transferred to the Afghan authorities in June 2013, while legal challenges continued to prevent the transfer of other detainees. BBC, *UK Forces Begin Transfer of Afghan Detainees*, 28 June 2013, <http://www.bbc.co.uk/news/uk-23097273>. Both Canada and the United Kingdom ceased the transfer of detainees to specific NDS facilities at various times in previous years, based on reports of torture and ill-treatment; these countries subsequently implemented post-transfer monitoring schemes, allowing them to track the treatment of detainees handed over to Afghan authorities. See Government of Canada, *Canadian Forces Release Statistics on Afghanistan Detainees*, 9 September 2010, http://www.afghanistan.gc.ca/canada-afghanistan/news-nouvelles/2010/2010_09_22b.aspx?lang=eng; and R (on the application of Evans) v. Secretary of State for Defence, [2010] EWHC 1445 (Admin), 25 June 2010, <http://www.refworld.org/docid/4c4049be2.html>. However, in its 17 March 2012 report, the AIHRC suggested that post-transfer monitoring systems might not in fact be sufficient to provide guarantees against the use of torture or cruel, inhuman and degrading treatment, in view of concerns raised in its report, including evidence of off-site abuse and detainees' fear of reprisals for disclosing abuse. AIHRC and Open Society Foundations, *Torture, Transfers, and Denial of Due Process: The Treatment of Conflict-Related Detainees in Afghanistan*, 17 March 2012, <http://www.refworld.org/docid/512241ec2.html>, p. 3.
- ²⁵⁶ UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/5113aeeb2.html>, para. 36; New York Times, *U.S. Puts Transfer of Detainees to Afghans on Hold*, 9 September 2012, <http://www.nytimes.com/2012/09/10/world/asia/us-puts-afghan-transfers-at-parwan-prison-on-hold.html>; Open Society Foundations, *Remaking Bagram: The Creation of an Afghan Internment Regime and the Divide over US Detention Power*, 6 September 2012, <http://www.refworld.org/docid/512240d82.html>.
- ²⁵⁷ UNHCR Executive Committee, No. 94 (LIII) - 2002, *Conclusion on the civilian and humanitarian character of asylum*, 8 October 2002, <http://www.refworld.org/docid/3dafdd7c4.html>. For guidance on how to establish the genuineness and permanence of renunciation, see, by analogy, UNHCR, *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum*, September 2006, <http://www.refworld.org/docid/452b9bca2.html>.
- ²⁵⁸ For further guidance on the application of the exclusion clauses to children, see UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <http://www.refworld.org/docid/4b2f4f6d2.html>, paras. 58-64.
- ²⁵⁹ The Paris Principles state: "Children who are accused of crimes under international law allegedly committed while they were associated with armed forces or armed groups should be considered primarily as victims of offences against international law; not only as perpetrators. They must be treated in accordance with international law in a framework of restorative justice and social rehabilitation, consistent with international law which offers children special protection through numerous agreements and principles". UNICEF, *The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, February 2007, <http://www.refworld.org/docid/465198442.html>, paras. 3.6 and 3.7.

5. *Members of Minority Religious Groups, and Persons Perceived as Contravening Sharia Law*

The Constitution provides that followers of religions other than Islam are “free within the bounds of law in the exercise and performance of their religious rights.”²⁶⁰ However, the Constitution also declares that Islam is the official religion of the State²⁶¹ and that “[n]o law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan.”²⁶² The Constitution provides furthermore that the courts shall follow Hanafi jurisprudence, a school of Sunni Islamic jurisprudence, in situations where neither the Constitution nor other laws provide guidance.²⁶³ Afghan jurists and government officials have been criticized for giving precedence to Islamic law over Afghanistan’s obligations under international human rights law,²⁶⁴ in situations where the Constitution’s commitments to the two bodies of law are in conflict, in particular in relation to the rights of those Afghans who are not Sunni Muslims and in relation to the rights of women.²⁶⁵

a) Minority Religious Groups

Non-Muslim minority groups, particularly Christian, Hindu, and Sikh groups, continue to suffer discrimination under the law.²⁶⁶ For example, in situations where the Constitution and Afghanistan’s codified laws do not provide guidance, the Constitution defers to Hanafi Sunni jurisprudence. This applies to all Afghan citizens, regardless of their religion. The only exception is for matters of personal law where all parties are Shia Muslims, in which case the Shiite Personal Status Law applies. There is no separate law for other religious minorities. Non-Muslims can reportedly be married to each other only if they do not publicly acknowledge their non-Islamic beliefs.²⁶⁷

²⁶⁰ Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>, Article 2.

²⁶¹ Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>, Article 2.

²⁶² Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>, Article 2. Article 149 places restrictions on any future amendments of the Constitution and provides, among other restrictions, “The principles of adherence to the tenets of the Holy religion of Islam as well as Islamic Republicanism shall not be amended.”

²⁶³ Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>, Article 130. The Hanafi school of Islamic jurisprudence is one of four schools of Sunni Islamic jurisprudence. The Office of Fatwa and Accounts within the Supreme Court interprets Hanafi jurisprudence when a judge needs assistance in understanding its application. US Department of State, *2012 Report on International Religious Freedom - Afghanistan*, 20 May 2013, <http://www.refworld.org/docid/519dd4ec77.html>. Matters of family law concerning members of the Shia minority in Afghanistan are governed by the Shiite Personal Status Law, which was adopted pursuant to Article 131 of the Constitution of Afghanistan (Shiite Personal Status Law, March 2009, <http://www.refworld.org/docid/4a24ed5b2.html>).

²⁶⁴ Article 6 of the Constitution provides that “The State shall create a prosperous and progressive society based on [...] protection of human rights”, while Article 7 provides that “The United Nations Charter, inter-state agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights shall be respected”. Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>.

²⁶⁵ US Department of State, *2012 Report on International Religious Freedom - Afghanistan*, 20 May 2013, <http://www.refworld.org/docid/519dd4ec77.html>; US Commission on International Religious Freedom, *USCIRF Annual Report 2013 - Tier 2: Afghanistan*, 30 April 2013, <http://www.refworld.org/docid/51826ef1b.html>. For further analysis of the situation of women in Afghanistan, see Section III.A.7. For further guidance on religion-based asylum claims, see UNHCR, *Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, HCR/GIP/04/06, 28 April 2004, <http://www.refworld.org/docid/4090f9794.html>.

²⁶⁶ US Department of State, *2012 Report on International Religious Freedom - Afghanistan*, 20 May 2013, <http://www.refworld.org/docid/519dd4ec77.html>. While reliable data on religious demography is not available, estimates suggest that 80 per cent of the population is Sunni Muslim, 19 per cent Shia Muslim, while 1 per cent belong to other religious groups. The US State Department notes that, “The Ismailis, who self identify as a Shia denomination, comprise approximately 5 percent of the total population. Leaders of minority religious communities estimate there are 350 Sikh families and 30 Hindu families. Estimates of the Bahai and Christian communities are less clear because neither group practices openly for fear of persecution. Reportedly, the Christian community is between 500 and 8,000 persons and the Bahai community is approximately 2,000 persons. In addition, there are small numbers of practitioners of other religions. There is one known Jewish citizen.” US Department of State, *2012 Report on International Religious Freedom - Afghanistan*, 20 May 2013, <http://www.refworld.org/docid/519dd4ec77.html>. The 2011 US State Department report noted that most members of the non-Muslim communities in Afghanistan left the country during the civil war and the period of Taliban rule that followed, so that by 2001 these non-Muslim populations had been virtually eliminated. Since the fall of the Taliban, some members of religious minorities have returned, but others have since left Kabul due to economic hardship and discrimination. Estimates from Hindu and Sikh religious leaders indicate that their population shrank in the 2011 compared to 2010. US Department of State, *2011 Report on International Religious Freedom - Afghanistan*, 30 July 2012, <http://www.refworld.org/docid/502105e25a.html>.

²⁶⁷ US Department of State, *2012 Report on International Religious Freedom - Afghanistan*, 20 May 2013, <http://www.refworld.org/docid/519dd4ec77.html>; US Commission on International Religious Freedom, *USCIRF Annual Report 2013 - Tier 2: Afghanistan*, 30 April 2013, <http://www.refworld.org/docid/51826ef1b.html>. The US State Department report notes that according to the Afghanistan Independent Human Rights Commission, on several occasions marriages between Sunni and Shia Muslims have been annulled as *haram*. Furthermore, a Muslim man may marry a Christian or Jewish woman (women from other religious minorities must first convert to Islam). A Muslim woman is not allowed to marry a non-Muslim man.

Non-Muslim minority groups are reported to continue to suffer societal harassment and in some cases violence;²⁶⁸ the government reportedly did not protect religious minorities from such ill-treatment.²⁶⁹ Members of religious minorities such as Baha'is and Christians reportedly avoided stating their beliefs publicly or gathering openly to worship, out of fear of discrimination, ill-treatment, arbitrary detention, or death.²⁷⁰

In May 2007, the General Directorate of Fatwas and Accounts of the Afghan Supreme Court ruled that the Baha'i faith was distinct from Islam and a form of blasphemy. It held that all Muslims who converted to the Baha'i faith were apostates and that all Baha'is were infidels.²⁷¹ Baha'is are reported to have lived a covert existence since the ruling.²⁷²

Societal attitudes towards Christians reportedly remained openly hostile, and Christians are forced to conceal their faith.²⁷³ There are no public churches left in Afghanistan,²⁷⁴ and Christians worship alone or in small congregations in private homes.

Shia representation in government has increased,²⁷⁵ and overt discrimination by Sunnis against the Shia community has reportedly decreased.²⁷⁶ However, violent attacks targeting the Shia population continue to occur; for example, a double attack in Kabul and Mazar-e Sharif in December 2011, apparently targeting Shias, killed at least 58 people.²⁷⁷ It should be noted that in Afghanistan ethnicity and religion are often inextricably linked, especially in the case of the Hazara ethnic group, which is predominantly Shia. As a result, it is not always possible to distinguish clearly between a risk on the ground of religion and a risk on the ground of ethnicity.²⁷⁸

The Sikh and Hindu communities, although allowed to practice their religion publicly, reportedly continue to face discrimination, including when seeking government jobs. They are also reported to suffer intimidation and harassment during major religious celebrations.²⁷⁹ Both communities report not being able to cremate their dead in accordance with their customs, due to interference by those who live near the cremation sites.²⁸⁰ Sikhs and Hindus have reportedly been victims of illegal

²⁶⁸ Freedom House, *Freedom in the World 2012 - Afghanistan*, 22 March 2012, <http://www.refworld.org/docid/4f6b210837.html>.

²⁶⁹ US Department of State, *2012 Report on International Religious Freedom - Afghanistan*, 20 May 2013, <http://www.refworld.org/docid/519dd4ec77.html>.

²⁷⁰ US Department of State, *2012 Report on International Religious Freedom - Afghanistan*, 20 May 2013, <http://www.refworld.org/docid/519dd4ec77.html>.

²⁷¹ Bahai Awareness, *Fatwa of Ulema Council of Afghanistan*, August 2011, http://www.bahaiawareness.com/fatwas_afghanistan.html. See also, for example, Freedom House, *Freedom in the World 2010 - Afghanistan*, 3 May 2010, <http://www.refworld.org/docid/4c0ceb0d28.html>.

²⁷² For example, Baha'is were unable to attend to their dead in accordance with their customs, but reportedly refrained from lodging formal complaints because they sought to avoid drawing government attention. Similarly, although Baha'i community leaders expressed concerns over land disputes, reportedly they often chose not to pursue restitution through the courts for fears of retaliation. See US Department of State, *2012 Report on International Religious Freedom - Afghanistan*, 20 May 2013, <http://www.refworld.org/docid/519dd4ec77.html>; US Commission on International Religious Freedom, *USCIRF Annual Report 2013 - Tier 2: Afghanistan*, 30 April 2013, <http://www.refworld.org/docid/51826ef1b.html>.

²⁷³ US Commission on International Religious Freedom, *USCIRF Annual Report 2013 - Tier 2: Afghanistan*, 30 April 2013, <http://www.refworld.org/docid/51826ef1b.html>.

²⁷⁴ The last remaining church was reportedly razed to the ground in 2010 by the owner of the land on which the church had stood. CNS News, *Not a Single Christian Church Left in Afghanistan, Says State Department*, 10 October 2011, <http://cnsnews.com/news/article/not-single-christian-church-left-afghanistan-says-state-department>.

²⁷⁵ 59 of Afghanistan's 249 Members of Parliament are Shia. US Commission on International Religious Freedom, *Annual Report 2012 - Afghanistan*, March 2012, <http://www.refworld.org/docid/4f71a66d32.html>.

²⁷⁶ US Department of State, *2012 Report on International Religious Freedom - Afghanistan*, 20 May 2013, <http://www.refworld.org/docid/519dd4ec77.html>. The US State Department report notes that while four members of the Shia Ismaili community served as Members of Parliament, some members of the Ismaili community complained of being marginalized from positions of political authority. The report also notes that the treatment of Shias varied by locality.

²⁷⁷ The attack in Kabul hit a Shia shrine packed with worshippers, while the attack in Mazar-e-Sharif struck near a Shia mosque. BBC, *Afghanistan Bombs Kill 58 in Kabul and Mazar-e-Sharif*, 6 December 2011, <http://www.bbc.co.uk/news/world-asia-16046079>.

²⁷⁸ For further analysis of the situation of members of ethnic minority groups, see Section III.A.11.

²⁷⁹ US Department of State, *2012 Report on International Religious Freedom - Afghanistan*, 20 May 2013, <http://www.refworld.org/docid/519dd4ec77.html>. An Afghan Sikh who was deported from the United Kingdom in 2010 was arrested upon his arrival in Afghanistan. He was detained for 18 months, but was never officially charged with any crime. While in detention he suffered harassment because of his religion, and was pressured to convert. He was released in 2012 and flown back to the United Kingdom by the British Government. The Guardian, *Sikh Man Deported to Afghanistan Returned to the UK*, 3 July 2012, <http://www.guardian.co.uk/world/2012/jul/03/sikh-man-deported-afghanistan-returned-uk>.

²⁸⁰ US Department of State, *2012 Report on International Religious Freedom - Afghanistan*, 20 May 2013, <http://www.refworld.org/docid/519dd4ec77.html>. The US State Department report notes that while the Government provided land for the purpose of cremation, following the intervention of a Sikh senator, some Sikhs complained that the land was far from any urban area and in an insecure region, thus rendering it unusable.

occupation and seizure of their land, and have also reportedly been unable to regain access to property lost during the mujahideen era.²⁸¹ The right to education for Hindu and Sikh children is reported to be severely compromised because of abuse, harassment and bullying by other students.²⁸² Although reliable data about the size of the Sikh and Hindu communities in Afghanistan are not available, large numbers of Sikhs and Hindus are believed to have left Afghanistan as a result of the severe difficulties they faced. The small number of Sikhs and Hindus who remain in Afghanistan have reportedly been left even more vulnerable to abuse.²⁸³

b) Conversion from Islam

Conversion from Islam is considered apostasy; under some interpretations of Islamic law in the country it is punishable by death.²⁸⁴ While Afghanistan's Criminal Code does not define apostasy as a crime and the Constitution provides that no deed shall be considered a crime unless defined as such by law, the Penal Code states that egregious crimes, including apostasy, should be punished in line with Hanafi jurisprudence and should be handled by the Attorney General's office. Male citizens over age 18 or female citizens over age 16 of sound mind who convert from Islam and who do not recant their conversions within three days risk the invalidation of their marriage, and deprivation of all property and possessions. They may also face rejection from their families and community members, and loss of employment.²⁸⁵

Those regarded as attempting to convert others also face risks; Christians accused of proselytizing have reportedly been arrested and detained.²⁸⁶

²⁸¹ US Department of State, *2011 Report on International Religious Freedom - Afghanistan*, 30 July 2012, <http://www.refworld.org/docid/502105e25a.html>. See also US Commission on International Religious Freedom, *Annual Report 2012 - Afghanistan*, March 2012, <http://www.refworld.org/docid/4f71a66d32.html>, which quotes the Afghanistan Independent Human Rights Commission as saying that there have been several cases of illegal seizure and occupation of Hindu-owned land in Kabul and Khost province; the Hindus are reported to have been unable to reclaim their lands and to have received little assistance from the Government.

²⁸² In previous years Hindu and Sikh families were reportedly able to circumvent some of these problems by sending their children to private Hindu and Sikh schools, but many of these private schools have closed because of the shrinking Hindu and Sikh population in Afghanistan and because the deteriorating economic circumstances made the private schools unaffordable for the remaining Hindu and Sikh families. US Department of State, *2012 Report on International Religious Freedom - Afghanistan*, 20 May 2013, <http://www.refworld.org/docid/519dd4ec77.html>. Sikh children reported being harassed and beaten by fellow pupils and having their hair cut against their will by fellow pupils. Institute for War and Peace Reporting, *Afghan Sikhs and Hindus Face Discrimination at School*, 28 July 2011, <http://www.refworld.org/docid/4e37c9eb2.html>.

²⁸³ For further analysis of the shrinking population of Hindus and Sikhs in Afghanistan, see Roger Ballard (Centre for Applied South Asian Studies), *The History and Current Position of Afghanistan's Hindu and Sikh Population*, 2011, <http://www.casas.org.uk/papers/pdfpapers/afghansikhs.pdf>.

²⁸⁴ US Department of State, *2012 Report on International Religious Freedom - Afghanistan*, 20 May 2013, <http://www.refworld.org/docid/519dd4ec77.html>.

²⁸⁵ US Department of State, *2012 Report on International Religious Freedom - Afghanistan*, 20 May 2013, <http://www.refworld.org/docid/519dd4ec77.html>; and Foreign and Commonwealth Office, *Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report*, March 2011, <http://www.refworld.org/docid/4d9989c72.html>. (The UKFCO report for 2011, published in April 2012, notes that there has been no change in the situation relating to religious freedom compared to 2010. Foreign and Commonwealth Office, *Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report*, April 2012, <http://www.refworld.org/docid/519c770d4.html>.) The US State Department report notes that converts from Islam may even face death by stoning, but by the end of 2012, there were no reported cases of national or local authorities imposing criminal penalties on converts from Islam. There were also no known cases of converts still in custody from previous years. For reports about the detention of converts from Islam, see New York Times, *Afghan Rights Fall Short for Christian Converts*, 5 February 2011, <http://www.nytimes.com/2011/02/06/world/asia/06mussa.html>; and Christian Post, *Second Afghan Convert Faces Death Penalty under Apostasy Law*, 29 March 2011, <http://www.christianpost.com/news/second-afghan-convert-faces-death-penalty-under-apostasy-law-49632>. The risk that Christian converts may face in Afghanistan has been recognized in national jurisdictions. For example, the UK Asylum and Immigration Tribunal held that a Christian convert from Islam would be at real risk of serious ill-treatment amounting to persecution on return to Afghanistan; see *NM (Christian Converts)* CG [2009] UKAIT 00045, 13 November 2009, <http://www.refworld.org/docid/4afd6a8d2.html>.

²⁸⁶ In October 2010 Shoaib Assadullah was reportedly arrested and detained in Mazar-i-Sharif for six months after having been accused of giving a Bible to a friend. He was reportedly released in May 2011, after which his whereabouts have remained unknown. US Commission on International Religious Freedom, *Annual Report 2012 - Afghanistan*, March 2012, <http://www.refworld.org/docid/4f71a66d32.html>, p. 288. (Reports on Shoaib Assadullah's case vary; according to Amnesty International, he was arrested for having converted from Islam to Christianity himself, and threatened with the death penalty if he did not recant. Amnesty International, *Annual Report 2011: Afghanistan*, <http://www.refworld.org/docid/4dce1585c.html>.) See also US Department of State, *2012 Report on International Religious Freedom - Afghanistan*, 20 May 2013, <http://www.refworld.org/docid/519dd4ec77.html>; the report notes that practising Muslims and charities operated by Afghan Muslims have been wrongly accused of proselytizing for Christianity as a way to discredit the organizations. A 2004 report quotes the then Chief Justice of Afghanistan's Supreme Court as saying that individuals found guilty of "professing the Gospel" may face the death penalty. World Evangelical Alliance, *Geneva Report 2004, A Perspective on Global Religious Freedom: Challenges Facing the Christian Community*, quoted in UK Home Office, *Afghanistan Country of Origin Information Report*, April 2006, http://www.ecoi.net/file_upload/1329_1200312380_afghanistan-280406.pdf, para. 6.163. In *NM (Christian Converts)* CG [2009] UKAIT

Converts from Islam are also at risk from the Taliban, who have threatened anyone who converts to Christianity with death.²⁸⁷

c) Other Acts Contravening Sharia Law

Besides apostasy, other acts on which Afghanistan's laws are silent and in relation to which the courts therefore rely on Islamic law include blasphemy. Under some interpretations of Islamic law blasphemy is a capital crime; men over the age of 18 and women over the age of 16 who are of sound mind and who are accused of blasphemy may thus be at risk of being sentenced to death. As with apostasy, those accused of blasphemy have three days to recant.²⁸⁸

Furthermore, persons accused of committing crimes against Sharia law, such as apostasy, blasphemy, having consensual same-sex relations, or adultery (*zina*), are at risk not only of prosecution, but also of social rejection and violence at the hands of their families, other community members and the Taliban and other AGEs.²⁸⁹

d) Summary

Based on the preceding analysis, UNHCR considers that persons perceived as contravening Sharia law, including persons accused of blasphemy and converts from Islam, as well as members of minority religious groups, may be in need of international refugee protection on the ground of religion, depending on the individual circumstances of the case.²⁹⁰

6. *Individuals Perceived as Contravening the Taliban's Interpretation of Islamic Principles, Norms and Values*

The Taliban have reportedly killed, attacked and threatened individuals and communities who are perceived to contravene the Taliban's interpretation of Islamic principles, norms and values.²⁹¹ Killings, attacks and harassment of individuals who are perceived to act in violation of the Taliban's rules of morality occur in areas under the effective control of the Taliban and other AGEs, as well as in areas that are not, or not fully, controlled by them. Victims of such attacks have included musicians; film makers, directors and actors;²⁹² and men and women playing sports, whether as

00045, 13 November 2009, <http://www.refworld.org/docid/4afd6a8d2.html>, the UK Asylum and Immigration Tribunal considered expert evidence that "The Supreme Court advocates harsh sentences, including the death penalty for crimes such as blasphemy and apostasy."

²⁸⁷ The Taliban are reported to use social media and blogs to threaten Christians. US Commission on International Religious Freedom, *USCIRF Annual Report 2013 - Tier 2: Afghanistan*, 30 April 2013, <http://www.refworld.org/docid/51826ef1b.html>. A video released in June 2011 showed the beheading of a man believed to be a Christian convert by four Taliban militias in Enjil district of Herat province, <http://www.persecution.org/2011/06/23/christian-convert-beheaded-in-afghanistan-as-terror-advances-ahead-of-president%E2%80%99s-pullout-plan>.

²⁸⁸ US Department of State, *2012 Report on International Religious Freedom - Afghanistan*, 20 May 2013, <http://www.refworld.org/docid/519dd4ec77.html>.

²⁸⁹ It should be noted that both men and women may be at risk on the grounds of accusations of engagement in "moral crimes", including adultery (*zina*) and other sexual relations outside wedlock. For further analysis of the treatment of women accused of moral crimes, please refer to Section III.A.7. For further analysis of the treatment of persons perceived as contravening Sharia law, please refer to Sections III.A.6 and III.A.10.

²⁹⁰ For further guidance on religion-based asylum claims, see UNHCR, *Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, HCR/GIP/04/06, 28 April 2004, <http://www.refworld.org/docid/4090f9794.html>. The risk that Christian converts may face in Afghanistan has been recognized in national jurisdictions. For example, the UK Asylum and Immigration Tribunal held that a Christian convert from Islam would be at real risk of serious ill-treatment amounting to persecution on return to Afghanistan; see *NM (Christian Converts)* CG [2009] UKAIT 00045, 13 November 2009, <http://www.refworld.org/docid/4afd6a8d2.html>. Similarly, the Verwaltungsgericht in Germany has held that Hindus from Afghanistan had a well-founded fear of persecution on the grounds of their religion; see Case No. K 103/09.KS.A, Verwaltungsgericht (VG) Kassel, judgment of 27 July 2010, http://www.asyl.net/fileadmin/user_upload/dokumente/17462.pdf; and Case No. 7 K 746/09.F.A, Verwaltungsgericht (VG) Frankfurt/Main, Judgment of 11 February 2010, http://www.asyl.net/fileadmin/user_upload/dokumente/18127.pdf.

²⁹¹ For analysis of the situation of religious leaders who are at risk from AGEs, see Section III.A.1. For analysis of the specific situation of women who are perceived to contravene social mores, see Section III.A.7. For analysis of the specific situation of LGBTI individuals, see Section III.A.10.

²⁹² Reuters, *Family, Taliban Scare Off Actresses in Afghan Film*, 14 June 2011, <http://www.reuters.com/article/2011/06/14/afghanistan-film-women-idU5L3E7H62IU20110614>; New York Times, *A Director's Many Battles to Make Her Movie*, 21 September 2010, <http://www.nytimes.com/2010/09/22/movies/22tulip.html>; BBC, *Kandahar Dreamers Test Taliban Edicts*, 16 August 2009, http://news.bbc.co.uk/2/hi/south_asia/8203830.stm.

amateurs or professionals.²⁹³ Victims of such attacks have also included individuals who attended events or venues that were claimed by the Taliban to be the scene of behaviour in violation of Islamic principles, norms and values, including social gatherings where music was played such as weddings,²⁹⁴ and bird fights and other matches where spectators engaged in gambling.²⁹⁵ The Taliban has also threatened individuals and communities who wore clothing of which it disapproved.²⁹⁶

Based on the evidence presented above, UNHCR considers that persons perceived as contravening the Taliban's interpretation of Islamic principles, norms and values may, depending on the individual circumstances of the case, be in need of international refugee protection on the ground of religion and/or on the ground of imputed political opinion.

7. Women

Since 2001, the Government has taken important steps to improve the situation of women in the country, including the incorporation of international standards for the protection of women's rights into national legislation, notably through the adoption of the Law on Elimination of Violence against Women (EVAW law);²⁹⁷ the adoption of measures to increase women's political participation;²⁹⁸ and the establishment of a Ministry for Women's Affairs.²⁹⁹

However, the situation of women and girls remains of serious concern on a number of fronts.³⁰⁰ The deterioration of the security situation in some parts of the country has undone some of the earlier

²⁹³ According to information available to UNHCR. UNAMA reported that in an area of Nangarhar province the Taliban threatened people playing cricket, stating that their interpretation of Islam does not allow it. UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 28.

²⁹⁴ In August 2012, the Taliban reportedly killed 17 civilians in the Tajaki district in Helmand province, including two women and 15 men; the men had reportedly gathered to listen to music and to watch the women dance. BBC, *Taliban Kill Afghan "Party-Goers" in Helmand*, 27 August 2012, <http://www.bbc.co.uk/news/world-asia-19388869>. On 7 June 2012, a group of 11 AGEs reportedly attacked a local house in a village in Balkh province where music was playing as part of a wedding ceremony and opened fire on the people inside. As a result, two people were killed and three others were wounded. On 21 June 2012, Taliban forces reportedly attacked the Spozmai Restaurant at Qargha Lake in Kabul province, firing at people at close range and killing 21 civilians, including three private security guards, three ANP officers and 15 other people, and wounding seven civilians, including two women. The Taliban claimed responsibility for this attack, stating that the restaurant was used as a venue for immoral behaviour in violation of Islamic principles, norms and values. UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 28.

²⁹⁵ On 31 January 2013, Taliban fighters claimed responsibility for an attack on spectators watching a bird fight in the Greshk district of Helmand province, killing a 13-year-old boy and wounding eight other people. AFP, *Deadly Bomb Blast Hits Afghan Bird Fight*, 31 January 2012, <http://reliefweb.int/report/afghanistan/deadly-bomb-blast-hits-afghan-bird-fight>.

²⁹⁶ UNAMA reported that on 1 June 2012 in Paktika province a night letter was distributed forbidding people from wearing revealing sportswear. UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 28.

²⁹⁷ The Constitution of Afghanistan guarantees equal rights to women and men; see Article 22 of the Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>. In addition, the 2009 EVAW Law criminalizes various forms of violence against women. The text of the law in English is available at <http://sgdatabse.unwomen.org/searchDetail.action?measureId=43483&baseHREF=country&baseHREFId=101>. Afghanistan ratified the Convention on the Elimination of All Forms of Discrimination Against Women in 2003. In 2011 the Government completed its first report to the Committee on the Elimination of All Forms of Discrimination against Women, which was considered at the Committee's 55th Session in July 2012. The Committee's *Concluding Observations on the Combined Initial and Second Periodic Reports of Afghanistan*, 23 July 2013, CEDAW/C/AFG/CO/1-2, can be found at <http://www.refworld.org/docid/51ff5ac94.html>. The Government's report and related documents are available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws55.htm>. See also UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, para. 52. The Government also adopted a National Action Plan for the Women of Afghanistan (NAPWA), 2007-2017, <http://sgdatabse.unwomen.org/uploads/National%20Action%20Plan%20for%20the%20Women%20of%20Afghanistan%202007%20to%202017.pdf>.

²⁹⁸ Women hold 27 per cent of the seats in the National Assembly and 25 per cent of the seats in the Provincial Councils. In the 2010 *Wolesi Jirga* election, 406 of 2,556 candidates were women, a 24 per cent increase from the 2005 election. In total, 69 women filled elected seats, one seat above the reserved number of 68; and 11 women had enough votes to enter the Parliament independent of the reserved seats. Women constitute 24 per cent of participants in the local Community Development Councils. US Department of Defense, *Report on Progress Towards Security and Stability in Afghanistan*, April 2012, http://www.defense.gov/pubs/pdfs/Report_Final_SecDef_04_27_12.pdf, p. 92. However, only nine out of the 80 members of the High Peace Council are women; UNDP, *Top Afghan Official: A Peace Process Without the Participation of Women Will Not Work*, 4 December 2012, <http://www.refworld.org/docid/5124f1222.html>.

²⁹⁹ The Ministry for Women's Affairs was established in 2001, shortly after the fall of the Taliban and in accordance with the Bonn Agreement. For more information on the mandate and activities of the Ministry, see <http://www.mowa.gov.af/en>.

³⁰⁰ The UN Secretary-General reports that "UNAMA continues to observe growing concerns related to the promotion and protection of women's rights." UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/855 – S/2012/462, 20 June 2012, <http://www.refworld.org/docid/5118c1152.html>, para. 35 (italics added). In a reversal of a

progress in women's human rights situation.³⁰¹ Deep-rooted discrimination against women remains pervasive.³⁰² Violence against women and girls remains widespread and is reported to be on the rise;³⁰³ impunity in relation to such violence is reportedly common.³⁰⁴ Women are said to continue to face serious challenges to the full enjoyment of their economic, social and cultural rights.³⁰⁵ Despite advances, poverty, illiteracy, and poor health care continue to affect women disproportionately.³⁰⁶

declining pattern from 2006 to 2010, in 2011 a higher per centage of Afghan women cited "lack of women's rights", "domestic violence" and "forced marriages/dowry" as problems. Civil-Military Fusion Centre, *The Peace Process and Afghanistan's Women*, April 2012, https://www.cimicweb.org/cmo/afg/Documents/Governance/Afghanistan_Women_Reconciliation.pdf, p. 4. A 2011 survey of 213 gender experts around the world for Thomson Reuters Foundation ranked Afghanistan as the most dangerous place in the world to be a woman. <http://www.trust.org/trustlaw/news/trustlaw-poll-afghanistan-is-most-dangerous-country-for-women>.

³⁰¹ See for example Human Rights Watch, *Afghanistan: Rights at Risk as Military Drawdown Advances*, 1 February 2013, <http://www.refworld.org/docid/5118bd4d2.html>.

³⁰² UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/855 – S/2012/462, 20 June 2012, <http://www.refworld.org/docid/5118c1152.html>, para. 35; US Department of Defense, *Report on Progress Towards Security and Stability in Afghanistan*, April 2012, http://www.defense.gov/pubs/pdfs/Report_Final_SecDef_04_27_12.pdf, p. 93; UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, p.1 (Summary) and para. 3. The Gender Policy issued by the Joint Secretariat of the High Peace Council in September 2011 recognized that persistent discrimination against women within Afghanistan has played a role in inhibiting them from taking part in the design and implementation of national peace and reconstruction processes. Civil-Military Fusion Centre, *The Peace Process and Afghanistan's Women*, April 2012, https://www.cimicweb.org/cmo/afg/Documents/Governance/Afghanistan_Women_Reconciliation.pdf, p. 3. Policewomen serving in the ANP are reported to suffer discrimination in their job, as well as sexual harassment and abuse at the hands of their colleagues, including rape. Reuters, *Once a Symbol of New Afghanistan, Can Policewomen Survive?*, 19 December 2012, <http://reliefweb.int/report/afghanistan/insight-once-symbol-new-afghanistan-can-policewomen-survive>.

³⁰³ UNAMA, *Afghanistan: Violence against Women on the Rise in Afghanistan: Deputy Minister*, 7 January 2013, <http://www.refworld.org/docid/5124f1fa2.html>. The AIHRC estimated that the number of reported cases of violence against women had increased by 22 per cent during the last six months of 2012 compared to the same period in 2011. Inter Press Service, *Violence Against Women on the Rise*, 5 December 2012, <http://www.ipsnews.net/2012/12/violence-against-afghan-women-on-the-rise/>. See also Tolo News, *Violence Against Women Cases Hit 550 Last Month*, 24 October 2012, <http://tolonews.com/en/afghanistan/8088-violence-against-women-cases-hit-550>. The 2012 figures are part of a larger trend of increasing numbers of reported incidents of violence against women. In the seven-month period between 21 March and 21 October 2012 the AIHRC recorded 4,010 cases of violence against women, compared to 2,299 cases for the 12-month period between 21 March 2010 and 21 March 2011. UNAMA, *Still a Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan*, December 2012, <http://www.refworld.org/docid/50c72e0d2.html>, p. 2. The 2010-2011 figures themselves represented an increase over the 2009-2010 figures. AIHRC, *Fifth Report: Situation of Economic and Social Rights in Afghanistan*, December 2011, <http://www.refworld.org/docid/511e58cf0.html>, pp. 18, 57. It should be noted that comprehensive official statistics on the number of cases of violence against women in Afghanistan are not available; what is clear is that most incidents go unreported. UNAMA notes that the increase in reported cases may be the result of increased public awareness and sensitization to violence against women and its harmful consequences, and that as a result "increased reporting may not necessarily reflect an increase in actual incidents of violence against women". It nevertheless cautions that "incidents of violence against women are greatly under-reported". See UNAMA, *Still a Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan*, December 2012, <http://www.refworld.org/docid/50c72e0d2.html>, pp. iv, 2, 4. See also Pajhwok Afghan News, *Violence against Women Up in Western Zone*, 12 June 2012, <http://www.pajhwok.com/en/2012/06/12/violence-against-women-western-zone>; Ariana News, *Violence Against Women Increases in Herat*, 8 March 2012, <http://ariananews.af/regional/violence-against-women-increases-in-herat/>; Tolo News, *Concern over Increased Violence Against Women in Balkh*, 5 March 2012, <http://tolonews.com/en/afghanistan/5539-concern-over-increased-violence-against-women-in-balkh>; Pajhwok Afghan News, *Violence against Nangarhar Women on the Rise*, 27 February 2012, <http://www.pajhwok.com/en/2012/02/27/violence-against-nangarhar-women-rise>; Khaama Press, *Concerns over Increased Violence against Women in Baghlan*, 6 February 2012, <http://www.khaama.com/concerns-over-increased-violence-against-women-in-baghlan-576/>; Pajhwok Afghan News, *Violence against Women on the Rise in Urzgan*, 15 January 2012, <http://www.pajhwok.com/en/2012/01/15/violence-against-women-rise-urzgan>; Khaama Press, *Concerns over Increasing Violence on Women in Afghanistan*, 21 November 2011, <http://www.khaama.com/7890-562/>.

³⁰⁴ UNAMA reports that there are "patterns of reluctance by police to arrest perpetrators of violence against women connected to armed groups affiliated with Anti-Government Elements, or pro-Government militias, *Arbaki*, Afghan Local Police (ALP), influential persons from in or outside the Government or those who would pay bribes." UNAMA notes that this phenomenon "combined with weak accountability mechanisms in the police and discriminatory attitudes towards women resulted in widespread impunity for perpetrators of violence against women across the country." UNAMA, *Still a Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan*, December 2012, <http://www.refworld.org/docid/50c72e0d2.html>, p. 4. See also Inter Press Service, *Violence Against Women on the Rise*, 5 October 2012, <http://www.ipsnews.net/2012/12/violence-against-afghan-women-on-the-rise/>; UN Women, *UN Women Condemns Violence Against Afghan Women and Calls for Justice*, 13 July 2012, <http://www.reliefweb.int/report/afghanistan/un-women-condemns-violence-against-afghan-women-and-calls-justice>.

³⁰⁵ UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/855 – S/2012/462, 20 June 2012, <http://www.refworld.org/docid/5118c1152.html>, para. 35. A UNESCO report refers to a growing "brain drain" from Afghanistan, and notes that women who remain in Afghanistan are increasingly likely to choose not to work, for fear of being targeted for transgressing social mores. UNESCO, *Education for All Global Monitoring Report 2010*, <http://www.refworld.org/docid/51224eae2.html>.

³⁰⁶ US Department of Defense, *Report on Progress Towards Security and Stability in Afghanistan*, April 2012, http://www.defense.gov/pubs/pdfs/Report_Final_SecDef_04_27_12.pdf, p. 93. Amnesty International states that progress in relation to women's access to health and education is in reverse. Amnesty International, *Afghanistan: Don't Trade Away Women's Rights*, October 2011, <http://www.refworld.org/docid/5122511f2.html>. Maternity hospitals run by foreign organizations have come under attack. For example, on 17 April 2012 a bomb attack on a maternity hospital run by MSF in Khost injured seven people and forced MSF to close the hospital. MSF, *Medical Care Suspended in Khost after Attack on MSF Hospital*, 17 April 2012,

Observers have noted that the government's commitment to the promotion and protection of women's rights has at times been in doubt.³⁰⁷ The implementation of legislation to protect women's rights remains slow.³⁰⁸ This includes in particular the implementation of the EVAW law. The law, promulgated in August 2009, criminalizes child marriage, forced marriage and 17 other acts of violence against women, including rape and domestic violence; it also specifies punishments for perpetrators.³⁰⁹ While some progress has been noted in the application of the EVAW law by prosecutors and primary courts,³¹⁰ the vast majority of cases, including instances of serious crimes

<http://www.doctorswithoutborders.org/press/release.cfm?id=5916&cat=press-release&ref=news-index>. The hospital was reopened in October 2012. MSF, *MSF Resuming Activities in Khost*, 17 October 2012, <http://reliefweb.int/report/afghanistan/msf-resuming-activities-khost>.

³⁰⁷ According to Human Rights Watch, in May 2013 President Karzai told women's rights activists that he was unable to support further efforts to protect Afghanistan's EVAW law, and advised them to stop advocating for stronger enforcement of the EVAW law. HRW, *Afghanistan: Defend Women's Rights*, 28 June 2013, <http://www.hrw.org/news/2013/06/28/afghanistan-defend-women-s-rights>. See also Radio Free Europe / Radio Liberty, *Protections For Women Under Threat In Afghanistan*, 24 June 2013, <http://www.rferl.org/content/afghanistan-women-gender-legislature-quota/25026221.html>; The Guardian, *Afghan Women's Rights under Threat*, 20 June 2013, <http://www.guardian.co.uk/global-development/2013/jun/20/afghan-womens-rights-under-threat>. The US Department of Defense noted, "In March [2012], a statement by the Ulema Council, endorsed by President Karzai, outlined standards of behavior for women that were stricter than those in the Afghan constitution. President Karzai's intent is unclear, and the statement by the Ulema Council raises concerns about its negative implications for the advance of Afghan women's rights." US Department of Defense, *Report on Progress Towards Security and Stability in Afghanistan*, April 2012, http://www.defense.gov/pubs/pdfs/Report_Final_SecDef_04_27_12.pdf, p. 93. The statement by the government-appointed Ulema Council sought to justify certain types of violence against women, and called for Afghan law to forbid women from mixing with men in places of work or education and to prescribe the wearing of the veil for all Afghan women. See Civil-Military Fusion Centre, *The Peace Process and Afghanistan's Women*, April 2012, https://www.cimicweb.org/cmo/afg/Documents/Governance/Afghanistan_Women_Reconciliation.pdf, p. 5; Human Rights Watch, *"I Had to Run Away": The Imprisonment of Women for 'Moral Crimes' in Afghanistan*, March 2012, <http://www.refworld.org/docid/4f787d142.html>, p. 7. At the same time, President Karzai has, with increasing frequency, pardoned women convicted for "moral crimes." Human Rights Watch, *"I Had to Run Away"*, p. 3. Other acts by the Government that have given rise to concerns about the Government's position on women's rights include the fact that, in January 2011, the Government issued a draft regulation on women's shelters which threatened to jeopardize the shelters' independence by bringing them under government control and requiring women to obtain government approval before being granted access to the shelters. The proposals were modified only under intense pressure from women's rights advocates within and without Afghanistan; the Afghan Council of Ministers approved revised regulations in September 2011. UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, para. 29. In July 2012 controversy erupted again when the Minister of Justice accused the shelters of hosting "immorality and prostitution". Human Rights Watch, *Free Women Jailed for "Running Away"*, 18 September 2012, <http://www.refworld.org/docid/505c1c852.html>; Radio Free Europe / Radio Liberty, *Afghan Women's Shelters, A lifeline for Many, Face Uncertain Future*, 23 July 2012, <http://www.rferl.org/content/afghanistan-womens-shelters-uncertain-future/24653459.html>; UNAMA, *UN Supports Women's Shelters*, 19 June 2012, <http://www.refworld.org/docid/5124f3d72.html>; Afghan Women Network and others, *Declaration regarding the Accusations against the Safe Houses/Women's Shelters*, 18 June 2012, <http://www.afghanwomennetwork.af/Latest%20Updates/Declaration%20regarding%20the%20Accusations%20against%20the%20Safe%20Houses.pdf>; Foreign and Commonwealth Office, *Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report*, April 2012, <http://www.fco.gov.uk/en/news/latest-news/?view=News&id=758877882>, pp. 165-166.

³⁰⁸ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding Observations on the Combined Initial and Second Periodic Reports of Afghanistan*, 23 July 2013, CEDAW/C/AFG/CO/1-2, <http://www.refworld.org/docid/51ff5ac94.html>, paragraph 7; UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, paras. 3, 26, 28, 30. The UN High Commissioner for Human Rights noted that while provincial commissions for the prevention of violence against women were established in 28 of Afghanistan's 34 provinces, only 16 met regularly. *Ibid.*, para. 30. Similarly, the implementation of the Government's National Action Plan for the Women of Afghanistan has been "slow and insignificant". Government of Afghanistan, *Ministry of Women's Affairs Priority Programme 2010-2013*, February 2011.

³⁰⁹ Law on Elimination of Violence Against Women (2009), <http://sgdatabse.unwomen.org/searchDetail.action?measureId=43483&baseHREF=country&baseHREFId=101>. The law was enacted under a presidential decree; by May 2013 the Law was yet to be approved by Parliament. On 18 May 2013 the Wolesi Jirga opened a debate on the Law; draft amendments were put forward in an attempt to secure parliamentary approval for the law and strengthen some provisions. Conservative lawmakers reportedly attacked key provisions, including provisions on shelters for women victims of violence and on a minimum marriage age. Leaders of Afghan civil society called upon parliamentarians to approve the law without any amendments. UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 13 June 2013, A/67/889 – S/2013/350, <http://www.refworld.org/docid/51c00fe74.html>, paragraph 31; Afghanistan Analysts Network, *The EVAW law – An Evil Law? The Backlash at Kabul University*, 26 May 2013, <http://www.afghanistan-analysts.org/the-evaw-law-an-evil-law-the-backlash-at-kabul-university>; UNAMA, *Afghan Civil Society Calls for EVAW Law Support*, 16 May 2013, <http://reliefweb.int/report/afghanistan/afghan-civil-society-calls-evaw-law-support>. Human Rights Watch stated that the attempt to secure parliamentary approval for the law "ended in shambles". HRW, *Afghanistan: Defend Women's Rights*, 28 June 2013, <http://www.hrw.org/news/2013/06/28/afghanistan-defend-women-s-rights>.

³¹⁰ UNAMA observed that in the period between October 2011 and September 2012, progress was made in the registration of incidents and the application of the EVAW law by prosecutors and primary courts (but not by the police), compared to the previous reporting period between March 2010 and September 2011. Nevertheless, UNAMA also reported that compared to the number of incidents of violence against women reported to the AIHRC, the number of cases resolved through the judicial process and convictions using the EVAW law "remained very low". UNAMA, *Still a Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan*, December 2012, <http://www.refworld.org/docid/50c72e0d2.html>, p. 3. See also Amnesty International, *Afghanistan: 11 Lashes for Teen Shows Why Climate of Violence against Women Must Be Tackled*, 20 September 2012, <http://www.refworld.org/docid/505c19522.html>; UNAMA and UN Women, *UN Calls for Full and Speedy Implementation of the Law on Elimination of Violence Against Women*, 8 March 2012,

against women, are still being mediated by traditional dispute resolution mechanisms rather than prosecuted as required by the law. UNAMA reports that both the ANP and prosecutors' offices continue to refer numerous cases, including serious crimes, to *jirgas* and *shuras* for advice or resolution, thereby undermining the implementation of the EAW law and reinforcing harmful traditional practices.³¹¹ Decisions of these mechanisms place women and girls at risk of further victimization.³¹²

The Shiite Personal Status Law,³¹³ which regulates family law matters such as marriage, divorce and inheritance rights for members of the Shia community, includes a number of provisions that discriminate against women, notably in relation to guardianship, inheritance, under-age marriages, and limitations on movements outside the home.³¹⁴

While the protection concerns identified in this section affect women and girls across the country, the situation in areas under the effective control of AGEs is reported to be of particular concern. In areas under their control, the Taliban are reported to have severely curtailed the rights of girls and women, including their freedom of movement and political participation.³¹⁵ Moreover, in areas under the effective control of AGEs women are likely to face particular difficulties in accessing justice and obtaining effective remedies for any violations of their rights. Indeed, the parallel justice structures operated by the Taliban in areas under their control routinely violate women's rights.³¹⁶

UNHCR notes that concerns have been expressed about the impact of the ongoing withdrawal of international troops on the situation of women in Afghanistan, and reported possible concessions on women's rights in the context of peace negotiations with the Taliban and other AGEs.³¹⁷ UNHCR

<http://www.unwomen.org/2012/03/on-international-womens-day-un-calls-for-full-and-speedy-implementation-of-the-law-on-elimination-of-violence-against-women-in-afghanistan/>; OHCHR/UNAMA, *A Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan*, November 2011, <http://www.refworld.org/docid/50c72e0d2.html>. See also UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, paras. 3, 26, 28, 30. The UN High Commissioner for Human Rights notes that the EAW law has been weakened in some respects since coming into force. For example, the Supreme Court annulled article 42 of the Law, which forbade the use of pardons convicted under the Law. The Court held that the provision was in conflict with the President's constitutional power of pardon. *Ibid.*, para. 28. See also UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/728 – S/2012/133, 5 March 2012, <http://www.refworld.org/docid/4fb60732.html>, pp. 23-24.

³¹¹ UNAMA, *Still a Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan*, December 2012, <http://www.refworld.org/docid/50c72e0d2.html>, p. 4. See also UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding Observations on the Combined Initial and Second Periodic Reports of Afghanistan*, 23 July 2013, CEDAW/C/AFG/CO/1-2, <http://www.refworld.org/docid/51ff5ac94.html>, paragraph 14; IRIN, *Afghan Women Navigate a Challenging Judicial Landscape*, 12 March 2013, <http://reliefweb.int/report/afghanistan/afghan-women-navigate-challenging-judicial-landscape>.

³¹² UNAMA notes that as a result of the lack of due oversight by the entity that refers the case to a traditional dispute resolution mechanism, such as the provincial department of women's affairs, the ANP, or prosecutors, women often remain at risk of recurrent violence when they returned to their families following such mediation. UNAMA, *Still a Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan*, December 2012, <http://www.refworld.org/docid/50c72e0d2.html>, p. 4.

³¹³ Shiite Personal Status Law, March 2009, <http://www.refworld.org/docid/4a24ed5b2.html>. The law was adopted pursuant to Article 131 of the Constitution of Afghanistan.

³¹⁴ See, for example, US Department of State, *2010 Report on International Religious Freedom - Afghanistan*, 17 November 2010, <http://www.refworld.org/docid/4cf2d0bb64.html>. The controversial provision requiring a wife to provide for the sexual enjoyment of her husband was removed from the Law following domestic and international pressure. However, Afghan legal experts are of the view that Article 162 of the amended Law could be used by a husband to effectively deny maintenance to a wife if she refuses him what he perceives as his conjugal rights; see UN Committee on Economic, Social and Cultural Rights (CESCR), *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: concluding observations of the Committee on Economic, Social and Cultural Rights: Afghanistan*, E/C.12/AFG/CO/2-4, 7 June 2010, <http://www.refworld.org/docid/4c1732dc2.html>. See also UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of human rights*, A/HRC/13/62, 11 January 2010, <http://www.refworld.org/docid/4bc2c8d62.html>, paras. 4 and 21-23, denouncing the law as legitimizing harmful traditional and customary practices that disadvantage women and calling for its repeal.

³¹⁵ Amnesty International, *Strengthening the Rule of Law and Protection of Human Rights, Including Women's Rights, Is Key to Any Development Plan for Afghanistan*, ASA 11/012/2012, 26 June 2012, <http://www.refworld.org/docid/512231782.html>, pp. 3-4; Afghan Women's Network, *Afghan Women Towards Bonn and Beyond: Position Paper*, 6 October 2011, http://www.afghanwomensnetwork.af/Latest%20Updates/AWN_Position_Paper_FINAL_FINAL_English.pdf, pp. 2, 4.

³¹⁶ For further discussion of the parallel justice structures operated by the Taliban, see Section II.C.1.b.

³¹⁷ UNAMA, *UN Expert Report Notes Gains in Afghan Women's Rights, Expresses Concern over Future Progress*, 1 August 2013, <http://unama.unmissions.org/Default.aspx?tabid=12254&ctl=Details&mid=15756&ItemID=37123&language=en-US>; Reuters, *Afghan Women's Rights at Risk in Peace Process, UN Watchdog Says*, 29 July 2013, <http://www.trust.org/item/20130729140705-qhewv/?source=hptop>. Fawzia Kofi, a Member of Parliament, also expressed concerns about the position of women after the NATO withdrawal. CNN, *Saving Face: The Struggle and Survival of Afghan Women*, 18 May 2012, <http://edition.cnn.com/2012/05/18/world/asia/afghanistan-domestic-violence/index.htm>. See also Inter Press Service, *Honouring the Silent Courage of Afghan Women*, 26 November 2012, <http://www.ipsnews.net/2012/11/qa-honouring-the-silent-courage-of-afghan-women/>; United Kingdom Parliament: International Development Committee, *Afghanistan: Development Progress and Prospects after 2014*, 25

considers that the evolving political and security situation in Afghanistan and the impact of such developments on the human rights situation of women merit close scrutiny in relation to all applications for international protection by Afghan women.

a) Sexual and Gender-Based Violence

The UN Secretary-General has noted that sexual and gender-based violence against women in Afghanistan remains endemic.³¹⁸ Such violence includes “honour killings”, abduction, rape, forced abortion and domestic violence.³¹⁹ As sexual acts committed outside marriage are widely seen in Afghan society to dishonour families, victims of rape are at risk of ostracism, forced abortions, imprisonment, or even death.³²⁰ Societal taboos and fear of stigmatization and reprisals, including at the hands of their own community and family members, often deter victims from reporting sexual and gender-based violence.³²¹ At the same time, incidents of self-immolation as a result of domestic violence have continued to increase.³²²

In many areas where the criminal justice system's presence is weak, Government authorities continue to refer most complaints of domestic violence to traditional dispute-resolution mechanisms.³²³ Women

October 2012, <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmintdev/403/40302.htm>; UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/67/354 – S/2012/703, 13 September 2012, <http://www.refworld.org/docid/5065a16a2.html>, para. 33; US Institute of Peace (USIP), *A Death in Afghanistan: What Gender Violence Means for Afghan Women in Transition*, 13 July 2012, <http://www.usip.org/in-the-field/death-in-afghanistan>; ActionAid, *Afghan Women's Rights on the Brink: Why the International Community Must Act to End Violence Against Women in Afghanistan*, June 2012, http://www.actionaid.org.uk/doc_lib/on_the_brink_afghan_womens_rights.pdf; Guardian, *Afghan Women Leave the Country in Fear of Taliban Return*, 26 May 2012, <http://www.guardian.co.uk/world/2012/may/26/afghan-women-security-fears-inequality>; Voice of America, *Activists Urge NATO to Protect Afghan Women's Rights*, 20 May 2012, <http://www.voanews.com/content/activists-urge-nato-to-protect-afghan-womens-rights/727483.html>; Gayle T. Lemmon, *Washington's War for Afghanistan's Women*, 17 April 2012, http://afpak.foreignpolicy.com/posts/2012/04/17/washingtons_war_for_afghanistans_women; New York Times (Michelle Bachelet), *A Precarious Crossroads for Afghan Women*, 13 April 2012, <http://www.nytimes.com/2012/04/14/opinion/a-precocious-crossroads-for-afghan-women.html>; Common Ground News Service, *Preserving the Gains of Afghan Women as Troops Withdraw*, 27 March 2012, <http://reliefweb.int/node/485942>; Human Rights Watch, *Are Afghan Women Better Off after a Decade of War?*, 8 March 2012, <http://www.refworld.org/docid/4f59f95b2.html>; Council on Foreign Relations, *Looming Threat to Afghan Women's Rights*, 7 October 2011, <http://www.cfr.org/afghanistan/looming-threat-afghan-womens-rights/p26124#>. The Afghan People's Dialogue on Peace, a process that included 78 discussion groups across Afghanistan in October 2011, recorded many Afghan men and women saying that they were worried that women's rights would become a casualty of peace. Civil-Military Fusion Centre, *The Peace Process and Afghanistan's Women*, April 2012, https://www.cimicweb.org/cmo/afg/Documents/Governance/Afghanistan_Women_Reconciliation.pdf, p. 2.

³¹⁸ UN General Assembly / Security Council, *Sexual Violence in Conflict – Report of the Secretary-General*, A/67/792–S/2013/149, 14 March 2013, http://reliefweb.int/sites/reliefweb.int/files/resources/N1325944_0.pdf, paras. 15-19; UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/855 – S/2012/462, 20 June 2012, <http://www.refworld.org/docid/5118c1152.html>, para. 35.

³¹⁹ UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, paras. 3, 25. See also AFP, *Afghan Girl Beheaded for Refusing Prostitution*, 17 October 2012, <http://reliefweb.int/report/afghanistan/afghan-girl-beheaded-refusing-prostitution-police>.

³²⁰ See, for example, Human Rights Watch, *In Afghanistan, Women Behind Bars for 'Moral Crimes'*, 27 February 2013, <http://www.hrw.org/news/2013/02/27/afghanistan-women-behind-bars-moral-crimes>; Washington Post, *The Immorality of Afghanistan's "Moral Crimes"*, 20 January 2012, http://www.washingtonpost.com/opinions/the-immorality-of-afghanistans-moral-crimes/2012/01/04/gIQAQFVyeEQ_story.html; New York Times, *Rape Case, in Public, Cites Abuse by Armed Groups in Afghanistan*, 1 June 2012, <http://www.nytimes.com/2012/06/02/world/asia/afghan-rape-case-is-a-challenge-for-the-government.html>.

³²¹ Heinrich Böll Stiftung, *Women's Perceptions of the Afghan National Police*, December 2011, http://www.af.boell.org/downloads/PPS_new.pdf.

³²² CNN, *Saving Face: The Struggle and Survival of Afghan Women*, 18 May 2012, <http://edition.cnn.com/2012/05/18/world/asia/afghanistan-domestic-violence/index.htm>; Pajhwok Afghan News, *94 Self-Immolation Cases Registered in Western Afghanistan*, 28 March 2012, <http://www.pajhwok.com/en/2012/03/28/94-self-immolation-cases-registered-western-afghanistan>; Ariana News, *Violence against Women Increases in Herat*, 08 March 2012, <http://ariananews.af/regional/violence-against-women-increases-in-herat/>; IWPR, *Unreported Suicides in Central Afghan Province*, 17 February 2012, <http://www.refworld.org/docid/4f43979a2.html>; UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, para. 25; Pajhwok Afghan News, *Self-Immolations Increase in Herat*, 30 March 2011, <http://www.rawa.org/temp/runews/2011/03/30/self-immolations-increase-in-herat.html>. Female suicide rates in Afghanistan reportedly remain among the highest in the world. Radio Free Europe / Radio Liberty, *Afghan Women's Shelters, A lifeline for Many, Face Uncertain Future*, 23 July 2012, <http://www.rferl.org/content/afghanistan-womens-shelters-uncertain-future/24653459.html>. The Asia Foundation's 2012 Afghanistan Survey found that eight per cent of respondents identified domestic violence as the biggest problem faced by women in Afghanistan. The 2011 figure (9 per cent) and 2012 figure (8 per cent) are the highest recorded by the survey since 2006. Asia Foundation, *Afghanistan in 2012 A Survey of the Afghan People*, 2012, <http://asiafoundation.org/resources/pdfs/Surveybook2012web1.pdf>, pp. 157-158.

³²³ The lack of access to effective forms of justice and remedies for victims results in turn in sexual violence remaining largely unaddressed by either law enforcement agencies or society. See, for example, Kristine Herman, *Hearing Their Voices and Meeting Their Needs: Victims of Violence Against Women in Afghanistan*, Journal of Humanitarian Assistance, 7 April 2010, <http://jha.ac/2010/04/07/hearing-their-voices-and-meeting-their-needs-victims-of-violence-against-women-in-afghanistan/>; and UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Afghanistan and on the Achievements of Technical Assistance in*

and girls who flee their homes due to abuse or threats of forced marriage are often themselves accused of vaguely defined or even undefined “moral crimes”, including adultery (*zina*), or “running away from home”.³²⁴ While many women in these circumstances are convicted and imprisoned, men responsible for the domestic violence or forced marriages almost always enjoy impunity.³²⁵

Access to justice for women seeking to report violence is further hampered by the fact that women police officers constitute only just over one per cent of all police officers in the country. Women police officers are reportedly themselves at risk of sexual harassment and assault in the workplace, including rape by male colleagues.³²⁶

Impunity for acts of sexual violence is further reported to persist due to the fact that in some areas of the country, alleged rapists are powerful commanders or members of armed groups or criminal gangs, or have links to such groups or influential individuals who protect them from arrest and prosecution.³²⁷

b) Harmful Traditional Practices

Harmful traditional practices continue to be pervasive in Afghanistan,³²⁸ occurring in varying degrees in both rural and urban communities throughout the country, and among all ethnic groups.³²⁹ Rooted

the Field of Human Rights, A/HRC/13/62, 11 January 2010, <http://www.refworld.org/docid/4bc2c8d62.html>, para. 27. In September 2012 a nationwide awareness-raising campaign was launched by the UN Population Fund (UNFPA) and the EU Police Mission in Afghanistan (EUPOL), in coordination with the Ministry of Interior Affairs and the Attorney General’s Office, to support the capacity of police officers to address cases of violence against women. UNAMA, *Nationwide Campaign to Raise Awareness against Violence against Women Launched*, 5 September 2012, <http://www.refworld.org/docid/5124f7302.html>.

³²⁴ UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/855 – S/2012/462, 20 June 2012, <http://www.refworld.org/docid/5118c1152.html>, para. 35; Human Rights Watch, *I Had to Run Away”: The Imprisonment of Women and Girls for ‘Moral Crimes’ in Afghanistan*, March 2012, <http://www.refworld.org/docid/4f787d142.html>; UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, paras. 3, 25. *Zina* (sexual intercourse outside marriage) is a crime under the Penal Code, while “running away” or “intention to commit *zina*” are not crimes under Afghan law or in Sharia law.

³²⁵ See for example *The Guardian*, *Afghan Judges Free Three Jailed for Torture of Child Bride Sahar Gul*, 11 July 2013, http://www.theguardian.com/world/2013/jul/11/afghan-judges-free-sahar-guls-torturers?CMP=tw_t_gu; *The Guardian*, *Sahar Gul Seared Afghanistan’s Conscience But her Tormentors are Free*, 11 July 2013, <http://www.theguardian.com/world/2013/jul/11/sahar-gul-afghanistan-tormentors-free>. See also Human Rights Watch, *Free Women Jailed for “Running Away”*, 18 September 2012, <http://www.refworld.org/docid/505c1c852.html>; and Human Rights Watch, *I Had to Run Away”: The Imprisonment of Women and Girls for ‘Moral Crimes’ in Afghanistan*, March 2012, <http://www.refworld.org/docid/4f787d142.html>, pp. 2-3. Human Rights Watch notes that the imprisonment of women and girls who try to escape abuse in turns deters other victims of such abuse from seeking protection or justice. *Ibid.*, p. 3. In addition, women and girls escaping domestic violence may be forcibly returned to their families by law enforcement authorities, where they may face dangerous or even life-threatening situations, rather than being afforded protection; see, for example, ActionAid, *Afghan Women’s Rights on the Brink: Why the International Community Must Act to End Violence Against Women in Afghanistan*, June 2012, http://www.actionaid.org.uk/doc_lib/on_the_brink_afghan_womens_rights.pdf, p. 5; *The New York Times*, *Child Brides Escape Marriage, But Not Lashes*, 30 May 2010, <http://www.nytimes.com/2010/05/31/world/asia/31flogging.html>. A proposed revision to the criminal procedure code discussed by the lower house of parliament would further weaken protection for victims of domestic violence, as it would prohibit the relatives of a criminal defendant from being questioned as witnesses against the accused. This would make successful prosecutions in domestic violence cases unlikely as family members who witnessed domestic abuse would effectively be silenced. Human Rights Watch, *Afghanistan: Escalating Setbacks for Women*, 16 July 2013, <http://www.hrw.org/news/2013/07/16/afghanistan-escalating-setbacks-women>.

³²⁶ Human Rights Watch, *Afghanistan: Urgent Need for Safe Facilities for Female Police*, 25 April 2013, <http://www.hrw.org/news/2013/04/25/afghanistan-urgent-need-safe-facilities-female-police>.

³²⁷ UN General Assembly / Security Council, *Sexual Violence in Conflict – Report of the Secretary-General*, A/67/792–S/2013/149, 14 March 2013, http://reliefweb.int/sites/reliefweb.int/files/resources/N1325944_0.pdf, para. 16.

³²⁸ UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/5113aeeb2.html>, para. 10; UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, paras. 3, 25. See also UNAMA, *Still a Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan*, December 2012, <http://www.refworld.org/docid/50c72e0d2.html>.

³²⁹ Specific concerns have been expressed in relation to the Shiite Personal Status Law. The law was adopted pursuant to Article 131 of the Constitution of Afghanistan and regulates family law matters (e.g. marriage, divorce and inheritance rights) of the Shia community, which comprises circa 20 per cent of the Afghan population (Shiite Personal Status Law, March 2009, <http://www.refworld.org/docid/4a24ed5b2.html>). While the law was welcomed by some prominent Shias and Shia groups for officially recognizing Shia jurisprudence, the law in its initial form was the subject of domestic and international criticism for its failure to protect women’s rights. The criticisms led to amendments of the law, but the law retains some of the contentious provisions, including discriminatory provisions regarding guardianship, inheritance, under-age marriages, and limitations on movements outside the home. See, for example, US Department of State, *2011 Report on International Religious Freedom - Afghanistan*, 30 July 2012, <http://www.refworld.org/docid/502105e25a.html>. The controversial provision requiring a wife to provide for the sexual enjoyment of her husband was removed. However, Afghan legal experts are of the view that Article 162 of the amended Law could be used by a husband to effectively deny maintenance to a wife if she refuses him what he perceives as his conjugal rights; see UN Committee on Economic, Social

in discriminatory views about the role and position of women in Afghan society, harmful traditional practices disproportionately affect women and girls. Such practices include various forms of forced marriages,³³⁰ including child marriages;³³¹ forced isolation in the home; and “honour killings”.³³² Coerced forms of marriage in Afghanistan include:

- (i) “sale” marriage, where women and girls are sold for a fixed quantity of goods or cash, or to settle a family debt,³³³
- (ii) *baad dadan*, a tribal form of dispute-settling in which the offending family offers a girl for marriage into the “wronged” family, for instance to settle a blood debt,³³⁴

and Cultural Rights (CESCR), *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Afghanistan*, E/C.12/AFG/CO/2-4, 7 June 2010, <http://www.refworld.org/docid/4c1732dc2.html>. The UN High Commissioner for Human Rights denounced the law as legitimizing harmful traditional and customary practices that disadvantage women and called for its repeal; UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Afghanistan and on the Achievements of Technical Assistance in the Field of Human Rights*, A/HRC/13/62, 11 January 2010, <http://www.refworld.org/docid/4bc2c8d62.html>, paras. 4 and 21-23.

³³⁰ The Asia Foundation found in its 2012 survey that six per cent of respondents identified forced marriages/dowry as the most serious problem facing women in Afghanistan. Asia Foundation, *Afghanistan in 2012 A Survey of the Afghan People*, 2012, <http://asiafoundation.org/resources/pdfs/Surveybook2012web1.pdf>, pp. 157-158.

³³¹ The Afghanistan Independent Human Rights Commission estimates that between 60 and 80 per cent of all marriages in Afghanistan are forced. Although reliable data are difficult to obtain, surveys indicate that 15 per cent of women are married by age 15, and 46 per cent of women are married by age 18. Under Afghan law, the minimum age for marriage is 16 for girls and 18 for boys. UN Population Fund, *Escaping Child Marriage in Afghanistan*, 4 October 2012, <http://www.refworld.org/docid/5124f78d2.html>. The high rate of child marriages for girls contributes to high maternal mortality rates in Afghanistan and to high rates of girls dropping out of education. See for example Inter Press Service, *Afghan Girls Give More Than Their Hands in Marriage*, 26 February 2013, <http://www.ipsnews.net/2013/02/afghan-girls-give-more-than-their-hands-in-marriage/>.

³³² Cases of honour killings are reported to be on the rise. UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding Observations on the Combined Initial and Second Periodic Reports of Afghanistan*, 23 July 2013, CEDAW/C/AFG/CO/1-2, <http://www.refworld.org/docid/51ff5ac94.html>, paragraph 24. On 22 April 2013, a woman named Halima, who was a mother of two children, was reportedly shot dead by her father in the village of Kookchaheel, in the Aabkamari district of Badghis province, after having been accused of running away with a male cousin while her husband was in Iran. Amnesty International, *Afghanistan: Woman Killed for “Dishonouring” Family*, 30 April 2013, <http://www.refworld.org/docid/5183c3fe4.html>. Cases of “honour killings” reported in March 2013 included a young girl who was reportedly buried alive by her brother and father in Kishim district of Badakhshan province; a 14 year-old girl in Herat province who was reportedly killed when she refused to marry her fiancé; a brother who was reported to have killed his married sister as she insisted on joining her husband in Iran; and a husband in Jawzjan province who reportedly beheaded his wife. UN Women, *UN Women Strongly Condemns “Honour Killings” of Women and Girls*, 1 April 2013, <http://reliefweb.int/report/afghanistan/un-women-strongly-condemns-%E2%80%9Chonour-killings%E2%80%9D-women-and-girls>. The number of “honour killings” was reported to have risen sharply in 2012. Reuters, *Woman, Children Beheaded in Afghan “Honour Killing”*, 4 July 2012, <http://www.trust.org/alertnet/news/woman-children-beheaded-in-afghan-honour-killing>. New York Times, *With Help, Afghan Survivor of “Honor Killing” Inches Back*, 1 December 2012, <http://www.nytimes.com/2012/12/02/world/asia/doctors-and-others-buck-tradition-in-afghan-honor-attack.html>. See also UNAMA, *Still a Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan*, December 2012, <http://www.refworld.org/docid/50c72e0d2.html>, p. 3. According to the AIHRC, in March and April 2012 (the first two months of the Afghan year), there were 16 cases of “honour killings” in Afghanistan, compared to 20 cases for all of the previous year. Since the AIHRC started recording “honour killings” in 2001, there have never been more than 20 reported cases per year. The AIHRC notes too, however, that many cases of “honour killings” go unreported. Reuters, *Woman, Children Beheaded in Afghan “Honour Killing”*, 4 July 2012, <http://www.trust.org/alertnet/news/woman-children-beheaded-in-afghan-honour-killing>. See also New York Times, *With Help, Afghan Survivor of “Honor Killing” Inches Back*, 1 December 2012, <http://www.nytimes.com/2012/12/02/world/asia/doctors-and-others-buck-tradition-in-afghan-honor-attack.html>, which quotes human rights advocates as saying that for each reported case of an “honour killing”, a dozen other cases are estimated to remain unreported. In October 2012, a woman and a man, each of whom were married but who had gone on the run together, were attacked in the village of Kandi Bagh, in Nangarhar Province, reportedly by the woman’s brother. The woman was severely injured; her partner was killed. New York Times, *With Help, Afghan Survivor of “Honor Killing” Inches Back*, 1 December 2012, <http://www.nytimes.com/2012/12/02/world/asia/doctors-and-others-buck-tradition-in-afghan-honor-attack.html>. On 4 July 2012, a woman and two of her children were killed in Ghazni by the woman’s ex-husband in what officers investigating the case described as an “honour killing”. Reuters, *Woman, Children Beheaded in Afghan “Honour Killing”*, 4 July 2012, <http://www.trust.org/alertnet/news/woman-children-beheaded-in-afghan-honour-killing>. In June 2012 a 22-year-old woman accused of adultery was killed in a public execution in Parwan province on the orders of the Taliban district shadow governor. Reuters, *Afghan Women Protest for Rights after Public Execution*, 11 July 2012, <http://www.trust.org/trustlaw/news/afghan-women-protest-for-rights-after-public-execution>. On 17 May 2012 in Badghis province, the Taliban held a trial of a man and woman who were accused of adultery and publicly executed both. UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 24. See also Institute for War and Peace Reporting, *“Honour Killings” Rising in Afghan West: Culture of Impunity Seen as Encouraging Murder*, 28 June 2011, <http://www.refworld.org/docid/4e1c657d2.html>.

³³³ Opium-farming families are reported to sell their children, especially girls, to settle debts with opium traffickers. US State Department, *Trafficking in Persons Report 2012 – Afghanistan*, 19 June 2012, <http://www.refworld.org/docid/4fe30cea3c.html>, p. 62.

³³⁴ See for example UNICEF, *Programme Aims to Protect Vulnerable Children and Reunite Them with Their Families*, 14 September 2012, <http://www.refworld.org/docid/5124f7f92.html>; New York Times, *For Punishment of Elder’s Misdeeds, Afghan Girl Pays the Price*, 16 February 2012, <http://www.nytimes.com/2012/02/17/world/asia/in-baad-afghan-girls-are-penalized-for-elders-crimes.html>. The article quotes Fraidoon Mohmand, a Member of Parliament from Nangarhar Province, speaking approvingly of *baad*, saying that he believed that “a woman given in *baad* suffered only briefly.” In the first six months of 2012, UNAMA documented a number of cases where ALP officers were directly involved in cases of *baad*, including the case of an 18-year-old girl in Kunduz district, Kunduz province, on 17 May 2012, who was given in *baad* by an ALP commander to one of his ALP members, allegedly to prevent a potential dispute between two ALP members’ families over a recent marriage. On 12 May 2012, in Khair Kot district (Zarghun Shahr) of Paktika province, an ALP commander and four

- (iii) *baadal*, where two families exchange their daughters in order to minimize marriage costs;³³⁵
- (iv) the coercion of widows into marrying a man from their deceased husband's family.³³⁶

Economic insecurity and ongoing conflict perpetuate the problem of child marriages, with the practice often seen as the only means of survival for the girl and her family.³³⁷

The EVAW law criminalizes several harmful traditional practices, including the buying and selling of women for marriage, offering women for dispute resolution under *baad*, and child and forced marriages. However, as noted above, implementation of the law has been slow and inconsistent.³³⁸

c) Women Perceived as Contravening Social Mores³³⁹

Despite Government efforts to promote gender equality, women continue to face pervasive social, political and economic discrimination due to persistent stereotypes and customary practices that marginalize them.³⁴⁰ Women who are perceived as transgressing social norms continue to face social stigma, general discrimination and risks to their safety. Such norms include requirements that restrict women's freedom of movement, such as the requirement to be accompanied by a male relative chaperone when appearing in public.³⁴¹ Women without male support and protection, including

ALP members shot and killed a man during a land dispute. The issue was addressed through a *jirga* which took the decision to give the ALP commander's seven-year-old daughter in *baad* to the deceased man's family. The ANP did not investigate and arrest the ALP commander and his men for the crimes of murder or *baad*. UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 46. See also Landinfo, *Afghanistan: Marriage*, 19 May 2011, <http://www.refworld.org/docid/512258e82.html>; Human Rights Watch, *Stop Women Being Given as Compensation*, 8 March 2011, <http://www.refworld.org/docid/4d79c53f2.html>.

³³⁵ For in-depth information on marriage practices in Afghanistan, see Afghanistan Independent Human Rights Commission, *Situation of Economic and Social Rights in Afghanistan: Fifth Report*, November/December 2011, <http://www.refworld.org/docid/511e58cf0.html>, Part 3; Landinfo, *Afghanistan: Marriage*, 19 May 2011, <http://www.refworld.org/docid/512258e82.html>; Afghanistan Research and Evaluation Unit, *Decisions, Desires and Diversity: Marriage Practices in Afghanistan*, February 2009, <http://www.refworld.org/docid/4992cc722.html>; and Women and Children Legal Research Foundation, *Early Marriage in Afghanistan*, 2008, http://www.wclrf.org/English/eng_pages/Researches/Early%20Marriage%20with%20cover.pdf.

³³⁶ Widows who reject such marriages are likely to lose custody of their children, due to discriminatory provisions in the Afghan Civil Code on child custody. Widows who reject such marriages may also be at risk of sexual and gender-based violence at the hands of the deceased husband's male relatives. See Landinfo, *Afghanistan: Marriage*, 19 May 2011, <http://www.refworld.org/docid/512258e82.html>, pp. 15-16; UNAMA, *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, 9 December 2010, <http://www.refworld.org/docid/4d00c4e82.html>, pp. 27-30; Afghanistan Research and Evaluation Unit, *Decisions, Desires and Diversity: Marriage Practices in Afghanistan*, February 2009, <http://www.refworld.org/docid/4992cc722.html>, pp. 51-57. Widows who run away from home to avoid the forced marriage or to keep their children may be prosecuted for "moral crimes" or could be at risk of "honour killings"; see also Section III.A.7.c.

³³⁷ Afghanistan Independent Human Rights Commission, *Fifth Report: Situation of Economic and Social Rights in Afghanistan*, December 2011, <http://www.refworld.org/docid/511e58cf0.html>, pp. 53-54. The US State Department noted that the custom of bride money motivated poor families to pledge daughters as young as six or seven years old, with the understanding that the actual marriage would be delayed until the child reached puberty. However, reports indicated that this delay was rarely observed and that young girls were sexually violated not only by the groom but also by older men in the family, particularly if the groom was also a child. There were reports that young girls who were married between the ages of nine and 11 attempted self-immolation. US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>. A law banning the enrolment in the public school system of anyone who is married forces many girls who are married at a young age to drop out of school. Inter Press Service, *Education in Afghanistan – the Good, the Bad and the Ugly*, 26 June 2013, <http://www.ipsnews.net/2013/06/education-in-afghanistan-the-good-the-bad-and-the-ugly/>.

³³⁸ *Baad* is a criminal offence under article 517 of the 1976 Afghan Penal Code, but the article only applies to widows and women above the age of 18. Under the Penal Code, prison sentences for *baad* cannot exceed two years. The penal code provisions against *baad* were supplemented by the Law on Elimination of Violence against Women law, which extends the scope of the crime of offering women for marriage to girls under the age of 18 and increases potential prison sentences for *baad* to up to 10 years. The law also widens the scope of those who could be considered complicit in the crime.

³³⁹ For further analysis of the treatment of women in the public sphere, see Section III.A.1.

³⁴⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Afghanistan*, E/C.12/AFG/CO/2-4, 7 June 2010, <http://www.refworld.org/docid/4c1732dc2.html>. For further analysis of the treatment of women perceived as contravening Sharia law, see Sections III.A.5 and III.A.6. For further analysis of the situation of women in the public sphere, see Section III.A.1.9.

³⁴¹ According to research conducted by UNAMA, "women who appear in public on their own put their reputation and their safety at risk. Mullahs consulted during the research for this report referred to Islamic tenets to justify their perspective that a woman can only appear in public when accompanied by a male relative chaperone namely, a mahram. This interpretation of Islam is common in Afghanistan, although Sharia specialists consulted in the context of this research disagree that religion imposes the need for a male chaperone, provided that certain rules regarding the hijab (Islamic veil) are respected." See UNAMA, *Silence is Violence: End the Abuse of Women in Afghanistan*, 8 July 2009, p. 10, <http://www.refworld.org/docid/4a548f532.html>.

widows, are at particular risk. They generally lack the means of survival, given existing social norms imposing restrictions on women living alone, including limitations on their freedom of movement.³⁴²

In areas under the effective control of the Taliban, women accused of immoral behaviour risk being tried by the Taliban's parallel justice structures and being given harsh sentences, including lashings and death.³⁴³

Detention for breaches of customary or Sharia law disproportionately affects women and girls,³⁴⁴ including detention on the ground of perceived "moral crimes" such as being improperly unaccompanied,³⁴⁵ refusing marriage,³⁴⁶ or "running away from home"³⁴⁷ (including in situations of domestic violence).³⁴⁸ The number of girls and women detained for "moral crimes" was reported to have risen by 50 per cent between October 2011 and May 2013.³⁴⁹ As noted above, women and girls who flee their homes as a result of domestic violence or the threat of forced marriage are often themselves charged with running away from home or adultery.³⁵⁰ Since accusations of adultery and

³⁴² According to the US Institute of Peace (USIP), traditional customs regarding women's movements and low employment levels mean that women simply cannot survive independently within Afghanistan. Quoted in Civil-Military Fusion Centre, *The Peace Process and Afghanistan's Women*, April 2012, https://www.cimicweb.org/cmo/afg/Documents/Governance/Afghanistan_Women_Reconciliation.pdf, p. 6. In *N v. Sweden*, Application no. 23505/09, 20 July 2010, <http://www.refworld.org/docid/4c4d4e2.html>, the European Court of Human Rights noted that women were at a particularly heightened risk of ill-treatment in Afghanistan if they were perceived as not conforming to the gender roles ascribed to them by society, tradition or the legal system. The mere fact that the claimant had lived in Sweden might well be perceived as having crossed the line of acceptable behaviour. The fact that she wanted to divorce her husband, and in any event did not want to live with him any longer, might result in serious life-threatening repercussions upon her return to Afghanistan. Reports had further shown that a high proportion of Afghan women were affected by domestic violence, acts which the authorities saw as legitimate and therefore did not prosecute. Unaccompanied women, or women without a male "tutor", faced continuous severe limitations to having a personal or professional life, and social exclusion. They also often plainly lacked the means for survival if not protected by a male relative. Consequently, the Court found that if N. were deported to Afghanistan, Sweden would be in violation of Article 3 of ECHR. See also *RRT Case No. 1005628* [2010] RRTA 822, Refugee Review Tribunal of Australia, 21 September 2010, <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/RRTA/2010/822.html>, where the Refugee Review Tribunal found that the appellant, a widow with no members of her family remaining in Afghanistan, was a member of the particular social group of elderly Afghan women without male protection.

³⁴³ In February 2012 in Ghor province, a Taliban court convicted a man and woman of adultery (*zina*) and lashed both as punishment. UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>. For further information about public executions of women accused of immoral behaviour by the Taliban, see the discussion on honour killings above.

³⁴⁴ Human Rights Watch, "I Had to Run Away": *The Imprisonment of Women for 'Moral Crimes' in Afghanistan*, March 2012, <http://www.refworld.org/docid/4f787d142.html>, p. 3; Washington Post, *The Immorality of Afghanistan's "Moral Crimes"*, 20 January 2012, http://www.washingtonpost.com/opinions/the-immorality-of-afghanistans-moral-crimes/2012/01/04/gIQAfVyeEQ_story.html.

³⁴⁵ "Improper accompaniment" is considered a crime according to Hanafi jurisprudence. Women have been detained, indicted and convicted for being in the company of a man without proper accompaniment, or *Khelwat-esahiha*; see UNAMA, *Arbitrary Detention in Afghanistan: A Call For Action, Volume I - Overview and Recommendations*, January 2009, <http://www.refworld.org/docid/49d07f272.html>, p. 7.

³⁴⁶ UNAMA, *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, 9 December 2010, <http://www.refworld.org/docid/4d00c4e82.html>.

³⁴⁷ Running away from home is stigmatized in Afghanistan, but is not a crime under the Penal Code and thus lacks proper definition. It is understood to mean the action of running away, with no intent to return home, abandoning family members without the permission of parents or legal custodians; see AIHRC, *Report on the Situation of Economic and Social Rights in Afghanistan - IV*, December 2009, <http://www.refworld.org/docid/4b3b2df72.html>, p. 58. See also, UN Women, *UN Women in Afghanistan Welcomes Government Statements Confirming that "Running Away" Is Not a Crime under Afghan Law*, 3 October 2012, <http://www.unwomen.org/2012/10/un-women-in-afghanistan-welcomes-government-statements-confirming-that-running-away-is-not-a-crime-under-afghan-law/>; UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding Observations on the Combined Initial and Second Periodic Reports of Afghanistan*, 23 July 2013, CEDAW/C/AFG/CO/1-2, <http://www.refworld.org/docid/51ff5ac94.html>, paragraph 24.

³⁴⁸ The Supreme Court of Afghanistan has instructed Afghan judges to treat "running away" as a crime, despite the absence of this offence in Afghan statutory law. The Court stated that the appropriate course of action for women experiencing problems at home was to seek assistance from the authorities. Human Rights Watch, "I Had to Run Away": *The Imprisonment of Women for 'Moral Crimes' in Afghanistan*, March 2012, <http://www.refworld.org/docid/4f787d142.html>, p. 5. Human Rights Watch notes that in light of the discrimination at the hands of law enforcement officials faced by women who seek protection and/or access to justice, seeking government assistance is an unsafe and unfeasible option for most women and girls who are victims of domestic violence or harmful traditional practices. *Ibid.* A copy of the Supreme Court decree (in Dari), dated 1 August 2010, is on record with UNHCR. An absence of female police interrogators, lawyers and prosecutors may pose a further obstacle to access to justice for women accused of morality crimes. Institute for War and Peace Reporting, *Lack of Female Lawyers in Eastern Afghanistan*, 5 April 2012, <http://www.refworld.org/docid/4f82f00c2.html>. Human Rights Watch reports that in a meeting on 16 September 2012, the Minister of Justice, the Women's Affairs Minister and the Deputy Interior Minister for the first time publicly confirmed that it is not a criminal offense for women and girls to "run away", and that fleeing violence or running away was not a basis for detention or prosecution. Human Rights Watch, *Free Women Jailed for "Running Away"*, 18 September 2012, <http://www.refworld.org/docid/505c1c852.html>.

³⁴⁹ The number of women and girls imprisoned for "moral crimes" was reported to have risen from about 400 in October 2011 to about 600 in May 2013. Human Rights Watch, *Afghanistan: Surge in Women Jailed for "Moral Crimes"*, 21 May 2013, <http://www.hrw.org/news/2013/05/21/afghanistan-surge-women-jailed-moral-crimes>.

³⁵⁰ UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/855 – S/2012/462, 20 June 2012, <http://www.refworld.org/docid/5118c1152.html>, para. 35; UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, paras. 3, 25. According to a 2012 Human Rights Watch report, in January 2012, approximately 400 women and girls were imprisoned for "moral

other “moral crimes” may elicit honour killings, in some instances the authorities have sought to justify the detention of women accused of such acts as a protective measure.³⁵¹

d) Summary

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

- a) Victims and those at risk of sexual and gender-based violence;
- b) Victims and those at risk of harmful traditional practices; and
- c) Women perceived as contravening social mores.

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

8. Children

Children may fall within a number of the other risk profiles contained in these guidelines.³⁵² Children may, however, also be at risk of child-specific forms of persecution, including under-age recruitment, child trafficking, bonded or hazardous child labour, domestic violence against children, forced and/or underage marriage, child prostitution and child pornography, and the systematic denial of education.³⁵³

a) Underage and Forced Recruitment

In January 2011 the UN and the Government signed an action plan for the prevention of underage recruitment.³⁵⁴ While the Government has reportedly made progress in the implementation of the

crimes”, constituting about half of all women in Afghanistan’s prisons and virtually all the girls in juvenile detention centres. Human Rights Watch, “*I Had to Run Away*”: *The Imprisonment of Women for ‘Moral Crimes’ in Afghanistan*, March 2012, <http://www.refworld.org/docid/4f787d142.html>, p. 3.

³⁵¹ US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>. In a large number of cases, women released from prison were unable to go home, either because their families refused to accept them, or because the women themselves fear that they will face violence and/or be forced into marriages on their return home. UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, para. 45. UNAMA reports that provincial departments of women’s affairs and local women’s shelters have been accommodating several released female prisoners who were unable or unwilling to return home. *Ibid.* On the risk of repercussions from their family members, including “honour killings”, for women and girls who are accused of having committed morality crimes, see also Human Rights Watch, “*I Had to Run Away*”: *The Imprisonment of Women for ‘Moral Crimes’ in Afghanistan*, March 2012, <http://www.refworld.org/docid/4f787d142.html>, p. 6; Institute for War and Peace Reporting, *No Life Outside for Female Ex-Cons in Afghanistan*, 24 August 2010, <http://www.refworld.org/docid/4c762dc72c.html>; and Human Rights Watch, “*We Have the Promises of the World*”: *Women’s Rights in Afghanistan*, 3 December 2009, <http://www.refworld.org/docid/4b179c4a2.html>.

³⁵² See the profiles for civilians suspected of supporting armed anti-government elements; members of minority religious groups, persons perceived as contravening sharia law, and persons perceived as contravening the Taliban’s interpretation of Islamic principles, norms and values; women with specific profiles; victims of trafficking and individuals at risk of trafficking; lesbian, gay, bisexual and transgender (LGBT) individuals; members of minority ethnic groups; and blood feuds.

³⁵³ For further analysis on the situation of girls at risk of harmful traditional practices, including forced or underage marriage, and girls at risk of sexual and gender-based violence, see Section III.A.7. For further analysis of child victims of trafficking, bonded labour, or child prostitution, see also Section III.A.9.

³⁵⁴ General Assembly / Security Council, *Report of the Secretary-General on Children and Armed Conflict*, 15 May 2013, A/67/845–S/2013/245, <http://www.refworld.org/docid/51b9864e4.html>, paragraph 33; UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/728 – S/2012/133, 5 March 2012, <http://www.refworld.org/docid/4fbf60732.html>, p. 23. The action plan has annexes on the prevention of sexual violence and the killing and maiming of children. Three decrees to prevent underage recruitment and enhance related disciplinary measures within the ANSF have subsequently been issued by the Ministries of the Interior and Defence. Two decrees to raise awareness of the prohibition of child recruitment, torture and attacks on schools and hospitals in Islam have been issued by the Ulema Shura (Council of Clerics). *Ibid.* See also UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, para. 23. Afghanistan has acceded to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. The Protocol prohibits the compulsory recruitment of children (defined as persons under the age of 18) into a State’s armed forces (Article 2). Voluntary recruitment of children above the age of 16 into national armed forces is allowed under certain conditions (Article 3), but children may not take direct part in hostilities (Article 1). The recruitment of children or their use in hostilities by non-State armed groups is prohibited in all circumstances (Article 4). Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 25 May 2000, *Treaty Series*, Vol. 2173, p. 222; <http://www.refworld.org/docid/47fd180.html>.

action plan, concerns remained about underage recruitment by the ANSF, and in particular the ANP and ALP.³⁵⁵

Recruitment by AGEs of children was reportedly on the rise.³⁵⁶ AGEs increasingly used children for suicide attacks; in 2012 UNAMA documented the death of three children while they carried out suicide attacks, while a further 48 children were arrested by the ANSF on allegations of plans to carry out suicide attacks.³⁵⁷ Children were also used to plant IEDs and to smuggle weapons and uniforms, and to act as guards or scouts for reconnaissance. In some cases AGEs abused children sexually.³⁵⁸

³⁵⁵ The country task force on monitoring and reporting in Afghanistan reported that, the official age requirements for enlistment notwithstanding, the ALP and the ANP were responsible for 19 cases of underage recruitment in 2012. Concerns also remained over the informal use of children for security-related tasks by the ANSF, including the ANP, ALP and ANA. General Assembly / Security Council, *Report of the Secretary-General on Children and Armed Conflict*, 15 May 2013, A/67/845-S/2013/245, <http://www.refworld.org/docid/51b9864e4.html>, paragraph 25. In the period between 1 February and 30 April 2013, Afghan security forces were reported to have recruited three boys for police operations. UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 13 June 2013, A/67/889 – S/2013/350, <http://www.refworld.org/docid/51c00fe74.html>, paragraph 26. See also UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 55-56; UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/5113aeeb2.html>, para. 29. The UN High Commissioner for Human Rights reported that sexual exploitation was a motivating factor for the recruitment of boys into the ANSF. UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, para. 23. The UN Secretary-General reported that units of the ANP and ANA used children at checkpoints, in contravention of Afghan law, while children were also recruited into the ALP, mostly in the eastern and southern regions, including through intimidation. General Assembly / Security Council, *Report of the Secretary-General on Children in Armed Conflict*, 26 April 2012, A/66/782-S/2012/261, <http://www.refworld.org/docid/4fd706472.html>, para. 8. See also US Department of Labor, *Findings on the Worst Forms of Child Labor 2011: Afghanistan*, 26 September 2012, <http://www.refworld.org/docid/5124b8f42.html>.

³⁵⁶ The country task force on monitoring and reporting in Afghanistan reported 47 cases of child recruitment by AGEs in 2012. General Assembly / Security Council, *Report of the Secretary-General on Children and Armed Conflict*, 15 May 2013, A/67/845-S/2013/245, <http://www.refworld.org/docid/51b9864e4.html>, paragraph 24. In the period between 1 February and 30 April 2013, armed opposition groups were reported to have recruited 29 boys to carry out conflict-related activities such as assembling and planting explosives and taking part in combat operations. UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 13 June 2013, A/67/889 – S/2013/350, <http://www.refworld.org/docid/51c00fe74.html>, paragraph 26. See also UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on Situation of Human Rights in Afghanistan*, A/HRC/22/37, 28 January 2013, <http://www.refworld.org/docid/5113aeeb2.html>, para. 29; UNICEF, *Deaths and Injuries to Children Increase as a Result of the On-Going Conflict in Afghanistan*, 13 June 2012, <http://www.refworld.org/docid/5124f89f2.html>; General Assembly / Security Council, *Report of the Secretary-General on Children in Armed Conflict*, 26 April 2012, A/66/782-S/2012/261, <http://www.refworld.org/docid/4fd706472.html>, para. 7. The Taliban reportedly tricked children, promised them money, or forced them to become suicide bombers. US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>; UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 18; UNAMA, *UNHCR Assists IDP Families in Balkh*, 13 August 2012, <http://www.refworld.org/docid/5124f84d2.html>. See also UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/855 – S/2012/462, 20 June 2012, <http://www.refworld.org/docid/5118c1152.html>, para. 34; UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, para. 23.

³⁵⁷ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 11, 55. The country task force on monitoring and reporting in Afghanistan reported that in 2012 at least children were recruited by AGEs to carry out suicide attacks. General Assembly / Security Council, *Report of the Secretary-General on Children and Armed Conflict*, 15 May 2013, A/67/845-S/2013/245, <http://www.refworld.org/docid/51b9864e4.html>, paragraph 24. See also US Department of State, *Trafficking in Persons Report 2012 - Afghanistan*, 19 June 2012, <http://www.refworld.org/docid/4fe30cea3c.html>; General Assembly / Security Council, *Report of the Secretary-General on Children in Armed Conflict*, 26 April 2012, A/66/782-S/2012/261, <http://www.refworld.org/docid/4fd706472.html>, para. 7. In 2011, 11 children, including one 8-year-old girl, were killed while carrying out suicide attacks. Some children unknowingly carried explosive packages. General Assembly / Security Council, *Report of the Secretary-General on Children in Armed Conflict*, 26 April 2012, A/66/782-S/2012/261, <http://www.refworld.org/docid/4fd706472.html>, para. 7. See also Aljazeera, *Children Caught Up in Afghan Conflict*, 23 September 2012, <http://www.aljazeera.com/indepth/features/2012/09/2012918124140212587.html>; The Sydney Morning Herald, *Taliban Accused of Using Children to Spy and Bomb*, 27 March 2012, <http://www.smh.com.au/world/taliban-accused-of-using-children-to-spy-and-bomb-20120326-1vunz.html>; The Telegraph, *Afghans Halt Convoy of Boys "Headed for Suicide Training Camps"*, 23 February 2012, <http://www.telegraph.co.uk/news/9101670/Afghans-halt-convoy-of-boys-headed-for-suicide-training-camps.html>; The Telegraph, *Afghan Boy Suicide Bombers Tell How They Are Brainwashed into Believing They Will Survive*, 13 January 2012, <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/9014282/Afghan-boy-suicide-bombers-tell-how-they-are-brainwashed-into-believing-they-will-survive.html>; Landinfo, *Afghanistan: Human Rights and Security Situation*, 9 September 2011, <http://www.refworld.org/docid/4e8eadc12.html>, p. 8; Human Rights Watch, *Afghanistan: Taliban Should Stop Using Children As Suicide Bombers*, 31 August 2011, <http://www.refworld.org/docid/4e60bb792.html>; The Guardian, *Taliban Use Girl, 8, as Bomb Mule in Attack on Afghanistan Police Post*, 26 June 2011, <http://www.guardian.co.uk/world/2011/jun/26/afghanistan-taliban-girl-bomb-police>; The Telegraph, *Taliban Recruiting Nine-Year-Old Suicide Bombers*, 15 May 2011, <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/8515012/Taliban-recruiting-nine-year-old-suicide-bombers.html>.

³⁵⁸ UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, p. 11.

AGEs reportedly abducted children for recruitment, but also for kidnap-for-ransom, and for retaliation and intimidation for suspected involvement with pro-government forces.³⁵⁹

Children are reportedly at risk of illegal detention for alleged support to AGEs, and at risk of torture and ill-treatment in detention, including beatings, electric shocks, sexual violence and threats of sexual violence.³⁶⁰

b) *Bonded or Hazardous Child Labour*³⁶¹

Child labour reportedly remains widespread.³⁶² Manifestations of child labour in Afghanistan include the worst forms of child labour, such as debt bondage and other forms of forced labour,³⁶³ the use of children in illicit activities including the drug trade, as well as the use of children in prostitution.³⁶⁴ Children are also engaged in hazardous work likely to harm their health, safety or morals.³⁶⁵

Street children are among the most exposed and vulnerable groups in Afghanistan, with little or no access to government services. Poverty and food shortages are reported to force families to send their children on to the streets to beg for food and money.³⁶⁶

³⁵⁹ General Assembly / Security Council, *Report of the Secretary-General on Children in Armed Conflict*, 26 April 2012, A/66/782-S/2012/261, <http://www.refworld.org/docid/4fd706472.html>, para. 18. In 2011, 31 incidents of abduction of children by armed groups were documented.

³⁶⁰ A January 2013 UNAMA report documented the illegal detention and torture of 80 children by the NDS, ANP and ALP for alleged national security crimes, including alleged suicide attacks. UNAMA, *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On*, 20 January 2013, <http://www.refworld.org/docid/50ffe6852.html>, pp. 33-34, 38-41, 46, 48, 51, 54. In 2011, 204 incidents of detention of children for alleged support to AGEs were documented. All were boys, including one 10-year-old. General Assembly / Security Council, *Report of the Secretary-General on Children in Armed Conflict*, 26 April 2012, A/66/782-S/2012/261, <http://www.refworld.org/docid/4fd706472.html>, paras. 10-11. On 25 August 2011, President Karzai ordered the release of 20 children who had been arrested by the NDS while trying to carry out suicide bombings. US Department of State, *2011 Country Reports on Human Rights Practices - Afghanistan*, 24 May 2012, <http://www.refworld.org/docid/4fc75ac3c.html>. Detained children were reportedly typically denied basic rights and many aspects of due process, including the presumption of innocence, the right to be informed of charges, access to defence lawyers, and the right not to be forced to confess. Children in juvenile rehabilitation centres across the country in 2011 reportedly lacked access to adequate food, health care and education. US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>. For further analysis of the situation of civilians suspected of supported AGEs, see also Section III.A.4.

³⁶¹ For further guidance on forms of child labour that constitute persecution, see UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <http://www.refworld.org/docid/4b2f4f6d2.html>, paras. 29-30.

³⁶² US Department of Labor, *Findings on the Worst Forms of Child Labor 2011: Afghanistan*, 26 September 2012, <http://www.refworld.org/docid/5124b8f42.html>. The Labour Law sets the minimum age for employment, including hazardous employment, at 18; children between ages 15 and 18 may engage in "light work" up to 35 hours per week. A child may work as an apprentice from age 14. However, enforcement of the Labour Law was reported to be weak, due to a lack of institutional capacity on the part of the government, and because fewer than 10 per cent of children had formal birth registrations, limiting authorities' ability to enforce the law. US Department of Labor, *ibid.*, and US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>. Estimates of the total number of child labourers vary. According to UNICEF estimates, at least 30 per cent of primary school-age children undertook some form of work, and there were more than one million child labourers younger than 14. A 2010 study by the AIHRC found that an even larger portion of the country's 15 million children, up to 40 per cent, were likely to be engaged in some sort of paid work. US Department of State, *ibid.* The Afghanistan Multiple Indicator Cluster Survey 2010-2011 found that 27 per cent of children aged 5-11 years were involved in child labour activities, and 22 per cent of children aged 12-14 years. Total child labour for children aged 5-14 was 23 per cent for girls and 28 per cent for boys. Central Statistics Organisation and UNICEF, *Afghanistan Multiple Indicator Cluster Survey 2010-2011*, June 2012, p. 127. See also Reuters, *Afghan Child Labor Fears Grow as Aid Dries Up*, 7 February 2012; CCN, *Kabul's "Unnoticed" Child Workers*, 18 October 2011, <http://edition.cnn.com/2011/10/18/world/cnnheroes-kabul-child-labor/index.html>.

³⁶³ The practice of bonded labour allows for men, women and children to work as a means to pay for debt or to settle grievances. The debt can continue from generation to generation, with children forced to work to pay off their parents' debt. US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>. See also Institute for War and Peace Reporting, *Afghanistan: "I Was Not Born a Slave"*, 23 May 2012, <http://www.refworld.org/docid/4fbf52512.html>; IRIN, *Bonded Labour Ensnarers Entire Families*, 16 May 2012, <http://www.refworld.org/docid/4fba18602.html>; The New York Times, *In Afghan Kilns, A Cycle of Debt and Servitude*, 15 March 2011.

³⁶⁴ For further analysis on the use of children in illicit activities, including the drug trade and child prostitution, see Section III.A.9.

³⁶⁵ For example, some sectors of child labour were reported to expose children to landmines. US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>.

³⁶⁶ While reliable figures on the number of street children are not available, the Ministry of Labor, Social Affairs, Martyrs, and Disabled's estimated that the number of street children in Kabul dropped during 2011 from previous NGO estimates of 37,000. However, no new survey was undertaken by the National Census Directorate. US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>. Estimates for the total number of children working in Kabul's streets range from 50,000 to 60,000. Assessment Capacities Project (ACAPS), *Afghanistan: Conflict and Displacement*, 10 October 2012, http://www.acaps.org/resourcescats/downloader/afghanistan_conflict_and_displacement. Some children were reported to belong to begging gangs. US Department of Labor, *Findings on the Worst Forms of Child Labor 2011: Afghanistan*, 26 September 2012, <http://www.refworld.org/docid/5124b8f42.html>. Street children who work as vendors are particularly vulnerable to suicide attacks; see for example <http://www.skateistan.org/blog/tragic-loss>.

c) *Violence against Children, including Sexual and Gender-Based Violence*³⁶⁷

Child abuse is reported to be endemic throughout the country, with the number of reported cases on the rise in 2012. Common forms of abuse include physical violence, sexual abuse, abandonment and general neglect.³⁶⁸ Some forms of domestic violence against children take place in the name of discipline.³⁶⁹ Sexual abuse of children reportedly remains pervasive.³⁷⁰ While most child victims of sexual abuse, particularly girls, are abused by family members,³⁷¹ boys and girls were also reported to be at risk of sexual violence at the hands of state agents,³⁷² while boys in particular were reported to be at risk of sexual abuse by AGEs.³⁷³ Young boys continue to be at risk of *bacha baazi*, a practice in which boys are sold to powerful figures and businessmen and trained to dance in female clothes for male audiences and then used and traded for sex.³⁷⁴ The practice is reported to be on the rise.³⁷⁵

Impunity for sexual abuse of children remains a problem: most abusers are not arrested, and there are reports of children raped with impunity by security officials and individuals connected to the ANP.³⁷⁶ Some children who were prosecuted for “moral crimes” were victims rather than perpetrators of crime; having reported instances of sexual abuse, they are perceived to have brought shame on their

³⁶⁷ For further analysis on the treatment of girls subject to harmful traditional practices and sexual and gender-based violence, see Section III.A.7.

³⁶⁸ US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>.

³⁶⁹ The Afghanistan Multiple Indicator Cluster Survey 2010-2011 found that 74 per cent of children aged 2-14 years were subjected to at least one form of psychological or physical punishment by their mothers/caretakers or other household members, while 38 per cent of children were subjected to severe physical punishment. Central Statistics Organisation and UNICEF, *Afghanistan Multiple Indicator Cluster Survey 2010-2011*, June 2012, pp. 129-131. The US Department of State noted furthermore that, outside the domestic sphere, corporal punishment in schools, rehabilitation centres, and other public institutions remained common, even though it was against the law. US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>.

³⁷⁰ US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>. According to the AIHRC, in 80 per cent of the cases of sexual assault registered by the Commission the survivors are teenage girls under the age of 18. Inter Press Service, *Violence Against Women on the Rise*, 5 October 2012, <http://www.ipsnews.net/2012/12/violence-against-afghan-women-on-the-rise/>. In 2011, the Ministry of Interior recorded an estimated 100 cases of child rape in Kabul alone, while reports from 13 other provinces totaled 470 cases of child rape in 2011. The unreported numbers were believed to be much higher.

³⁷¹ US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>.

³⁷² The UN Secretary-General noted that some boys held in detention on charges relating to national security reported sexual violence or threats of sexual violence upon arrest by the ANSF or in detention. General Assembly / Security Council, *Report of the Secretary-General on Children and Armed Conflict*, 15 May 2013, A/67/845-S/2013/245, <http://www.refworld.org/docid/51b9864e4.html>, paragraph 30; see also paragraph 27. In 2011 four incidents involving ANP elements were reported, including the attempted rape of a nine-year-old girl. Of 76 interviewed boys detained in juvenile rehabilitation centres on national security-related charges, 10 reported sexual violence or threats of sexual violence upon their arrest. General Assembly / Security Council, *Report of the Secretary-General on Children in Armed Conflict*, 26 April 2012, A/66/782-S/2012/261, <http://www.refworld.org/docid/4fd706472.html>, para. 15. In April 2011 a 12-year-old girl in Takhar Province was allegedly gang-raped; several of the perpetrators were reported to be wearing ANP uniforms. Although the AIHRC and other civil society representatives undertook a high-profile investigative visit to Takhar, authorities made no arrests. US Department of State, *2011 Country Reports on Human Rights Practices - Afghanistan*, 24 May 2012, <http://www.refworld.org/docid/4fc75ac3c.html>. There were reports that police beat and sexually abused detained children. US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>. In April 2011, four armed ALP members abducted a 13-year-old boy and took him to the house of an ALP-sub-commander, where he was gang raped. Human Rights Watch, *“Just Don’t Call It a Militia: Impunity, Militia and the “Afghan Local Police”*, September 2011, <http://www.refworld.org/docid/511e32a92.html>.

³⁷³ General Assembly / Security Council, *Report of the Secretary-General on Children and Armed Conflict*, 15 May 2013, A/67/845-S/2013/245, <http://www.refworld.org/docid/51b9864e4.html>, paragraph 27; General Assembly / Security Council, *Report of the Secretary-General on Children in Armed Conflict*, 26 April 2012, A/66/782-S/2012/261, <http://www.refworld.org/docid/4fd706472.html>, para. 15.

³⁷⁴ US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>. The State Department notes that credible statistics on the number of boys affected are difficult to obtain, due to the fact that the subject remains a source of shame. The US State Department noted that no progress was reported in the twelve months to June 2012 towards fulfilling the goals of the action plan signed in January 2011 to combat the use of *bacha baazi* by the ANSF. US Department of State, *Trafficking in Persons Report 2012 - Afghanistan*, 19 June 2012, <http://www.refworld.org/docid/4fc30cea3c.html>.

³⁷⁵ US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>; The Washington Post, *Afghanistan Sees Rise in “Dancing Boys” Exploitation*, 5 April 2012, www.washingtonpost.com/world/asia_pacific/afganistans-dancing-boys-are-invisible-victims/2012/04/04/gIQAyreSwS_story_1.html.

³⁷⁶ US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>. In 2011, the Ministry of Interior recorded an estimated 100 cases of child rape in Kabul alone, while reports from 13 other provinces totaled 470 cases of child rape in 2011. The unreported numbers were believed to be much higher. US Department of State, *2011 Country Reports on Human Rights Practices - Afghanistan*, 24 May 2012, <http://www.refworld.org/docid/4fc75ac3c.html>.

family and to be in need of punishment.³⁷⁷ Some children were reportedly imprisoned as a family proxy for the actual perpetrator.³⁷⁸

d) Systematic Denial of Access to Education

Limits on access to education remain a significant concern. While school attendance has improved for both boys and girls,³⁷⁹ high levels of insecurity are a major factor in hampering access to education, with 4.2 million children reported to lack access to education due to security reasons.³⁸⁰ The use of schools for military purposes by both AGEs and pro-government forces poses further concerns.³⁸¹

AGEs also continue to carry out direct attacks against schools, teachers and students,³⁸² especially in relation to education for girls.³⁸³ Such attacks were reported to be on the increase.³⁸⁴ Other obstacles to

³⁷⁷ For example, Human Rights Watch reported on the case of a 13-year-old boy who was convicted on “moral crimes” charges after having been accused of having sex with two adult men in a park. He was sentenced to one year in juvenile detention. Human Rights Watch, *Afghanistan: Don't Prosecute Sexually Assaulted Children*, 10 February 2013, <http://www.refworld.org/docid/511a0ac941e.html>. See also US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>.

³⁷⁸ US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>.

³⁷⁹ Central Statistics Organisation and UNICEF, *Afghanistan Multiple Indicator Cluster Survey 2010-2011*, June 2012. Of the country's 8.4 million schoolchildren, the Ministry of Education estimated that 3.27 million, or 39 per cent, were female. Boys were estimated to outnumber girls by a ratio of two to one at the secondary level and four to one at the tertiary level. US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>.

³⁸⁰ US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>. The Afghan Minister of Education was quoted as saying that in some areas, the lack of security means that there is no access to education, with the only solution being to move school-going children in Taliban-controlled districts to other parts of the country. Washington Post, *Afghan Students Leave Home to Find a Safe Place to Go to School*, 24 December 2012, <http://reliefweb.int/report/afghanistan/afghan-students-leave-home-find-safe-place-go-school>. According to the Ministry of Education, as of May 2012 over 590 schools were closed in vulnerable areas of Afghanistan, compared to approximately 1,200 schools three years previously. Many of the closed school are located in areas that are under partial or full control of AGEs. UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 33. In August 2012 Voice of America quoted a spokesperson for the Ministry of Education as saying that 500 schools were closed in southern provinces as a result of insecurity, and that around 300,000 students there were not going to school because they did not have access. Voice of America, *Afghanistan Struggles to Educate Its Youth*, 1 August 2012, <http://www.voanews.com/content/afghanistan-struggles-to-educate-its-youth/1452844.html>. See also US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>; Institute for War and Peace Reporting, *Afghanistan: Children Traumatized by War in Kunar Province*, 6 December 2012, <http://www.refworld.org/docid/50c1b88d2.html>; and UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 18. Some observers have raised particular concerns about the situation in those parts of the country where the security transition has been completed. See for example, Afghan Women's Network, *Afghan Women Towards Bonn and Beyond: Position Paper*, 6 October 2011, http://www.afghanwomensnetwork.af/Latest%20Updates/AWN_Position_Paper_FINAL_FINAL_English.pdf, p. 3, which states, “The presence of gunmen and militias in the transitioned areas are of huge concern to families. These security threats lead parents to prevent their sons and daughters from going to school and accessing other critical services.”

³⁸¹ In 2012 UNAMA received reports of 14 incidents where schools were occupied and used for military purposes. UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 57-58. The militarization of schools in situations of conflict can amount to persecution within Article 1(A)(2) of the 1951 Convention. See UNHCR, *Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence: Roundtable 13 and 14 September 2012, Cape Town, South Africa*, 20 December 2012, <http://www.refworld.org/docid/50d32e5e2.html>, para. 11; see also UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <http://www.refworld.org/docid/4b2f4f6d2.html>, para. 36.

³⁸² In the three-month period between 1 February and 30 April 2013, a total of 25 incidents involving actions against educational premises and staff, including the burning of schools, targeted killings and abductions, were reported to the country task force on monitoring and reporting on children and armed conflict. UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 13 June 2013, A/67/889 – S/2013/350, <http://www.refworld.org/docid/51c00fe74.html>, paragraph 26. The UN Secretary-General reported that in 2012, “Armed groups conducted targeted attacks against schools, including using improvised explosive devices and suicide attacks, burned schools and abducted and killed education personnel. Armed groups were also responsible for acts of intimidation, threats against teachers and pupils and the forced closure of schools. In 2012, the Taliban issued five statements in which it denied attacking schools and announced that it would set up a commission for education. The Taliban also issued a letter in which it opposed girls’ education and threatened girls who continued to attend school, however.” General Assembly / Security Council, *Report of the Secretary-General on Children and Armed Conflict*, 15 May 2013, A/67/845–S/2013/245, <http://www.refworld.org/docid/51b9864e4.html>, paragraph 31. At times the Taliban reportedly uses the temporary closure of schools as a means to extract concessions from local authorities. See for example OCHA, “40 Schools in Zabul Province Close after Threats”, *Humanitarian Bulletin Afghanistan, Issue 16, 1-31 May 2013*, <http://reliefweb.int/sites/reliefweb.int/files/resources/May%20MHB%20Afghanistan.pdf>. See also UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 5. The Afghanistan Analysts Network (AAN) reported that the Taliban has two Education Commissions, one under the supervision of the Quetta Shura and one under the supervision of the Peshawar Shura. According to the AAN, the Peshawar Commission describes education as a right, subject to a number of conditions and the scrutiny of the Taliban. Starting in 2010, the Taliban changed its strategy in relation to education. Instead of seeking to forcibly end state education, the Taliban entered negotiations with the Ministry of Education, suspending attacks on schools and allowing schools to reopen on a number of conditions, including: exclude certain subjects (such as English language instruction for girls); ban mixed gender teaching; expand the Islamic subjects in the curriculum; exclude teachers deemed to be hostile to the Taliban; increase funds for

girls' education in particular included poverty, early and forced marriage, lack of family support, lack of female teachers, and long distances to the nearest school.³⁸⁵

e) Summary

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

- a) Children from areas where either AGEs or elements of the ANSF use underage recruitment;
- b) Children from social milieus where bonded or hazardous child labour is practised;
- c) Victims of violence against children, including sexual and gender-based violence, as well as children from social milieus where such violence is practised; and
- d) School-age children, particularly girls.³⁸⁶

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

Asylum claims made by children, including any examination of exclusion considerations for former child soldiers, need to be assessed carefully and in accordance with the UNHCR Guidelines on child asylum claims.³⁸⁷

madrasas, permit the Taliban to proselytize, and have teachers report to the Taliban. The Peshawar Education Commission reportedly banned attacks on school buildings, but if schools fail to comply with the rules imposed by the Taliban, the Commission may order school closures and attacks on education staff, or on students who refuse to comply with Taliban rules. The Peshawar Commission reportedly acknowledges that individual Taliban networks may order attacks against state schools, despite the ban on such attack issued by the Peshawar Commission. Afghanistan Analysts Network (AAN), *The Battle for the Schools: The Taliban and State Education*, December 2011, <http://www.aan-afghanistan.org/index.asp?id=2349>; and *The Ongoing Battle for the Schools: Uprising, Negotiations and Taliban Tactics*, June 2013, <http://www.afghanistan-analysts.net/index.asp?id=3448>.

³⁸³ See for example Reuters, *Afghan Girls' School Feared Hit by Poison Gas*, 21 April 2013, <http://www.trust.org/item/?map=afghan-girls-school-feared-hit-by-poison-gas/>. ActionAid noted that "girls in school have specifically been attacked as part of the insurgency, and in Taliban-targeted areas girls are dropping out of school at an alarming rate". ActionAid, *Afghan Women's Rights on the Brink: Why the International Community Must Act to End Violence Against Women in Afghanistan*, June 2012, http://www.actionaid.org.uk/doc_lib/on_the_brink_afghan_womens_rights.pdf, p. 4. It should be noted that girls' schools are not the only ones to be attacked by AGEs; boys' schools have come under attack too. See for example Washington Post, *Afghan Students Leave Home to Find a Safe Place to Go to School*, 24 December 2012, <http://reliefweb.int/report/afghanistan/afghan-students-leave-home-find-safe-place-go-school>. UNAMA stated, "As part of its consultations with 99 conflict-affected communities across Afghanistan, UNAMA found that the Taliban's influence on the education system in those areas is increasing. This has had consequences for children's access to education, particularly for girls." In its December 2011 report the Afghanistan Analysts Network stated, "The Taliban, unable to forcibly end state schooling, have, however, managed to partially co-opt it. The main losers in this new modus vivendi are Afghan girls." AAN, *The Battle for the Schools: The Taliban and State Education*, December 2011, <http://www.aan-afghanistan.org/index.asp?id=2349>.

³⁸⁴ In 2012, UNAMA verified 74 incidents of attacks against education; the vast majority of these were carried out by AGEs and included the burning of schools, targeted killings of teachers and staff, armed attacks on education facilities, occupation of schools and intimidation and closure of schools, particularly girls' schools. UNAMA, *Afghanistan: Annual Report 2012, Protection of Civilians in Armed Conflict*, February 2013, <http://www.refworld.org/docid/512b26a92.html>, pp. 57-58. See also Government of Afghanistan, *President Karzai: We Will not Let Anyone to Deprive Our Children of Education and to Leave Them in Further Dependence*, 11 October 2012, http://president.gov.af/en_news/13664; Government of Afghanistan, *President Karzai: Attacks on Education Are Carried Out by Those Who Want Afghans to Remain Uneducated and Needy*, 10 October 2012, http://president.gov.af/en_news/13640; UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, pp. 30-34; UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/855 – S/2012/462, 20 June 2012, <http://www.refworld.org/docid/5118c1152.html>, para. 34; UN General Assembly (Human Rights Council), *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, para. 24. As of 26 April 2012, the Taliban were newly listed as a party to the conflict responsible for specific grave violations against children in the UN Secretary-General's Report on Children and Armed Conflict for 2011. General Assembly / Security Council, *Report of the Secretary-General on Children in Armed Conflict*, 26 April 2012, A/66/782–S/2012/261, <http://www.refworld.org/docid/4fd706472.html>. The report lists individuals or groups responsible specifically for attacks on schools and/or hospitals or threats against such protected locations or individuals.

³⁸⁵ US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>. Human Rights Watch noted that, "While education is far more accessible than under the Taliban, more than half of all girls still do not attend school." Human Rights Watch, *I Had to Run Away: The Imprisonment of Women and Girls for 'Moral Crimes' in Afghanistan*, March 2012, <http://www.refworld.org/docid/4f787d142.html>, p. 4.

³⁸⁶ For further guidance see UNHCR, *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, <http://www.refworld.org/docid/3d36f23f4.html>.

³⁸⁷ UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <http://www.refworld.org/docid/4b2f4f6d2.html>.

9. *Victims of Trafficking or Bonded Labour and Persons at Risk of Being Trafficked or of Bonded Labour*

Afghan men, women and children are reported to be trafficked internally and internationally for forced labour and sexual exploitation.³⁸⁸ Trafficking within Afghanistan is more prevalent than transnational trafficking. The majority of Afghan trafficking victims are reported to be children, who are trafficked for forced labour, domestic servitude, commercial sexual exploitation, forced begging, and drug smuggling within Afghanistan and in Pakistan, Iran and Saudi Arabia.³⁸⁹ Some families knowingly sell their children for forced prostitution, including for *bacha baazi*, where wealthy men use groups of young boys for social and sexual entertainment, while opium-farming families are reported to sell their children, particularly girls, to settle debts with opium traffickers.³⁹⁰ Some Afghan families, including children, are reported to be trapped in bonded labour, including in brick making in eastern Afghanistan.³⁹¹ Afghan women and girls are reportedly trafficked and subjected to forced prostitution and domestic servitude in Pakistan, Iran and India.³⁹² Afghan men are reportedly trafficked to Iran, Pakistan, Greece, the Gulf States and possibly south-east Asian countries and subjected to forced labour and debt bondage in the agriculture and construction sectors.³⁹³

In 2008 the Government adopted an anti-trafficking law,³⁹⁴ but in the twelve months between June 2011 and June 2012 it is reported not to have prosecuted or convicted any trafficking offenders under this law.³⁹⁵ In contrast, the Government reportedly punished victims for offenses they allegedly

³⁸⁸ Special Inspector General for Afghanistan Reconstruction, *Quarterly Report to the United States Congress*, 30 October 2012, <http://www.sigar.mil/pdf/quarterlyreports/2012-10-30qr.pdf>, pp. 124-125; and *Quarterly Report to the United States Congress*, 30 July 2012, <http://www.sigar.mil/pdf/quarterlyreports/2012-07-30qr.pdf>, pp. 106-107; US Department of State, *Trafficking in Persons Report 2012 - Afghanistan*, 19 June 2012, <http://www.refworld.org/docid/4fe30cea3c.html>; AIHRC, *Summary Report on Investigation of Causes and Factors of Trafficking in Women and Children*, July 2011, <http://www.refworld.org/docid/4e1d57012.html>; IRIN, *Sharp Rise in Human Trafficking in Sindh Province*, 21 March 2012, <http://www.refworld.org/docid/4f7034212.html>; AIHRC, *Fifth Report: Situation of Economic and Social Rights in Afghanistan*, December 2011, <http://www.refworld.org/docid/511e58cf0.html>, p. 129.

³⁸⁹ See for example International Organization for Migration, *Counter Trafficking and Assistance to Vulnerable Migrants: Annual Report Activities 2011*, 8 January 2013, <http://reliefweb.int/report/world/counter-trafficking-and-assistance-vulnerable-migrants-annual-report-activities-2011>. The report found "evidence of boys being internally trafficked for forced labour in construction or other hardship sectors and begging in the capital, sometimes being subjected to sexual abuse in the course of labour exploitation" (pp. 34, 36). See also US Department of State, *Trafficking in Persons Report 2012 - Afghanistan*, 19 June 2012, <http://www.refworld.org/docid/4fe30cea3c.html>; Watchlist on Children and Armed Conflict, *Setting the Right Priorities: Protecting Children Affected by Armed Conflict in Afghanistan*, 14 June 2010, pp. 39-40, <http://www.watchlist.org/reports/pdf/Afghanistan%20Report%202010.pdf>.

³⁹⁰ US Department of State, *Trafficking in Persons Report 2012 - Afghanistan*, 19 June 2012, <http://www.refworld.org/docid/4fe30cea3c.html>; Washington Post, *Afghanistan Sees Rise in 'Dancing Boys' Exploitation*, 5 April 2012, http://www.washingtonpost.com/world/asia_pacific/afghanistans-dancing-boys-are-invisible-victims/2012/04/04/gIOAYreSwS_story.html.

³⁹¹ US Department of State, *Trafficking in Persons Report 2012 - Afghanistan*, 19 June 2012, <http://www.refworld.org/docid/4fe30cea3c.html>; Institute for War and Peace Reporting, *Afghanistan: "I Was Not Born a Slave"*, 23 May 2012, <http://www.refworld.org/docid/4fbf52512.html>; International Labour Organization, *Buried in Bricks: A Rapid Assessment of Bonded Labour in Brick Kilns in Afghanistan*, 2011, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_172671.pdf. The ILO report found that more than half of the workers surveyed were children, with the majority under 14, and that the brick kilns relied almost entirely on bonded labour. Most children began working between seven and eight years old, and by the age of nine almost 80 per cent of children were found to be working. The brick kilns were found to rely almost entirely on debt bondage, with workers and their families tied to a kiln by the need to pay off loans taken for basic necessities. (ILO has posted a short video about the report on its Youtube channel: *Child and Bonded Labourers in Afghan Brick Kilns*, 12 February 2012, <http://www.youtube.com/watch?v=kwOYT8EOYHE>.)

³⁹² See for example International Organization for Migration, *Counter Trafficking and Assistance to Vulnerable Migrants: Annual Report Activities 2011*, 8 January 2013, <http://reliefweb.int/report/world/counter-trafficking-and-assistance-vulnerable-migrants-annual-report-activities-2011>. The report found that, "In Afghanistan, women are forced into prostitution, exploited in domestic servitude and forced labour, and exchanged in marriage for dispute settlement purposes" (p. 37). See also Deutsche Welle, *Human Trafficking, Prostitution Thrive in Afghanistan*, 24 October 2012, <http://www.dw.de/human-trafficking-prostitution-thrive-in-afghanistan/a-16327746>; US Department of State, *Trafficking in Persons Report 2012 - Afghanistan*, 19 June 2012, <http://www.refworld.org/docid/4fe30cea3c.html>.

³⁹³ US Department of State, *Trafficking in Persons Report 2012 - Afghanistan*, 19 June 2012, <http://www.refworld.org/docid/4fe30cea3c.html>.

³⁹⁴ Forced labour is prohibited under Article 49 of the Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>. On 14 July 2008, the Law on Countering Abduction and Human Trafficking/Smuggling was endorsed by President Karzai and published in the official gazette. The law requires the establishment of a high-level commission to prevent and combat the crimes of human trafficking and to coordinate the activity of the relevant authorities in this respect; see AIHRC, *Report on the Situation of Economic and Social Rights in Afghanistan - IV*, December 2009, p. 47, <http://www.refworld.org/docid/4b3b2df72.html>. The Law, along with Article 516 of the Penal Code, prescribes between eight and 15 years' imprisonment for labour trafficking. The Law on the Elimination of Violence Against Women provides for a maximum sentence of 15 years' imprisonment for forced prostitution of women.

³⁹⁵ The US State Department reports that Afghanistan does not fully comply with the minimum standards for the elimination of trafficking in persons, but that the government has a written plan that, if implemented, would constitute making significant efforts to bring itself into compliance with these minimum standards. The US State Department also states that no progress was reported in the twelve months to June 2012 towards fulfilling the goals of the action plan signed in January 2011 to combat the use of *bacha baazi* by the ANSF. US Department of State, *Trafficking in Persons Report 2012 - Afghanistan*, 19 June 2012, <http://www.refworld.org/docid/4fe30cea3c.html>.

committed as a direct result of being trafficked.³⁹⁶ Government employees are reported to have been accused of complicity in human trafficking.³⁹⁷

In light of the foregoing, UNHCR considers that people, especially women and children, in particular social-economic circumstances that create vulnerabilities to trafficking or bonded labour, may be in need of international refugee protection on the grounds of their membership of a particular social group, depending on the individual circumstances of the case. This includes individuals who have previously been victims of trafficking or bonded labour who may be in a position of heightened vulnerability to being re-trafficked or being re-subjected to bonded labour.³⁹⁸

10. Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Individuals

Consensual same-sex relations are illegal in Afghanistan and are punishable by “long imprisonment” under the Afghan Penal Code.³⁹⁹ The use by the police of harassment, violence, and detention on the basis of people’s sexual orientation was reported to have increased significantly during 2012 compared to previous years.⁴⁰⁰ Under Sharia law, the maximum sentence for same-sex relations is the death penalty, but no death sentences for same-sex relations are reported to have been handed out since the fall of the Taliban.⁴⁰¹

Social taboos around homosexuality remain strong.⁴⁰² LGBTI individuals are reported to face discrimination and violence, including at the hands of the authorities, family and community members, as well as AGEs.⁴⁰³ Transvestites are reported to face harassment at the hands of the

³⁹⁶ In some cases, trafficking victims were jailed pending resolution of their legal cases, despite their recognized victim status. Women victims were arrested and imprisoned or otherwise punished for prostitution or adultery, for escaping from their husbands who forced them into prostitution, or for being unchaperoned as they fled abuse in their homes. Authorities arrested several would-be child suicide attackers after they were reportedly psychologically coerced, trained and equipped in Pakistan by armed opposition groups. UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding Observations on the Combined Initial and Second Periodic Reports of Afghanistan*, 23 July 2013, CEDAW/C/AFG/CO/1-2, <http://www.refworld.org/docid/51ff5ac94.html>, paragraph 26; US Department of State, *Trafficking in Persons Report 2012 - Afghanistan*, 19 June 2012, <http://www.refworld.org/docid/4fe30cea3c.html>.

³⁹⁷ This includes reports of sexual abuse of boys, including for *bacha baazi*, by members of the ANSF; reports of traffickers bribing Afghan officials to secure their release from prison; reports of corrupt officials in government-run orphanages sexually abusing children and forcing them into prostitution; and reports that ANP and border police facilitated trafficking and raped sex trafficking victims. The government is reported not to have investigated, arrested or prosecuted any government officials for facilitating trafficking offenses. US Department of State, *Trafficking in Persons Report 2012 - Afghanistan*, 19 June 2012, <http://www.refworld.org/docid/4fe30cea3c.html>.

³⁹⁸ UNHCR, *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, HCR/GIP/06/07, 7 April 2006, <http://www.refworld.org/docid/443679fa4.html>.

³⁹⁹ Article 427 of the Penal Code of Afghanistan, 7 October 1976. The English text of the Penal Code is available at <http://www.refworld.org/docid/4c58395a2.html>. Sexual relations with a person under the age of consent are also covered by Article 427. See also International Lesbian, Gay, Bisexual, Trans and Intersex Association, *State-Sponsored Homophobia – A World Survey of Laws Prohibiting Same Sex Activity between Consenting Adults*, May 2012, http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2012.pdf, pp. 12, 41.

⁴⁰⁰ US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>.

⁴⁰¹ International Lesbian, Gay, Bisexual, Trans and Intersex Association, *State-Sponsored Homophobia – A World Survey of Laws Prohibiting Same Sex Activity between Consenting Adults*, May 2012, http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2012.pdf, p. 41.

⁴⁰² The Guardian, *Gay Afghan Men Face Exile or Marriage in Conformist Masculine Society*, 10 September 2012, <http://www.guardian.co.uk/commentisfree/2012/sep/10/gay-afghan-men-exile-or-marriage>; US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>. The term homosexuality is reportedly itself often wrongly understood in Afghanistan, with the terms *hamjins baazi* (homosexuality) and *bacha baazi* (paedophilia) being used interchangeably. The Guardian, *Afghanistan’s Accidental Gay Pride*, <http://www.guardian.co.uk/commentisfree/2011/may/24/gay-pride-afghanistan-rainbow-flags>. It should also be noted that in certain segments of Afghan society, sexual acts between men are reportedly not uncommon. However, men are reported to make a distinction between engaging in sexual acts with other men and feeling love for another men, the latter of which is considered a sin in Islam and punishable under Sharia law. See for example Afghanistan Human Terrain Team, *Pashtun Sexuality: Research Update and Findings (Unclassified)*, 2009, <http://info.publicintelligence.net/HTT-PashtunSexuality.pdf>; Shivananda Khan, *Everybody Knows, But Nobody Knows: Desk Review of Current Literature on HIV and Male-Male Sexualities, Behaviours and Sexual Exploitation in Afghanistan* (London: Naz Foundation International), September 2008, http://www.aidsdatahub.org/dmdocuments/Everybody_knows_but_nobody_knows_Afghan_Review.pdf, pp. 22, 29; and Shivananda Khan, *Rapid Assessment of Male Vulnerabilities to HIV and Sexual Exploitation in Afghanistan* (London: Naz Foundation International), 30 March 2009, http://www.aidsdatahub.org/dmdocuments/Rapid_Assessment_of_Male_Vulnerabilities_to_HIV_and_Sexual_Exploitation_in_Afghanistan_2009.pdf, pp. 17, 63. For information on the practice of *bacha baazi*, see Section III.A.8.

⁴⁰³ Shivananda Khan states, “It is clearly recognised that because of denial, invisibility, stigmatisation and illegality (both religious and secular), males who have sex with males already face considerable risks of harassment, violence, and perhaps imprisonment.” Shivananda Khan, *Rapid Assessment of Male Vulnerabilities to HIV and Sexual Exploitation in Afghanistan* (London: Naz Foundation International), 30

police.⁴⁰⁴ Organizations dedicated to the protection or exercise of freedom of sexual orientation reportedly remain underground.⁴⁰⁵

Given the pervading social taboos related to same-sex relations, there is little information available on the treatment of LGBTI individuals in Afghanistan. What little information there is pertains to gay men and male transvestites; the situation of lesbians, and that of bisexual, transgender or intersex individuals is largely undocumented. The absence of information should not be taken to mean that there is no risk for LGBTI individuals.⁴⁰⁶

In light of the strong social taboos, as well as the criminalization of same-sex relations, UNHCR considers that LGBTI individuals are likely to be in need of international refugee protection on account of their membership of a particular social group based on their sexual orientation and/or gender identity, since they do not, or are perceived not to conform to prevailing legal, religious and social norms.⁴⁰⁷ It should be borne in mind that LGBTI individuals cannot be expected to change or conceal their identity in order to avoid persecution.⁴⁰⁸ Furthermore, the existence of significant criminal sanctions for same-sex relations is a bar to State protection, including where persecutory acts are perpetrated by non-State actors such as family or community members.⁴⁰⁹

11. Members of (Minority) Ethnic Groups

The population of Afghanistan comprises a number of different ethnic groups, which have traditionally maintained a large measure of autonomy vis-à-vis the central Government.⁴¹⁰ As a result

March 2009, http://www.aidsdatahub.org/dmdocuments/Rapid_Assessment_of_Male_Vulnerabilities_to_HIV_and_Sexual_Exploitation_in_Afghanistan_2009.pdf.pdf, p. 63. For further analysis of the situation of individuals perceived as contravening Sharia law, see Sections III.A.5. For further analysis of the situation of individuals perceived as contravening the Taliban's interpretation of Islamic principles, norms and values, see Section III.A.6.

⁴⁰⁴ US Department of State, *2011 Country Reports on Human Rights Practices - Afghanistan*, 24 May 2012, <http://www.refworld.org/docid/4fc75ac3c.html>; The Guardian, *Will Afghanistan Learn that Cross-Dressers Are Not Criminals?*, 13 November 2011, <http://www.guardian.co.uk/commentisfree/2011/nov/13/cross-dressing-afghanistan-transvestite>.

⁴⁰⁵ US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6c73f.html>. The report noted that there were some reports of improving perceptions within communities in Kabul in relation to consensual same-sex conduct.

⁴⁰⁶ COC Nederland and Vrije Universiteit Amsterdam (Sabine Jansen and Thomas Spijkerboer), *Fleeing Homophobia: Asylum Claims Related to Sexual Orientation and Gender Identity in Europe*, September 2011, <http://www.refworld.org/pdfid/4ebba7852.pdf>, Chapter 8.

⁴⁰⁷ For further guidance see UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, <http://www.refworld.org/docid/50348afc2.html>; and UNHCR, *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, <http://www.refworld.org/docid/3d36f23f4.html>. The UK Asylum and Immigration Tribunal held that if an individual or LGBT organization "tried to make a political point in public or otherwise behaved in a way such as to attract public outrage, then there might be a sharp response from the Government." See *AJ (Risk to Homosexuals) Afghanistan* CG [2009] UKAIT 00001, 5 January 2009, <http://www.refworld.org/docid/4964c06b2.html>.

⁴⁰⁸ UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, <http://www.refworld.org/docid/50348afc2.html>. The right to freedom of opinion and expression encompasses "the expression of identity or personhood through speech, department, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers"; see Principle 19 of the *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, March 2007, <http://www.refworld.org/docid/48244e602.html>. As recognized by numerous national jurisdictions, persecution does not cease to be persecution for the purpose of the 1951 Convention because those persecuted can eliminate the harm by taking avoiding action within the country of nationality. See, for instance, the UK Supreme Court judgment in *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, [2010] UKSC 31, 7 July 2010, <http://www.refworld.org/docid/4c3456752.html>; *Nasser Mustapha Karouni v. Alberto Gonzales, Attorney General*, No. 02-72651, United States Court of Appeals for the Ninth Circuit, 7 March 2005, <http://www.refworld.org/docid/4721b5c32.html>; and *Appellant S395/2002 v. Minister for Immigration and Multicultural Affairs; Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs*, [2003] HCA 71, 9 December 2003 (High Court of Australia), para. 81, <http://www.refworld.org/docid/3fd9eca84.html>.

⁴⁰⁹ Even in the absence of enforcement of the legal provisions criminalizing homosexual acts, the pervading or generalized climate of homophobia, as evidenced by societal attitudes etc., can be considered an indication of the risks faced by LGBT individuals in Afghanistan. See UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, <http://www.refworld.org/docid/50348afc2.html>.

⁴¹⁰ Maley, William, *The Afghan Wars*, 2002, New York, Palgrave Macmillan, pp. 8-9: "The population of Afghanistan has never been counted in a complete census, but the results of a partial census in 1979, adjusted to take account of other relevant data, suggested a population of approximately 13.05 million, including around 800,000 nomads (Eighmy, 1990: 10). This population was in no sense homogeneous, and indeed it is something of a misnomer to talk of "Afghan society", for the term suggests a degree of coherent structure which was never really

of a variety of historical population movements, both forced and voluntary, some members of ethnic groups now reside outside areas where they traditionally represented a majority.⁴¹¹ Consequently, individuals belonging to one of the largest ethnic groups nationwide may in fact constitute a minority ethnic group in their area of residence, and may accordingly face certain challenges in their home area due to their ethnicity.⁴¹² Conversely, a member of an ethnic group constituting a minority at the national level may not be at risk on the grounds of ethnicity in areas where this ethnic group represents the local majority.

It should be noted that the various ethnic groups are not necessarily homogenous communities. Among Pashtuns, for example, strong rivalries between different sub-groupings may be a cause of tensions and conflicts.⁴¹³

It should also be noted that ethnicity and religion are often inextricably linked, especially in the case of the Hazara ethnic group which is predominantly Shia. As a result, it is not always possible to distinguish between religion and ethnicity as the primary element behind certain incidents or tensions.⁴¹⁴ Similarly, since political allegiance is often guided by ethnicity, (imputed) political opinion and ethnicity may be inextricably-linked elements in conflicts and tensions between different groups.⁴¹⁵

Ethnic divisions in Afghanistan remain strong. The Peoples under Threat Index compiled by Minority Rights Group International lists Afghanistan as the third most dangerous country in the world for ethnic minorities, especially because of targeted attacks against individuals based on their ethnicity and religion. The index refers specifically to the Hazaras, Pashtuns, Tajiks, Uzbeks, Turkmen and Baluchis as ethnic minorities at risk in Afghanistan.⁴¹⁶

present. Rather, Afghanistan has encompassed a kaleidoscopic collection of 'micro-societies' (often identified by the label qawm, or 'network'), with porous and flexible boundaries. One scholar even went so far as to dub Afghanistan a 'Nation of Minorities' (Jawad, 1992). Ethnicity, religion, occupation, and gender have historically offered to Afghans a range of bases upon which they may seek to identify with their fellows, and while some of these are effectively ascriptive - that is, unchangeable, or changeable only at enormous social cost - the relative emphasis given to one over another is frequently a matter of strategic choice. (...) Afghanistan is first of all a multiethnic country." As noted by William Maley, quoted above, no population census has been conducted in the country since the partial census 1979, which itself was not completed due to the Soviet invasion. Based on an extrapolation of the data from the 1979 census, sources estimate that the current ethnic composition of Afghanistan's population is Pashtun 42 per cent; Tajik 27 per cent; Hazara 9 per cent; Uzbek 9 per cent; Aimak 4 per cent; Turkmen 3 per cent; Baloch 2 per cent; and other ethnic groups 4 per cent. See US Central Intelligence Agency, *CIA Factbook: Afghanistan*, <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html>. Statistics about the ethnic composition of Afghanistan are disputed by different ethnic groups. Civil-Military Fusion Centre, *Afghanistan Ethnic Groups: A Brief Investigation*, August 2011, <http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation>. A detailed map showing the geographic distribution of Afghanistan's ethnic groups can be found at p. 88 of Congressional Research Service, *Afghanistan: Post-Taliban Governance, Security, and U.S. Policy*, 3 May 2012, <http://www.fas.org/sgp/crs/row/RL30588.pdf>, Figure A-2, "Map of Afghan Ethnicities".

⁴¹¹ As an example, Abdur Rahman Khan (who ruled Afghanistan between 1880 and 1901) transported troublesome Pashtuns of the Durrani and Ghilzai tribes to Uzbek- and Tajik-populated areas in the north, where their dispersion amongst non-Pashtun groups made them dependent on the Rahman's central government. Rahman also enrolled tens of thousands of Pashtun warriors in a Muslim jihad against Shia Hazaras in the Hazarajat and against animist tribes in Kafiristan (today's Nuristan). The Pashtun warriors were rewarded with plunder and land grants in the regions they conquered. A second wave of Pashtun migration into settled Tajik, Uzbek and Hazara areas followed in the second quarter of the 20th century, when the government transported thousands of landless Pashtun Ghilzai families to the north, depriving the northern minorities of valuable agricultural and pasture land that they had occupied for centuries. See, for example, Peter Tomsen, *The Wars of Afghanistan*, New York: Public Affairs, 2011, pp. 42, 53, 80.

⁴¹² An example are the Pashtuns in northern Afghanistan, the descendants of Pashtuns who were relocated by the government in the nineteenth and twentieth centuries to areas traditionally settled by Uzbeks and Tajiks. Following the fall of the Taliban in 2001, large numbers of Pashtuns from northern Afghanistan, who constitute an ethnic minority there, were forcibly displaced due to ethnic violence directed against them due to their (perceived) association with the Taliban regime. For some of the displaced, reclaiming land and property has remained a challenge. Internal Displacement Monitoring Centre, *Afghanistan: Durable Solutions Far From Reach Amid Escalating Conflict*, 16 April 2012, <http://www.refworld.org/docid/511e50cd2.html>; Minority Rights Group International, *Pashtuns* (undated), <http://www.minorityrights.org/5433/afghanistan/pashtuns.html>; Human Rights Watch, *Paying for the Taliban's Crimes: Abuses Against Ethnic Pashtuns in Northern Afghanistan*, 9 April 2002, <http://www.refworld.org/docid/3cb2ad007.html>. See also Secure Livelihoods Research Consortium (Adam Pain), *Livelihoods, Basic Services and Social Protection in Afghanistan*, July 2012, <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7718.pdf>, p. 4.

⁴¹³ See for example Civil-Military Fusion Centre, *Afghanistan Ethnic Groups: A Brief Investigation*, August 2011, <http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation>; Tribal Analysis Center, *Pashtun Tribal Dynamics*, October 2009, <http://www.tribalanalysiscenter.com/PDF-TAC/Pashtun%20Tribal%20Dynamics.pdf>.

⁴¹⁴ See for example US Commission on International Religious Freedom, *Annual Report 2012 – Afghanistan*, March 2012, <http://www.refworld.org/docid/4f71a66d32.html>; Civil-Military Fusion Centre, *Afghanistan Ethnic Groups: A Brief Investigation*, August 2011, <http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation>.

⁴¹⁵ See, for example, Congressional Research Service, *Afghanistan: Politics, Elections, and Government Performance*, 20 September 2012, <http://www.fas.org/sgp/crs/row/RS21922.pdf>, p. 2. Further analysis of corresponding risk profiles can be found in Sections III.A.1 and III.A.5.

⁴¹⁶ Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2012*, 28 June 2012, <http://www.minorityrights.org/11374/state-of-the-worlds-minorities/state-of-the-worlds-minorities-and-indigenous-peoples-2012.html>, p.

The Constitution guarantees “equality among all ethnic groups and tribes”.⁴¹⁷ However, members of certain ethnic groups have complained of discrimination by the state, including in the form of unequal access to local government jobs in areas where they were in the minority.⁴¹⁸

a) *Kuchis*

Kuchis, who are ethnic Pashtuns, form a marginalized group.⁴¹⁹ Since the fall of the Taliban regime in 2001, human development indicators for Kuchis are reported to have stayed behind those of other ethnic groups; they are among the poorest people in Afghanistan.⁴²⁰ Traditionally the Kuchis are nomads, but the majority of Kuchis have now settled in towns or villages.⁴²¹ The Constitution provides that the State shall take measures to improve the livelihoods of nomads and to improve access to education for nomads (Article 44).⁴²² However, the Afghanistan Independent Human Rights Commission (AIHRC) reports that the Government has seldom acted on its pledges to build mobile schools and clinics for Kuchis. As a result, literacy rates among nomadic Kuchis are reported to be among the lowest in the world. Kuchis also have very limited access to health facilities.⁴²³

b) *Hazaras*

Hazaras have also been reported to face continuing societal discrimination, as well as to be targeted for extortion through illegal taxation, forced recruitment and forced labour, and physical abuse.⁴²⁴ Pashtuns are reportedly increasingly resentful of the Hazara minority, who have historically been marginalized and discriminated against by the Pashtuns, but who have made significant economic and political advances since the 2001 fall of the Taliban regime.⁴²⁵ Nevertheless, Hazaras have accused the Government of giving preferential treatment to Pashtuns at the expense of minorities in general and Hazaras in particular.⁴²⁶ Hazaras are also reported to continue to be subject to harassment,

213. In the 2010 index, Afghanistan was listed as the fourth most dangerous country in the world for ethnic minorities; it rose to third place in 2011 and has remained there in the 2012 index. It should be noted that not all observers agree on the classification of certain violent incidents as being ethnically motivated. Thus the Congressional Research Service states, “While Afghans continue to follow traditional patterns of affiliation, there has been a sense among Afghans that their country now welcomes members of all political and ethnic groups and factions. There have been very few incidents of ethnic-based violence since the fall of the Taliban, but jealousies over relative economic and political positions of the different ethnic communities have sporadically manifested as clashes or political disputes.” Congressional Research Service, *Afghanistan: Politics, Elections, and Government Performance*, 20 September 2012, <http://www.fas.org/sgp/crs/row/RS21922.pdf>, p. 2.

⁴¹⁷ Article 6 of the Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>.

⁴¹⁸ US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>.

⁴¹⁹ In recognition of this fact, ten seats in the lower house of the national assembly are reserved for Kuchis. US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>.

⁴²⁰ AIHRC, *Fifth Report: Situation of Economic and Social Rights in Afghanistan*, December 2011, <http://www.refworld.org/docid/511e58cf0.html>, p. 114; Civil-Military Fusion Centre, *Afghanistan Ethnic Groups: A Brief Investigation*, August 2011, <http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation>, p. 3; Minority Rights Group International, *Kuchis* (undated), <http://www.minorityrights.org/5444/afghanistan/kuchis.html>.

⁴²¹ There are no reliable statistics for the total number of Kuchis in Afghanistan; estimates range from 1.5 million people to 2-3 million. AIHRC, *Fifth Report: Situation of Economic and Social Rights in Afghanistan*, December 2011, <http://www.refworld.org/docid/511e58cf0.html>, p. 113; Civil-Military Fusion Centre, *Afghanistan Ethnic Groups: A Brief Investigation*, August 2011, <http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation>, p. 3. The AIHRC reports that over 80 per cent of Kuchis have permanently settled in towns or villages, while close to 18 per cent is semi-nomadic: they have settled but still move with their animals at certain times of the year. Only about two per cent of Kuchis are still fully nomadic, with no permanent place of residence. AIHRC, *ibid.* Kuchis who have settled continue in some cases to be at risk of forced eviction by government authorities; Kuchis in Kabul claimed that three people died on 10 December 2012 when bulldozers moved in after they had been ordered to leave their settlement in Kabul’s Qasaba district. Radio Free Europe / Radio Liberty, *Afghan Nomads Fend Off Authorities In Kabul Land Dispute*, 14 December 2012, <http://www.refworld.org/docid/5124f90b2.html>.

⁴²² Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>, Articles 14 and 44. The AIHRC reports that a decree issued by President Karzai in 1387 (2008-2009) on the settlement of Kuchis has not been implemented. AIHRC, *Fifth Report: Situation of Economic and Social Rights in Afghanistan*, December 2011, <http://www.refworld.org/docid/511e58cf0.html>, p. 115.

⁴²³ As a result, vaccination rates for Kuchi children are much lower than for other groups of children, whether urban or rural. Only 17 per cent of Kuchi women have access to prenatal care. AIHRC, *Fifth Report: Situation of Economic and Social Rights in Afghanistan*, December 2011, <http://www.refworld.org/docid/511e58cf0.html>, p. 114.

⁴²⁴ US Department of State, *2012 Country Reports on Human Rights Practices - Afghanistan*, 19 April 2013, <http://www.refworld.org/docid/517e6e73f.html>.

⁴²⁵ Congressional Research Service, *Afghanistan: Politics, Elections, and Government Performance*, 20 September 2012, <http://www.fas.org/sgp/crs/row/RS21922.pdf>, p. 3.

⁴²⁶ Freedom House, *Freedom in the World 2012 - Afghanistan*, 22 March 2012, <http://www.refworld.org/docid/4f6b210837.html>; US Commission on International Religious Freedom, *Annual Report 2012 - Afghanistan*, March 2012, <http://www.refworld.org/docid/4f71a66d32.html>.

intimidation and killings at the hands of the Taliban and other AGEs.⁴²⁷ In August 2012, following the murder of two Hazaras in Uruzgan province, allegedly by the Taliban, nine Pashtuns were killed in an attack widely believed to have been carried out by Hazaras. Local government officials expressed concerns about the spectre of a cycle of ethnically motivated violence, and about threats by Pashtuns to turn their weapons against the Government if justice were not done in relation to the murders.⁴²⁸

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

Among the most marginalized communities in Afghanistan are those of Jat ethnicity, which encompasses the Jogi, Chori Frosh and Gorbat communities.⁴²⁹ Institutional discrimination reportedly formed a major obstacle for members of these communities, with the Ministry of Interior reportedly refusing to consider members of the Jogi ethnic group as nationals of Afghanistan. This in turn has meant that they are not issued with the nationality card, the *tazkira*. As a result, they have limited access to social services, government schools, employment and land ownership.⁴³⁰

d) *Land Disputes with an Ethnic Dimension*

Land disputes are common in Afghanistan; they frequently turn violent.⁴³¹ Land grabbing is reportedly widespread, reportedly often involving powerful actors with connections to the Government.⁴³² All land dispute resolution mechanisms, whether formal or informal, are reported to be afflicted by corruption.⁴³³

⁴²⁷ US Commission on International Religious Freedom, *Annual Report 2012 – Afghanistan*, March 2012, <http://www.refworld.org/docid/4f71a66d32.html>. See also Radio Free Europe, *Five Civilians Gunned Down in Eastern Afghanistan*, 27 October 2012, <http://www.refworld.org/docid/5090e5b223.html>, reporting on the murder of five Hazaras by the Taliban in Andar district of Ghazni province. In September 2012, five Hazaras from Bamyan province were killed, allegedly by the Taliban, when travelling on the road connecting Bamyan province to Kabul via Wardak province. New York Times, *Taliban Hits Region Seen as “Safest” for Afghans*, 30 October 2012, <http://www.nytimes.com/2012/10/31/world/asia/taliban-hits-region-seen-as-safest-for-afghans.html>. In March 2013 a group of 30 Afghan Members of Parliament wrote to the Government of Australia, urging it to abandon plans to forcibly return about 125 failed asylum-seekers to Afghanistan, mostly Hazaras, on the grounds that the safety of the returnees could not be guaranteed. Most of the Members of Parliament who signed the letter were ethnic Hazaras, but the signatories also included Members of Parliament from other ethnic groups. Letter on file with UNHCR; see also ABC News, *Australia Warned against Returning Afghan Refugees*, 12 March 2013, <http://www.abc.net.au/news/2013-03-12/afghan-letters/4568656>.

⁴²⁸ UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/67/354 – S/2012/703, 13 September 2012, <http://www.refworld.org/docid/5065a16a2.html>, para. 22. The death of a Hazara girl in Bamyan province in January 2012, allegedly at the hands of a Sayed member of the local Provincial Council, led to tensions between Hazaras and Sayeds. EurasiaNet, *Still Searching for Inter-Ethnic Equilibrium*, 12 October 2012, <http://www.eurasianet.org/node/66044>.

⁴²⁹ Samuel Hall Consulting, *Jogi and Chori Frosh Communities: A Story of Marginalization* (for UNICEF), November 2011, <http://samuelhall.org/REPORTS/JOGI%20and%20CHORI%20FROSH%20Communities.pdf>, p. 15.

⁴³⁰ Samuel Hall Consulting, *Jogi and Chori Frosh Communities: A Story of Marginalization* (for UNICEF), November 2011, <http://samuelhall.org/REPORTS/JOGI%20and%20CHORI%20FROSH%20Communities.pdf>. The Jogi, Jat, Gorbat and Chori Frosh “suffer from severe social, economic and political barriers constraining access to education and employment.” ILO, *Afghanistan: Time to move to Sustainable Jobs: Study on the State of Employment in Afghanistan*, May 2012, <http://www.refworld.org/docid/5124c39f2.html>, p. 7. The total number of Jogi, Jat, Gorbat and Chori Frosh individuals is estimated to be around 30,000, mostly in the cities of Jalalabad (Jat), Mazar-e-Sharif (Jogi and Chori-Frosh), Kabul (Jogi and Jat), Kunduz (Jogi and Chori Frosh), and Herat (Gorbat); *ibid.*, p. 39. See also Humanitarian Policy Group, *Sanctuary in the City? Urban Displacement and Vulnerability in Kabul*, June 2012, <http://www.odi.org.uk/resources/docs/7722.pdf>, p. 7; Afghan Civil Society Forum, *The Jogi People*, 2010, http://www.acsf.af/english/index.php?option=com_content&view=article&id=23:jogi-people&catid=9:articles&Itemid=14; and Institute for War and Peace Reporting, *Gypsies Demand their Rights*, 22 June 2009, <http://www.refworld.org/docid/4a3b58f01e.html>. Afghanistan also has a small Kyrgyz community of about 1,500 individuals in northern Badakhshan province, who have expressed concerns about the very survival of their community in Afghanistan. Their efforts to be relocated to Kyrgyzstan have so far been unsuccessful. EurasiaNet, *Kyrgyz Community in Afghanistan Looking for a Way Out*, 7 May 2012, <http://www.eurasianet.org/node/65369>.

⁴³¹ Afghanistan Analysts Network, *Land Grabs in Afghanistan (I): Nangrahar, The Disputed O-rangeland*, 16 June 2012, <http://aan-afghanistan.com/index.asp?id=2814>; Inter Press Service, *Land Triggers New Conflicts*, 4 December 2011, <http://www.ipsnews.net/2011/12/afghanistan-land-triggers-new-conflicts/>; Civil-Military Fusion Centre, *From Dispute to Resolution: Managing Land in Afghanistan*, October 2011, https://www.cimicweb.org/cmo/afg/Documents/Governance/Afghanistan_Land_Dispute_Resolution.pdf.

⁴³² A Parliamentary Commission reported in December 2012 that a total of 1.25 million acres of land have been confiscated illegally in Afghanistan, mostly by influential figures. The Commission stated that the Attorney General’s Office had failed to act in relation to these land grabs. Wadsam, *Powerful Figures Involved in Land Grabbing: Parliament Commission*, 29 December 2012, <http://www.wadsam.com/powerful-figures-involved-in-land-grabbing-parliament-commission-2324/>. A meeting of the National Security Council chaired by President Karzai on 24 February 2013 directed the Ministry of Interior, the Attorney General Office as well as the Independent Directorate of Local Governance (IDLG) to develop a plan to address the issue of land seizures and to provide restitution for land illegally grabbed by powerful individuals who had abused their authority and official position. Government of Afghanistan, *National Security Council Meeting Discusses Situation in Wardak and Logar Provinces*, 24 February 2013, <http://president.gov.af/en/news/17740>. In October 2012 the Afghanistan Research and Evaluation Unit (AREU) noted that proposed amendments to the Land Management Law, while including a new chapter (Chapter 10) on land grabbing, focused primarily on grabbed lands presumed to be State lands and ignored land

Conflicts about land ownership and land use rights often have an ethnic dimension.⁴³⁴ Afghans who seek to reclaim their land after returning home from displacement may be particularly vulnerable to land disputes with an ethnic dimension.⁴³⁵ For example, many families of Pashtun origin who settled in parts of the north in the early parts of the twentieth century fled during the time of the Russian occupation of Afghanistan as indigenous Uzbek, Turkmen and Hazara communities rebelled against Pashtun occupation and dominance, including in terms of controlling rights to pastures.⁴³⁶ Upon their return to their home areas in the north after several decades in displacement, they have reportedly found their homes and lands occupied, mostly by Uzbek militias.⁴³⁷

In the provinces of Wardak and Ghazni, the annual migration of nomadic Kuchis in search of grazing pastures for their animals in areas settled by Hazaras has given rise to recurring violence between Kuchis and Hazaras.⁴³⁸ The violence has led to deaths and injuries among both groups, and displacement of Hazara villagers.⁴³⁹

grabbing by state actors of community lands. Afghanistan Research and Evaluation Unit, October 2012, *Land Governance at the Crossroads: A Review of Afghanistan's Proposed New Land Management Law*, <http://www.areu.org.af/ResearchProjectDetails.aspx?ContentId=2&ParentId=2&ResearchProjectId=16>, pp. 19-20. In a February 2013 report, the AREU noted that, ““Land grabbing,” first reviled by the Administration in 2002, has multiplied over the decade, and appears to enjoy unwitting or deliberate collusion of the key institutions including courts and political actors. Penalties embedded in the proposed new land law chapter on land grabbing have a good chance of being ignored.” AREU (Liz Alden Wily), *Land, People, and the State in Afghanistan: 2002 – 2012*, February 2013, <http://www.areu.org.af/EditionDetails.aspx?EditionId=622&ContentId=7&ParentId=7>, p. 94. The United States Institute of Peace notes that, “Conflicts over land are widespread in Afghanistan after decades of war, failed governance, population displacement and agricultural mismanagement. Warlords, insurgents, and government authorities continue to take advantage of the chaos to seize property they want.” United States Institute of Peace, *Afghanistan Land Conflicts Pit Nomads Against Villagers, Power Brokers Against Each Other*, 21 February 2013, <http://reliefweb.int/report/afghanistan/afghanistan-land-conflicts-pit-nomads-against-villagers-power-brokers-against>.

⁴³³ AREU (Liz Alden Wily), *Land, People, and the State in Afghanistan: 2002 – 2012*, February 2013, <http://www.areu.org.af/EditionDetails.aspx?EditionId=622&ContentId=7&ParentId=7>, p. 92.

⁴³⁴ The causes of some of the conflicts about land go back to the deliberate efforts in the 19th and early 20th century by Afghanistan’s Pashtun rulers to relocate mostly Pashtun Afghans into areas not previously settled by Pashtuns, in an attempt to gain control over these parts of the country. See for example Landinfo, *The Conflict between Hazaras and Kuchis in the Beshud Districts of Wardak Province*, 6 June 2011, <http://www.refworld.org/docid/5124c5142.html>; Cooperation for Peace and Unity (CPAU), *Fractured Relationships: Understanding Conflict between Nomadic and Settled Communities in Wardak’s Pastureland*, October 2010, <http://www.cpaug.org.af/images/publications/CPAU%20Report%20-%20Fractured%20Relationships.pdf>.

⁴³⁵ The International Crisis Group noted in a 2009 report: “as Afghans attempt to resettle in their home provinces or migrate to the country’s more secure and economically productive zones, land disputes risk sparking deep-rooted tribal, ethnic or sectarian violence.” International Crisis Group, *Afghanistan: What Now for Refugees*, 31 August 2009, <http://www.refworld.org/docid/4a9b95512.html>, page i. See also Afghanistan Research and Evaluation Unit, *Land Conflict in Afghanistan: Building Capacity to Address Vulnerability*, April 2009, <http://www.refworld.org/docid/4ebabd582.html>.

⁴³⁶ Brookings-Bern Project on Internal Displacement, *Beyond the Blanket: Towards More Effective Protection for Internally Displaced Persons in Southern Afghanistan*, May 2010, <http://www.refworld.org/docid/4c3d8cab2.html>; Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples – Afghanistan: Pashtuns*, 2008, <http://www.refworld.org/docid/49749d6745.html>; and Human Rights Watch, *Paying for the Taliban’s Crimes: Abuses Against Ethnic Pashtuns in Northern Afghanistan*, 9 April 2002, <http://www.refworld.org/docid/3cb2ad007.html>.

⁴³⁷ Afghanistan Research and Evaluation Unit, *Land Governance at the Crossroads: A Review of Afghanistan's Proposed New Land Management Law*, October 2012, <http://www.areu.org.af/ResearchProjectDetails.aspx?ContentId=2&ParentId=2&ResearchProjectId=16>, pp. 15; Brookings-Bern Project on Internal Displacement, *Beyond the Blanket: Towards More Effective Protection for Internally Displaced Persons in Southern Afghanistan*, May 2010, <http://www.refworld.org/docid/4c3d8cab2.html>; Internal Displacement Monitoring Centre, *Internal Displacement: Global Overview of Trends and Developments in 2009 - Afghanistan*, 17 May 2010, <http://www.refworld.org/docid/4bf252560.html>; IRIN, *Ethnic Antagonism Spurs Land Disputes in North*, 11 September 2008, <http://www.irinnews.org/Report/30289/AFGHANISTAN-Ethnic-antagonism-spurs-land-disputes-in-north>.

⁴³⁸ The Kuchis maintain that decrees issued by the Rahman regime at the end of the 19th century means they are entitled to use certain tracts of land as farmland and summer pastures. The Hazaras contest this, arguing that the decrees are invalid. Landinfo, *The Conflict between Hazaras and Kuchis in the Beshud Districts of Wardak Province*, 6 June 2011, <http://www.refworld.org/docid/5124c5142.html>.

⁴³⁹ The AIHRC reports that, “In 1386 (2007/08), around 1,900 families from Behsud and Daimirdad districts of Maidan Wardak province were internally displaced due to these disputes. In 1387 (2008/09), the disputes led to the internal displacement of over 6,000 families and the burning of 84 residential houses. In 1388 (2009/10), Kuchis did not come to these areas and as a result, no one was internally displaced. However, in 1389 (2010/11), Kuchis once again came to these areas and as a result of their conflict with the local residents, 2,791 local families were internally displaced from their homes in Hesa Awal, Hesa Dowum, and Daimirdad districts and most of them took refuge in Kabul. In 1390 (2011), as a result of similar conflicts in Nahor district of Ghazni province, 36 villages were severely damaged and 782 families were internally displaced after their properties were pillaged. In April 2011, 27 Hazara villages were reported to have been attacked and burned by Kuchi nomads.” AIHRC, *Fifth Report: Situation of Economic and Social Rights in Afghanistan*, December 2011, <http://www.refworld.org/docid/511e58cf0.html>, p. 113-115. In June 2012, up to 20000 Kuchi nomads were reported to have into the Kajab valley in the Behsud district of Wardak province, killing four Hazara civilians and seven soldiers and burning villages. Many Hazara residents are reported to have fled the Kajab valley for good after the June 2012 violence. Among the Kuchi raiders were reported to be Taliban, raising fears that the Taliban use the Kuchis to wrest control over land away from the government. AFP, *Afghan Nomad Clashes Raise Fears of Ethnic Strife*, 6 August 2012, <http://reliefweb.int/report/afghanistan/afghan-nomad-clashes-raise-fears-ethnic-strife>. See also AREU (Liz Alden Wily), *Land, People, and the State in Afghanistan: 2002 – 2012*, February 2013, <http://www.areu.org.af/EditionDetails.aspx?EditionId=622&ContentId=7&ParentId=7>, p. 90; International Crisis Group, *Afghanistan: The Long Hard Road to the 2014 Transition*, 8 October 2012, <http://www.refworld.org/docid/5072d5132.html>, pp. 11-12; and BBC Persian,

e) Summary

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

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

International protection needs based on ethnicity/race may overlap with those based on religion and/or (imputed) political opinion. Due consideration should also be given to whether the person exhibits other risk factors outlined in these Guidelines. In light of the strong ethnic divisions that persist in Afghanistan, due consideration should also be given to the potential deleterious impact on inter-ethnic relations of the security transition and ongoing political processes in the country.⁴⁴⁰

12. Individuals Involved in Blood Feuds

In general, a blood feud involves the members of one family killing members of another family in retaliatory acts of vengeance which are carried out according to an ancient code of honour and behaviour.⁴⁴¹ In the context of Afghanistan, blood feuds are primarily a Pashtun tradition and are rooted in Pashtuns' customary law system, Pashtunwali.⁴⁴² Blood feuds can be triggered by murders, but also by other offences, such as the infliction of permanent, serious injury, the kidnapping or violation of married women, or unresolved disputes over land, access to water supplies or property.⁴⁴³ Blood feuds may give rise to long cycles of retaliatory violence and revenge.⁴⁴⁴ Under Pashtunwali, in principle revenge must be taken against the offender, but under certain circumstances the offender's brother or other patrilineal kin may become the target for revenge. In general, revenge is not exacted

Conflict between Kuchis and Ghazni Rural Residents Displaces Hundreds of Families, 26 June 2011, http://www.bbc.co.uk/persian/afghanistan/2011/06/110626_k02-ghazni-nomads.shtml.

⁴⁴⁰ See, for example, International Crisis Group, *Afghanistan: The Long Hard Road to the 2014 Transition*, 8 October 2012, <http://www.refworld.org/docid/5072d5132.html>; Gilles Dorronsoro (Carnegie Endowment for International Peace), *Waiting for the Taliban in Afghanistan*, September 2012, http://www.carnegieendowment.org/files/waiting_for_taliban2.pdf; A.H. Cordesman (Center for Strategic & International Studies), *Statement before the House Armed Services Subcommittee on Oversight and Investigations*, 24 July 2012, http://armedservices.house.gov/index.cfm/files/serve?File_id=3b0df63f-54a4-45ad-8d2b-dc27ea4206da.

⁴⁴¹ See UNHCR, *UNHCR Position on Claims for Refugee Status Under the 1951 Convention relating to the Status of Refugees Based on a Fear of Persecution Due to an Individual's Membership of a Family or Clan Engaged in a Blood Feud*, 17 March 2006, paras. 5-6 and 16-20, <http://www.refworld.org/docid/44201a574.html>.

⁴⁴² Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, <http://www.refworld.org/docid/5124c6512.html>, p. 9. The Landinfo report provides further analysis of the concepts of honour and revenge as central elements of Pashtunwali. The Landinfo report notes that while blood feuds are primarily a Pashtun tradition, blood feuds and private revenge also occur among non-Pashtun groups in Afghanistan, especially in areas where historically there has been a mix of Pashtun and other ethnic groups, and where common norms have taken root over time. Blood feuds are, however, less common among non-Pashtun groups, where there is a greater willingness to use the formal justice system for dispute settlement. *Ibid.*, pp. 15-16.

⁴⁴³ Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, <http://www.refworld.org/docid/5124c6512.html>, p. 13. See also Herald Sun, *Save Us, Plead Afghan Blood-Feud Lovers*, 9 January 2011, <http://www.heraldsun.com.au/news/victoria/save-us-plead-afghan-blood-feud-lovers/story-e6frf7lf-1225984337772>; and Afghanistan Protection Cluster, *Protection Overview (Northern and North-Eastern Region - 2010)*, 11 May 2011, <http://www.refworld.org/docid/4dd21fe52.html>, p. 20, reporting on a group of 86 families (516 individuals) from Jawand district in Badghis province who fled their villages of origin in December 2008 due to a fear of revenge killings by tribe members supporting the opposing side in clashes between armed factions linked to warlords and militia. By May 2011 these individuals were still displaced; they did not expect to be able to return to Jawand in the near future. Human Rights First reported on the phenomenon of individuals involved in family feuds providing false information to the international military forces in Afghanistan about members of the opposing family, with a view to having them arrested and detained. Human Rights First, *Detained and Denied in Afghanistan*, May 2011, <http://www.refworld.org/docid/5122423c2.html>, pp. 18-19.

⁴⁴⁴ See for example Dawn, *Jirga Settles Decades Old Blood Feud*, 21 April 2012, <http://dawn.com/2012/04/21/jirga-settles-decades-old-blood-feud/>, concerning a blood feud between families that lasted 35 years and cost the lives of 67 people; and Stars and Stripes, *In Khost, Not Naming Names, But Mediating Blood Feuds*, 12 April 2012, <http://www.stripes.com/news/reporter-s-notebook/in-khost-not-naming-names-but-mediating-blood-feuds-1.174268>, concerning a blood feud that lasted 28 years and killed as many as 50 people.

against women and children.⁴⁴⁵ 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.⁴⁴⁶ 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.⁴⁴⁷

In light of the foregoing, UNHCR considers that persons involved in a blood feud may, depending on the circumstances of the individual case, be in need of international refugee protection on account of membership of a particular social group.⁴⁴⁸ Claims by persons involved in blood feuds may, however, give rise to the need to examine possible exclusion from refugee status. Depending on the specific circumstances of the case, family members, partners or other dependants of individuals involved in blood feuds may also be in need of international protection on the basis of their association with individuals at risk.

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

The Common Humanitarian Action Plan notes that extortion and intimidation are among the most tangible effects of the conflict on civilians' lives.⁴⁴⁹ AGEs are reported to extort illegal taxes from the civilian population in almost all areas under their partial or full control.⁴⁵⁰ AGEs are also reported to make extensive profits from other illegal activities, including protection rackets and kidnapping for ransom.⁴⁵¹

Government officials are also reported to engage in extortion practices, in particular at the provincial level where money is extorted from individuals under various pretexts such as the necessity to contribute to the reconstruction of the province.⁴⁵²

Wealthy business people and their relatives, including children, are further exposed to a risk of kidnapping for ransom by criminal gangs.⁴⁵³

⁴⁴⁵ Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, <http://www.refworld.org/docid/5124c6512.html>, p. 10. See, however, Reuters, *Heater Bomb Kills Two in Afghan Family Feud*, 15 January 2012, <http://in.reuters.com/article/2012/01/15/afghanistan-feud-bomb-idINL3E8CF0D820120115>, reporting on a case where a woman and her daughter were killed in what was believed to be part of a feud between two families.

⁴⁴⁶ Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, <http://www.refworld.org/docid/5124c6512.html>, p. 10; The Guardian, *US Troops' Killing of Hamid Karzai's Cousin Brings Claim of "Deep Conspiracy"*, 10 March 2011, <http://www.guardian.co.uk/world/2011/mar/10/hamid-karzai-cousin-nato-death-conspiracy-afghanistan>.

⁴⁴⁷ Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, <http://www.refworld.org/docid/5124c6512.html>, p. 9.

⁴⁴⁸ For further guidance see UNHCR, *UNHCR Position on Claims for Refugee Status Under the 1951 Convention relating to the Status of Refugees Based on a Fear of Persecution Due to an Individual's Membership of a Family or Clan Engaged in a Blood Feud*, 17 March 2006, paras. 5-6 and 16-20, <http://www.refworld.org/docid/44201a574.html>; and UNHCR, *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, <http://www.refworld.org/docid/3d36f23f4.html>. See also *Refugee Appeal No. 76355*, 5 November 2009, <http://www.refworld.org/docid/4b3c8bb42.html>, where the New Zealand Refugee Status Appeals Authority held that the appellant, a Tajik who was perceived to have violated the family honour of a Pashtun family, was at risk of persecution on the ground of a particular social group.

⁴⁴⁹ OCHA, *Afghanistan Common Humanitarian Action Plan 2013*, 26 December 2012, <http://www.refworld.org/docid/5118bc382.html>, p. 10.

⁴⁵⁰ UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 26. AGEs are reported to use various methods to collect illegal taxes. Most commonly AGEs operate checkpoints to extort money from civilian travellers. In some areas of the country AGEs are reported to impose illegal taxes on teachers in local schools. In some parts of the eastern region AGEs are reported to extort *ushar* (10 per cent on agricultural produce) and/or *zakat* (2.5 per cent on savings) from community members, in large part collected by village *imams*, who act as a proxy for the Taliban for these purposes. Particularly in areas where the local population relies on poppy cultivation, AGEs reportedly impose specific taxes on poppy farmers, sometimes in exchange for "protection services" against drug eradication campaigns. UNAMA, *ibid.*, p. 26.

⁴⁵¹ See for example Special Inspector General for Afghanistan Reconstruction, *Quarterly Report to the United States Congress*, 30 January 2013, <http://www.sigar.mil/pdf/quarterlyreports/2013-01-30qr.pdf>, p. 130 in relation to the Haqqani Network.

⁴⁵² See for example Center for International Private Enterprise, *Roundtable on "Illegal Payments and Extortion: Combating Corruption in Afghanistan"* - Discussion Paper, March 2009, <http://www.cipe.org/sites/default/files/publication-docs/CIPE%20AFG%20ROUNDTABLE%20DISCUSSION%20PAPER.pdf>, p. 4.

⁴⁵³ Reuters, *Kidnap Gangs Use Leaked Bank Details to Prey on Afghan Tycoons*, 16 December 2012, <http://www.reuters.com/article/2012/12/16/us-afghanistan-kidnappings-idUSBRE8BF0J420121216>. Mohammad Zahir, Chief of the Kabul Criminal Investigation, accused kidnapers of operating private prisons where they tortured victims if they refused to pay. Reuters, *ibid.*

Practices of illegal taxation would not normally rise to the level of persecution, nor would other forms of crime. However, certain methods of extortion may rise to the level of persecution, including kidnapping for ransom, while other forms of extortion may contribute to persecution on cumulative grounds. However, in the context of Afghanistan, in many cases of extortion there may be no nexus between the extortionary practice and one of the 1951 Convention grounds. Where such a nexus does exist, for example where wealthy individuals are targeted for kidnapping on the basis of their ethnicity or (imputed) political opinion, the individual concerned may, depending on the individual circumstances of the case, be in need of international protection.

UNHCR considers that separate considerations apply to the situation of family members of wealthy business people. Where family members, including children, are at risk of kidnapping for ransom for reason of their family relations with the wealthy individual in question, they may, depending on the individual circumstances of the case, be in need of international protection on the basis of their membership of a particular social group.

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

A detailed analytical framework for assessing the availability of an internal flight or relocation alternative (IFA/IRA), sometimes also referred to as internal protection alternative,⁴⁵⁴ is contained in the UNHCR *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*.⁴⁵⁵

An assessment of the possibility of relocation requires an assessment of the relevance as well as the reasonableness of the proposed IFA/IRA.⁴⁵⁶ In cases where a well-founded fear of persecution has been established in some localized part of the country of origin, the determination of whether the proposed internal flight or relocation area is an appropriate alternative for the individual concerned requires an assessment over time, taking into account not only the circumstances that gave rise to the risk feared, and that prompted flight from the area of origin, but also whether the proposed area provides a safe and meaningful alternative in the future. The personal circumstances of the individual applicant and the conditions in the area of relocation need to be considered.⁴⁵⁷

⁴⁵⁴ European Union, *Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted*, 19 April 2004, 2004/83/EC, <http://www.refworld.org/docid/4157e75e4.html>, article 8; European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 13 December 2011, <http://www.refworld.org/docid/4f06fa5e2.html>, article 8.

⁴⁵⁵ UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>.

⁴⁵⁶ In relation to applications for international protection in EU Member States, Article 8 of the 2004 Qualification Directive and (after transposition by participating EU Member States by December 2013), Article 8 of the 2011 Qualification Directive applies. While Article 8 of the 2004 Qualification Directive makes explicit reference to the reasonableness test (Article 8(1)), it makes no explicit reference to the relevance test. However, following the European Court of Human Rights’ decision in *Salah Sheekh v. The Netherlands*, Council of Europe: European Court of Human Rights, Application no. 1948/04, 11 January 2007, <http://www.refworld.org/docid/45cb3dfd2.html>, it is clear that a relevance test must also be carried out as part of the assessment of an internal relocation alternative. As a result of this decision by the European Court of Human Rights, Article 8 of the 2004 Qualification Directive was recast to include both a relevance and reasonable test, thereby providing explicit legislative recognition of the necessity of applying both the reasonableness and relevance tests: 2011 Qualification Directive, Article 8.

⁴⁵⁷ UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 7. In relation to applications for international protection in EU Member States, see also Article 8(2) of the 2004 Qualification Directive and Article 8(2) of the 2011 Qualification Directive respectively, which provides that “Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant”.

If an IFA/IRA is considered in asylum procedures, a particular area of proposed relocation must be identified, and the claimant must be given an adequate opportunity to respond to the purported relevance and reasonableness of the proposed IFA/IRA.⁴⁵⁸

1. Relevance Analysis

In assessing the relevance of an IFA/IRA for Afghan applicants, it is of particular importance to consider: (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 fact that the area of prospective IFA/IRA must be practically, safely and legally accessible to the individual.⁴⁵⁹ This latter requirement entails an assessment of the concrete prospects of safely accessing the proposed area of relocation, including by assessing the risks associated with the widespread use of IEDs and landmines throughout the country, attacks and fighting taking place on roads, and restrictions on civilians' freedom of movement imposed by AGEs.⁴⁶⁰

Where the claimant has a well-founded fear of persecution at the hands of the State or its agents, there is a presumption that consideration of an IFA/IRA is not relevant for areas under the control of the State.⁴⁶¹ In light of the available evidence of serious and widespread human rights abuses by AGEs in areas under their effective control, as well as the inability of the State to provide protection against such abuses in these areas, UNHCR considers that an IFA/IRA is not available in areas of the country that are under the effective control of AGEs, with the possible exception of individuals with previously-established links with the AGE-leadership in the proposed area of relocation.

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

Where the agents of persecution are AGEs, consideration must be given to whether the persecutor is likely to pursue the claimant in the proposed area of relocation. Given the wide geographic reach of some AGEs, a viable IFA/IRA may not be available to individuals at risk of being targeted by such groups. It is particularly important to note the operational capacity of the Taliban, the Haqqani network, Hezb-e-Islami Hekmatyar and other armed groups to carry out attacks in all parts of the country, including areas that are not under the effective control of AGEs, as evidenced for example by reports on high-profile complex attacks in urban areas under the effective control of pro-government forces.⁴⁶²

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

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

⁴⁵⁸ UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 6.

⁴⁵⁹ UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 7.

⁴⁶⁰ 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, UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>.

⁴⁶¹ UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, paras. 7, 13, 27.

⁴⁶² See for example UNAMA, *Mid-Year Report 2012: Protection of Civilians in Armed Conflict*, July 2012, <http://www.refworld.org/docid/502233982.html>, p. 32.

2. Reasonableness Analysis

Whether an IFA/IRA is “reasonable” must be determined on a case-by-case basis, taking into account the personal circumstances of the applicant, including the impact of any past persecution on the applicant.⁴⁶³ Other factors that must be taken into account include the safety and security situation in the proposed area of relocation; respect for human rights in that area, and the possibilities for economic survival.⁴⁶⁴

UNHCR considers that an IFA/IRA is not available in areas affected by active conflict. For other areas of Afghanistan, an IFA/IRA would only be available if the claimant is able to live there in safety and security, free from danger and risk of injury. These conditions must be durable, not illusory or unpredictable.⁴⁶⁵ Information presented in Section II.B of these Guidelines and reliable, up-to-date information about the security situation in the proposed area of relocation would be important elements in assessing the reasonableness of the proposed IFA/IRA.

In light of the available information presented in Section II.C of these Guidelines relating to serious and widespread human rights abuses committed by AGEs in Afghanistan, and the inability of the State to protect individuals from human rights abuses committed by AGEs in areas under the effective control of such AGEs, UNHCR considers that areas of Afghanistan that are under the effective control of the Taliban or other AGEs do not present a reasonable IFA/IRA, with the possible exception of claimants with previously-established links with the AGE leadership in the proposed area of relocation.⁴⁶⁶

To assess the reasonableness of a proposed IFA/IRA outside areas controlled by AGEs or affected by active conflict, particular attention must be given to:

- (i) the availability of traditional support mechanisms, provided by members of the applicant’s extended family or members of his or her ethnic group;
- (ii) access to shelter in the proposed area of relocation;
- (iii) the availability of basic infrastructure and access to essential services in the proposed area of relocation, such as sanitation, health care and education;
- (iv) the presence of livelihoods opportunities, including access to land for Afghans originating from rural areas;⁴⁶⁷ and
- (v) the scale of internal displacement in the proposed area of relocation.

Applicants may be able to fall back on the support of members of their extended family or members of their larger ethnic group. However, the existence of such traditional support networks can be assumed to weigh in favour of the reasonableness of a proposed IFA/IRA only when the members of the applicant’s extended family or wider ethnic group are assessed to be willing and able to provide genuine support to the applicant in practice, taking into account Afghanistan’s low humanitarian and developmental indicators and the wider economic constraints affecting large segments of the population. Moreover, the presence of members of the same ethnic background as the applicant in the proposed area of relocation cannot by itself be taken as evidence that the applicant would be able to benefit from meaningful support from such communities in the absence of specific pre-existing social relations connecting the applicant to individual members of the ethnic community in question.⁴⁶⁸

⁴⁶³ UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, paras. 25-26.

⁴⁶⁴ UNHCR, *ibid.*, paras. 24, 27-30.

⁴⁶⁵ See UNHCR, *ibid.*, para. 27.

⁴⁶⁶ See UNHCR, *ibid.*, para. 28.

⁴⁶⁷ Afghans originating from rural areas, with few marketable professional skills beyond agriculture and animal husbandry, may have more difficulty reintegrating elsewhere. They are likely to have few or no savings and no property (because property has been destroyed, looted or left behind during displacement), no social support networks in the places of relocation and perhaps even communications difficulties, due to language or dialect limitations.

⁴⁶⁸ Thus Professor Maley notes in relation to livelihoods in the context of a proposed IFA/IRA for Hazaras to Kabul: “Again, serious research in this area highlights the importance of social relations. A recent study by Kantor and Pain emphasizes the centrality of relationships to livelihoods in rural Afghanistan, and the points they make apply equally to urban areas (Paula Kantor and Adam Pain, *Securing Life and Livelihoods in Afghanistan: The Role of Social Relationships* (Kabul: Afghanistan Research and Evaluation Unit, December 2010). The mere fact that there may be people of similar ethnic background living in a potential relocation destination does not overcome this problem, since ethnic identities do not in and of themselves give rise to the ties of personal affinity and reciprocity that arise from family connections.

Where the proposed area of relocation is an urban area where the applicant has no access to pre-identified accommodation and livelihood options, and where he or she cannot reasonably be expected to be able to fall back on meaningful support networks, the applicant would likely find him- or herself in a situation comparable to that of other urban IDPs. To assess the reasonableness of such an outcome, adjudicators need to take into account the scale of internal displacement in the area of prospective relocation, and the living conditions of IDPs in that location. Relevant considerations in this regard include the fact that IDPs are considered to be among the most vulnerable groups in Afghanistan, many of whom are beyond the reach of humanitarian organizations;⁴⁶⁹ as well as available information to the effect that urban IDPs are more vulnerable than the non-displaced urban poor, as they are particularly affected by unemployment; limited access to adequate housing; limited access to water and sanitation; and food insecurity (see also Section II.E).⁴⁷⁰

The particular circumstances of unaccompanied or separated children as well as the legal obligations of States under the Convention on the Rights of the Child need to be taken into account in assessing the reasonableness of an IFA/IRA.⁴⁷¹ Adjudicators need to give due consideration to the fact that what is considered merely inconvenient for adults may constitute undue hardship for a child.⁴⁷²

In assessing the reasonableness of an IFA/IRA in relation to people with disabilities, particular attention needs to be paid to the heightened levels of vulnerabilities of people with disabilities in Afghanistan in terms of food insecurity, the lack access to livelihoods opportunities, and the lack of access to essential services, including appropriate health care.⁴⁷³

(Indeed, one mistake that observers — even Afghan observers — on occasion make is to underestimate the degree of differentiation amongst groups such as the Hazaras, including distinctions between elite and non-elite figures, distinctions based on district of origin and tribe, and distinctions based on values and ideology.) An Hazara who is returned to Kabul without social connections is likely to end up destitute, or be exposed to gross exploitation or criminal predation.” William Maley, *On Relocation to Kabul of Members of the Hazara Minority in Afghanistan*, 19 November 2012, copy on file with UNHCR. More generally, adjudicators must take into account that, as noted above, the various ethnic groups in Afghanistan are not necessarily homogenous communities. Among Pashtuns, for example, strong rivalries between different sub-groupings may be a cause of tensions and conflicts. See for example Civil-Military Fusion Centre, *Afghanistan Ethnic Groups: A Brief Investigation*, August 2011, <http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation>; Tribal Analysis Center, *Pashtun Tribal Dynamics*, October 2009, <http://www.tribalanalysiscenter.com/PDF-TAC/Pashtun%20Tribal%20Dynamics.pdf>.

⁴⁶⁹ UNHCR, *Conflict-Induced Internally Displaced Persons in Afghanistan: Interpretation of Data as of 31 May 2012*, July 2012, <http://www.refworld.org/docid/5035f0fe2.html>, pp. 19-20; Internal Displacement Monitoring Centre, *Afghanistan: Durable Solutions Far from Reach amid Escalating Conflict*, 16 April 2012, <http://www.refworld.org/docid/511e50cd2.html>, p. 1; UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/728 – S/2012/133, 5 March 2012, <http://www.refworld.org/docid/4fbf60732.html>, para. 52.

⁴⁷⁰ Humanitarian Policy Group, *Sanctuary in the City? Urban Displacement and Vulnerability in Kabul*, June 2012, <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7722.pdf>; Internal Displacement Monitoring Centre, *Afghanistan: Durable Solutions Far from Reach amid Escalating Conflict*, 16 April 2012, <http://www.refworld.org/docid/511e50cd2.html>, pp. 1, 6; Amnesty International, *Fleeing War, Finding Misery: The Plight of the Internally Displaced in Afghanistan*, 2012, <http://www.refworld.org/docid/4f48e3862.html>, p. 12; World Bank and UNHCR, *Research Study on IDPs in Urban Settings – Afghanistan*, May 2011, <http://www.refworld.org/docid/511e51382.html>, pp. 31-37. In January and February 2012, acute vulnerability, with limited shelter options, access to basic services and income generation, coupled with unusually harsh winter conditions, contributed to the death of tens of children living in informal settlements in Kabul. UN General Assembly / Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/66/728 – S/2012/133, 5 March 2012, <http://www.refworld.org/docid/4fbf60732.html>, para. 52. See also UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding Observations on the Combined Initial and Second Periodic Reports of Afghanistan*, 23 July 2013, CEDAW/C/AFG/CO/1-2, <http://www.refworld.org/docid/51ff5ac94.html>, paragraph 40.

⁴⁷¹ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, <http://www.refworld.org/docid/3ae6b38f0.html>. See also UN High Commissioner for Refugees, *Special Measures Applying to the Return of Unaccompanied and Separated Children to Afghanistan*, August 2010, <http://www.refworld.org/docid/4c91dbb22.html>.

⁴⁷² UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <http://www.refworld.org/docid/4b2f4f6d2.html>, paras. 53-57. See also *AA (unattended children) Afghanistan v. Secretary of State for the Home Department*, CG [2012] UKUT 00016 (IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 6 January 2012, <http://www.refworld.org/docid/4f293e452.html>, where the Upper Tribunal found that “the background evidence demonstrates that unattached children returned to Afghanistan may, depending upon their individual circumstances and the location to which they are returned, be exposed to a risk of serious harm, inter alia from indiscriminate violence, forced recruitment, sexual violence, trafficking and a lack of adequate arrangements for child protection.” (*Ibid.*, para. 92). See furthermore Catherine Gladwell and Hannah Elwyn, *Broken Futures: Young Afghan Asylum Seekers in the UK and on Return to their Country of Origin* (UNHCR, New Issues in Refugee Research, Research Paper No. 246), October 2012, <http://www.unhcr.org/5098d2679.html>.

⁴⁷³ For example, the 2013 Common Humanitarian Action Plan for Afghanistan notes that, “there are some population groups which are at greater risk of acute food insecurity than the general population. The key groups include IDPs, refugee returnees, IDP returnees, families living in insecure areas, female headed households (particularly households headed by widows); households with disabled and aged members, and people living in currently insecure areas. Of particular concern are those households with multiple / overlapping risk characteristics – for example female or widow headed IDP households.” OCHA, *Afghanistan Common Humanitarian Action Plan 2013*, 26 December 2012, <http://www.refworld.org/docid/5118bc382.html>, p. 52. Disabled returnees would fall into this category of people with

In light of traditional restrictions on women's freedom of movement, coupled with low employment rates for women, UNHCR considers that an IFA/IRA is not reasonable for women who are single heads of household with no male protection, as they will not be able to lead a life without undue hardship, including in urban areas.⁴⁷⁴

Against this background, UNHCR considers an IFA/IRA as reasonable only where the individual can expect to benefit from meaningful support of his or her own (extended) family, community or tribe in the area of prospective relocation. The only exception to this requirement of external support are single able-bodied men and married couples of working age without identified specific vulnerabilities as described above, who may in certain circumstances be able to subsist without family and community support in urban and semi-urban areas that have the necessary infrastructure and livelihood opportunities to meet the basic necessities of life and that are under effective Government control.

C. Refugee Status under UNHCR's Broader Mandate Criteria or Regional Instruments, or Eligibility for Complementary Forms of Protection

The 1951 Convention forms the cornerstone of the international refugee protection regime. The criteria for refugee status in the 1951 Convention should be interpreted in such a manner that individuals or groups of persons who meet these criteria are duly recognized and protected under that instrument. Only when an asylum-seeker is found not to meet the refugee criteria in the 1951 Convention should broader international protection criteria as contained in UNHCR's mandate and regional instruments be examined, including subsidiary protection.⁴⁷⁵

This section of the Guidelines provides guidance for the determination of eligibility for international protection of Afghan asylum-seekers who are found not to meet the refugee criteria contained in Article 1(A) of the 1951 Convention. Individuals who do not come within the criteria set out in the 1951 Convention may nevertheless be in need of international protection. In particular, individuals who flee situations of violence where there is no nexus with a 1951 Convention ground may be found to come within the terms of UNHCR's mandate, or the criteria set out in regional instruments.⁴⁷⁶

multiple risk characteristics who are of particular concern in terms of their greater risk of acute food insecurity. See also IRIN, *Disability Deprives Children of Education*, 21 October 2008, <http://www.irinnews.org/Report/81016/AFGHANISTAN-Disability-deprives-children-of-education>; New York Times, *Afghanistan's Disability Crisis*, 8 October 2008, <http://www.nytimes.com/video/2008/10/08/world/asia/1194822634676/afghanistan-s-disability-crisis.html>; and IRIN, *Disabled People Have Tough Time, Lack Education, Jobs*, 3 December 2007, <http://www.irinnews.org/Report/75645/AFGHANISTAN-Disabled-people-have-tough-time-lack-education-jobs>.

⁴⁷⁴ The Civil-Military Fusion Centre notes that, "USIP reports that traditional customs regarding women's movements and low employment levels mean that women simply cannot survive independently within Afghanistan." Civil-Military Fusion Centre, *The Peace Process and Afghanistan's Women*, April 2012, https://www.cimicweb.org/cmo/afg/Documents/Governance/Afghanistan_Women_Reconciliation.pdf, p. 6. See also *AK (Article 15(c)) Afghanistan CG v. Secretary of State for the Home Department*, [2012] UKUT 00163(IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 18 May 2012, <http://www.refworld.org/docid/4fba408b2.html>, where the Tribunal states, "Nevertheless, this position is qualified (both in relation to Kabul and other potential places of internal relocation) for certain categories of women. The purport of the current Home Office OGN on Afghanistan is that whilst women with a male support network may be able to relocate internally, "...it would be unreasonable to expect lone women and female heads of household to relocate internally" (February 2012 OGN, 3.10.8) and the Tribunal sees no basis for taking a different view." In *N v. Sweden*, Application no. 23505/09, 20 July 2010, <http://www.refworld.org/docid/4c4d4e4e2.html>, the European Court of Human Rights noted that women were at a particularly heightened risk of ill-treatment in Afghanistan if they were perceived as not conforming to the gender roles ascribed to them by society, tradition or the legal system. The mere fact that the claimant had lived in Sweden might well be perceived as having crossed the line of acceptable behaviour. The fact that she wanted to divorce her husband, and in any event did not want to live with him any longer, might result in serious life-threatening repercussions upon her return to Afghanistan. Reports had further shown that a high proportion of Afghan women were affected by domestic violence, acts which the authorities saw as legitimate and therefore did not prosecute. Unaccompanied women, or women without a male "tutor", faced continuous severe limitations to having a personal or professional life, and social exclusion. They also often plainly lacked the means for survival if not protected by a male relative. Consequently, the Court found that if N. were deported to Afghanistan, Sweden would be in violation of Article 3 of ECHR.

⁴⁷⁵ See UNHCR Executive Committee, *Conclusion on the Provision on International Protection Including through Complementary Forms of Protection*, No. 103 (LVI) – 2005, 7 October 2005, <http://www.refworld.org/docid/43576e292.html>.

⁴⁷⁶ As regards regional instruments, see the refugee definitions contained in the 1969 OAU Convention, Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention")*, 10 September 1969, 1001 U.N.T.S. 45, <http://www.refworld.org/docid/3ae6b36018.html> and in the Cartagena Declaration, *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>. Complementary forms of protection include subsidiary protection under Article 15 of the 2011 Qualification Directive. European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the*

Given the fluid nature of the conflict in Afghanistan, applications by Afghans for international protection under UNHCR's broader mandate criteria or under the regional instruments, or for forms of complementary protection, including subsidiary protection under Article 15 of the 2011 EU Qualification Directive, should each be assessed carefully in light of the evidence presented by the applicant and other current and reliable information about the situation in Afghanistan.

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

a) Refugee Status under UNHCR's Broader Mandate Criteria

UNHCR's mandate encompasses individuals who meet the refugee criteria under the 1951 Convention and its 1967 Protocol,⁴⁷⁷ but has been broadened through successive UN General Assembly and ECOSOC resolutions to a variety of other situations of forced displacement, resulting from indiscriminate violence or public disorder.⁴⁷⁸ In light of this evolution, UNHCR's competence to provide international protection to refugees extends to individuals who are outside their country of origin or habitual residence and who are unable or unwilling to return there owing to serious threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.⁴⁷⁹

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

In this respect, relevant elements include the information presented in Sections II.C and II.D relating to (i) the control over civilian populations by AGEs, including through the imposition of parallel justice structures and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, restrictions on freedom of movement, and the use of extortion and illegal taxation; (ii) forced recruitment; (iii) the impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty and the destruction of livelihoods; (iv) increasing levels of organized crime and the ability of warlords and corrupt government officials to operate with impunity in government-controlled areas; (v) systematic constraints on access to education or basic health care as a result of insecurity; and (vi) systematic constraints on participation in public life, including in particular for women.⁴⁸⁰

In the exceptional circumstances of Afghanistan, relevant considerations to assess the threat to life, physical integrity or freedom resulting from events seriously disturbing public order include the fact that in certain parts of the country the Government has lost effective control to AGEs and is unable to

qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 13 December 2011, <http://www.refworld.org/docid/4f06fa5e2.html>.

⁴⁷⁷ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, <http://www.refworld.org/docid/3be01b964.html> and UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, <http://www.refworld.org/docid/3ae6b3ae4.html>.

⁴⁷⁸ UNHCR, *Providing International Protection Including Through Complementary Forms of Protection*, 2 June 2005, EC/55/SC/CRP.16, available at: <http://www.refworld.org/docid/47fd49d.html>; UN General Assembly, *Note on International Protection*, 7 September 1994, A/AC.96/830, <http://www.refworld.org/docid/3f0a935f2.html>.

⁴⁷⁹ See for example UNHCR, *MM (Iran) v. Secretary of State for the Home Department - Written Submission on Behalf of the United Nations High Commissioner for Refugees*, 3 August 2010, C5/2009/2479, <http://www.refworld.org/docid/4c6aa7db2.html>, para. 10.

⁴⁸⁰ UNHCR, *Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence; Roundtable 13 and 14 September 2012, Cape Town, South Africa*, 20 December 2012, <http://www.refworld.org/docid/50d32e5e2.html>, paras. 10-12. See also A.H. Cordesman (Center for Strategic and International Studies), *Coalition, ANSF, and Afghan Casualties in the Afghan Conflict from 2001 through August 2012*, 4 September 2012, http://csis.org/files/publication/120904_Afghan_Iraq_Casualties.pdf, pp. 3, 6, 7. See also OCHA, *Afghanistan Common Humanitarian Action Plan 2013*, 26 December 2012, <http://www.refworld.org/docid/5118bc382.html>, p. 10.

provide protection to civilians. Available information indicates that the exercise of control over key aspects of people's lives in these areas is repressive, coercive and undermines an *ordre public* based on respect for the rule of law and human dignity. Such situations are characterised by the systematic use of intimidation and violence directed against the civilian population, in a climate of widespread human rights abuses.

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

b) Refugee Status under Article I(2) of the 1969 OAU Convention

Afghans and others originating from Afghanistan who seek international protection in countries that are States parties to the 1969 OAU Convention may qualify for refugee status under Article I(2) of that instrument, on the grounds that they were compelled to leave their place of habitual residence owing to events seriously disturbing public order in either part or the whole of Afghanistan, in order to seek refuge outside Afghanistan.⁴⁸¹

In the context of the 1969 OAU Convention, the phrase "events seriously disturbing public order" encompasses situations of conflict or violence that threaten civilians' lives, freedom or security, as well as other serious disruptions of the *ordre public*.⁴⁸² For the same reasons as above, UNHCR considers that areas of Afghanistan that are affected by active conflict as part of the ongoing struggle for control between pro-government forces and AGEs, as well as areas of Afghanistan that are under the effective control of AGEs should be regarded as areas affected by events seriously disturbing public order. Consequently, UNHCR considers that individuals originating from such areas may be in need of international protection under the terms of Article I(2) of the 1969 OAU Convention, on the grounds that they were compelled to leave their place of habitual residence owing to threats to their lives, freedom or security as a result of events seriously disturbing public order.

c) Refugee Status under the Cartagena Declaration

Afghan asylum-seekers who seek international protection in any of the countries that have incorporated the Cartagena Declaration on Refugees ("Cartagena Declaration") into their national legislation may qualify for refugee status on the grounds that their lives, safety or freedom have been threatened by generalized violence, internal conflict, massive violation of human rights or other circumstances that have seriously disturbed public order.⁴⁸³

⁴⁸¹ Organization of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45, <http://www.refworld.org/docid/3ae6b36018.html>. The definition of the term "refugee" as contained in Article I of the 1969 OAU Convention has been incorporated into Article I of the *Bangkok Principles on the Status and Treatment of Refugees* (Bangkok Principles). See Asian-African Legal Consultative Organization (AALCO), *Bangkok Principles on the Status and Treatment of Refugees* (Final Text of the AALCO's 1966 Bangkok Principles on Status and Treatment of Refugees, as adopted on 24 June 2001 at the AALCO's 40th Session, New Delhi), <http://www.refworld.org/docid/3de5f2d52.html>.

⁴⁸² On the meaning of the phrase "events seriously disturbing public order" in the 1969 OAU Convention, see Marina Sharpe, *The 1969 OAU Refugee Convention and the Protection of People fleeing Armed Conflict and Other Situations of Violence in the Context of Individual Refugee Status Determination*, January 2013, <http://www.refworld.org/docid/50fd3edb2.html>; Alice Edwards, "Refugee Status Determination in Africa", 14 *African Journal of International and Comparative Law* 204-233 (2006); UNHCR, *Extending the Limits or Narrowing the Scope? Deconstructing the OAU Refugee Definition Thirty Years On*, April 2005, ISSN 1020-7473, <http://www.refworld.org/docid/4ff168782.html>.

⁴⁸³ *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>. Unlike the OAU Convention, the Cartagena Declaration is not a binding legal instrument; its provisions acquire the force of law only through incorporation in national legislation.

Following similar considerations as for UNHCR's broader mandate criteria and the 1969 OAU Convention (Sections III.C.1.a and b), UNHCR considers that individuals originating from areas in Afghanistan affected by active conflict between pro-government forces and AGEs, or from areas under the effective control of AGEs, may be in need of international protection under the terms of the Cartagena Declaration, on the grounds that their lives, safety or freedom were threatened by circumstances that have seriously disturbed public order, either in the form of direct or indirect consequences of conflict-related violence, or as a result of serious and widespread human rights abuses committed by AGEs in areas under their effective control.

2. Internal Flight or Relocation Alternative under UNHCR's Broader Mandate Criteria and Regional Instruments

Consideration of an internal flight or relocation alternative is not relevant for individuals who have been found to be in need of international refugee protection under the refugee criteria contained in Article I(2) of the 1969 OAU Convention.⁴⁸⁴

For individuals found to be in need of international protection under UNHCR's broader mandate criteria or under the Cartagena Declaration, an assessment of the possibility of relocation requires an assessment on a case-by-case basis of the relevance as well as the reasonableness of the proposed IFA/IRA. The individual elements of the relevance test and the reasonableness test as set out in Section III.B apply.

As in the case of IFA/IRA in relation to applications for international protection under the 1951 Refugee Convention (see Section III.B.2), UNHCR considers that no IFA/IRA is available in areas of Afghanistan that are under the effective control of the Taliban and/or other AGEs, with the possible exception of claimants with previously-established links with the AGE leadership in the proposed area of relocation.⁴⁸⁵ UNHCR considers that an IFA/IRA is also not available in areas affected by active conflict.⁴⁸⁶

3. Eligibility for Subsidiary Protection under the EU Qualification Directive

Afghans who seek international protection in Member States of the European Union and who are found not to be refugees under the 1951 Convention may qualify for subsidiary protection under Article 15 of the 2011 Qualification Directive, if there are substantial grounds for believing that they would face a real risk of serious harm in Afghanistan.⁴⁸⁷ In light of the information presented in Section II.C of these Guidelines, applicants may, depending on the individual circumstances of the case, be in need of subsidiary protection under Article 15(a) or Article 15(b) on the grounds of a real risk of the relevant forms of serious harm (death penalty⁴⁸⁸ or execution; or torture or inhuman or

⁴⁸⁴ UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 5. Article I(2) of the 1969 Convention extends the refugee definition to "every person, who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality" [emphasis added]. The same considerations apply to individuals coming within the refugee definition as contained in Article I(2) of the Bangkok Principles, which is identical to the refugee definition of the 1969 OAU Convention.

⁴⁸⁵ See UNHCR, *ibid.*, para. 28.

⁴⁸⁶ See UNHCR, *ibid.*, para. 27.

⁴⁸⁷ Serious harm for the purposes of the Qualification Directive is defined as (a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict. European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 13 December 2011, <http://www.refworld.org/docid/4f06fa5e2.html>, arts 2(f), 15.

⁴⁸⁸ Under Article 24 of Afghanistan's Penal Code, the death penalty may be imposed for felony crimes. *Penal Code* [Afghanistan], No. 1980, 22 September 1976, <http://www.refworld.org/docid/4c58395a2.html>. In November 2012, 14 individuals convicted of serious crimes were executed. United Kingdom: Foreign and Commonwealth Office, *Human Rights and Democracy: The 2012 Foreign & Commonwealth Office Report - Afghanistan*, 15 April 2013, <http://www.refworld.org/docid/516fb7d14f.html>; New York Times, *Afghanistan Executes Six in Gesture on Taliban*, 21 November 2012, <http://www.nytimes.com/2012/11/22/world/asia/afghan-suicide-bomber-kills-3-near-us-embassy.html>. Under Article 1 of the Penal Code, those found guilty of hudood crimes are to be punished in accordance with the principles of Hanafi jurisprudence of Sharia law; hudood punishments include execution and stoning to death. Hossein Gholami, *Basics of Afghan Law*

degrading treatment or punishment), either at the hands of the State or its agents, or at the hands of AGEs.⁴⁸⁹

Equally, in light of the fact that Afghanistan continues to be affected by a non-international armed conflict and in light of the information presented in Sections II.B, II.C, II.D and II.E of these Guidelines, applicants originating from or previously residing in conflict-affected areas may, depending on the individual circumstances of the case, be in need of subsidiary protection under Article 15(c) on the grounds of a serious and individual threat to their life or person by reason of indiscriminate violence.

In the context of the armed conflict in Afghanistan, factors to be taken into account to assess the threat to the life or person of an applicant by reason of indiscriminate violence in a particular part of the country include the number of civilian casualties, the number of security incidents, as well as the existence of serious violations of international humanitarian law which constitute threats to life or physical integrity. Such considerations are not, however, limited to the direct impact of the violence, but also encompass the consequences of violence that are more long-term and indirect, including the impact of the conflict on the human rights situation and the extent to which the conflict impedes the ability of the State to protect human rights. In the context of the conflict in Afghanistan, relevant factors in this respect are (i) the control over civilian populations by AGEs, including through the imposition of parallel justice structures and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, restrictions on freedom of movement, and the use of extortion and illegal taxation; (ii) forced recruitment; (iii) the impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty and the destruction of livelihoods; (iv) increasing levels of organized crime and the ability of warlords and corrupt government officials to operate with impunity in government-controlled areas; (v) systematic constraints on access to education or basic health care as a result of insecurity; and (vi) systematic constraints on participation in public life, including in particular for women.⁴⁹⁰

These factors, either alone or cumulatively, may be found to give rise to a situation in a particular part of Afghanistan that is sufficiently serious to engage Article 15(c) without the need for the applicant to demonstrate individual factors or circumstances increasing the risk of harm.⁴⁹¹ Where, after all relevant evidence has been considered, this is found not to be the case in the part of Afghanistan from which the applicant originates, it falls to be considered whether the applicant's individual characteristics are such as to reveal specific vulnerabilities which, combined with the nature and the extent of the violence, give rise to a serious and individual threat to the applicant's life or person.

and *Criminal Justice*, undated, <http://www.auswaertiges-amt.de/cae/servlet/contentblob/343976/publicationFile/3727/Polizei-Legal-Manual.pdf>.

⁴⁸⁹ It should be noted that where applicants face a real risk of such treatment for reason of a 1951 Convention ground, they should be accorded refugee status under the Convention (unless they are to be excluded from the benefit of protection under the Refugee Convention under Article 1.F); only where there is no nexus between the risk of serious harm and one of the Convention grounds should the applicant be accorded subsidiary protection.

⁴⁹⁰ UNHCR, *Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence; Roundtable 13 and 14 September 2012, Cape Town, South Africa*, 20 December 2012, <http://www.refworld.org/docid/50d32e5e.html>, paras. 10-12. See also A.H. Cordesman (Center for Strategic and International Studies), *Coalition, ANSF, and Afghan Casualties in the Afghan Conflict from 2001 through August 2012*, 4 September 2012, http://csis.org/files/publication/120904_Afghan_Iraq_Casualties.pdf, pp. 3, 6, 7. See also OCHA, *Afghanistan Common Humanitarian Action Plan 2013*, 26 December 2012, <http://www.refworld.org/docid/5118bc382.html>, p. 10.

⁴⁹¹ See Court of Justice of the European Union, *Elgafaji v. Staatssecretaris van Justitie*, C-465/07, 17 February 2009, <http://www.refworld.org/docid/499aace52.html>, where the Court of Justice of the European Union held (at para. 43) that the existence of a serious and individual threat to the life or person of an applicant "can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place [...] reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat."

4. *Internal Protection Considerations for Individuals at Risk of Serious Harm under the EU Qualification Directive*

Where it has been established that an individual would be at risk of serious harm in their area of origin in Afghanistan, decision-makers in EU Member States may proceed to consider the possibility of internal protection in another part of Afghanistan under Article 8 of the Qualification Directive.⁴⁹² In relation to decisions about the availability of internal protection in Afghanistan, the considerations regarding the relevance and reasonableness of an internal protection alternative presented in Section III.B apply.

D. Exclusion from International Refugee Protection

In light of the serious human rights abuses and violations of international humanitarian law during Afghanistan's long history of armed conflicts, exclusion considerations under Article 1F of the 1951 Convention may arise in individual claims by Afghan asylum-seekers. Exclusion considerations will be triggered if there are elements in the applicant's claim that suggest that he or she may have been associated with the commission of crimes within the scope of Article 1F. Given the potentially serious consequences of exclusion from international refugee protection, the exclusion clauses need to be interpreted restrictively and applied with caution. A full assessment of the circumstances of the individual case is required in all cases.⁴⁹³

In the context of Afghanistan, exclusion considerations may be raised in the cases of asylum-seekers with certain backgrounds and profiles, in particular those who have participated in the revolution of April 1978 that brought to power the PDPA and which was followed by the brutal crackdown on later uprisings; and those who were involved in the armed conflicts in Afghanistan from 1979 until present, that is (i) a non-international armed conflict between the PPDA Government and armed opponents backed by local elites from the summer of 1979 until the Soviet invasion on 24 December 1979, (ii) a decade of international armed conflict beginning with the overthrow on 27 December 1979 of the existing Afghan Government and subsequent occupation of Afghanistan by the Soviet Union until the withdrawal of Soviet military was completed in February 1989;⁴⁹⁴ (iii) the non-international armed conflict which followed, with mujahideen forces led by various commanders fighting against the Government and pro-government armed groups until the Taliban took control over Kabul in September 1996; (iii) the non-international armed conflict between the Taliban and the United Front, also known as Northern Alliance between 1996 and the ouster of the Taliban in 2001; (iv) the international armed conflict which began with the intervention on 6 October 2001 led by the United States and which ended with the election of an Afghan Government in June 2002, following a period of occupation from the fall of the Taliban regime⁴⁹⁵ and (v) the non-international armed conflict between the Government and the Taliban and other armed groups which continues until present.

When considering claims of individuals who were involved in the above-listed events and armed conflicts, Article 1F(a) is of particular relevance. Where an applicant may have been associated with acts committed in connection and associated with an armed conflict, the starting point for the

⁴⁹² European Union, *Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted*, 19 April 2004, 2004/83/EC, <http://www.refworld.org/docid/4157e75e4.html>, article 8; European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 13 December 2011, <http://www.refworld.org/docid/4f06fa5e2.html>, article 8. Article 8 of the 2011 Qualification Directive applies from 22 December 2013; see 2011 Qualification Directive, Article 41.

⁴⁹³ Detailed guidance on the interpretation and application of Article 1F of the 1951 Convention can be found in UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, 4 September 2003, <http://www.refworld.org/docid/3f5857684.html>; and *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>.

⁴⁹⁴ For an overview of the events leading up to the Soviet invasion in 1979 and a discussion of the applicable rules of international humanitarian law, see Michael Reisman and James Silk, "Which Law Applies to the Afghan Conflict?", *Faculty Scholarship Series*, Paper 752, 1988, http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1745&context=fss_papers.

⁴⁹⁵ See International Committee of the Red Cross (ICRC), *International Law and Terrorism: Questions and Answers*, 1 November 2011, <http://www.icrc.org/eng/resources/documents/faq/terrorism-faq-050504.htm>.

exclusion analysis will be to examine whether or not these acts were in violation of the applicable rules of international humanitarian law and corresponding provisions of international criminal law and may thus constitute war crimes as referred to in Article 1F(a).⁴⁹⁶ Where the crimes in question constitute fundamentally inhumane acts committed as part of a widespread or systematic attack against a civilian population, the exclusion ground of crimes against humanity as referred to in Article 1F(a) may also be relevant.⁴⁹⁷ Acts reportedly committed by the parties to the various armed conflicts in Afghanistan include, *inter alia*, abductions and enforced disappearances, indiscriminate attacks on civilians, forced displacement, torture and other cruel, inhuman and degrading treatment, including political assassinations, mass killings, extrajudicial and summary executions and forced recruitment for military service and/or labour, including recruitment of children.⁴⁹⁸

A range of actors have reportedly engaged in serious crimes, including the illegal drugs trade, illegal taxation, trafficking in arms and trafficking in human beings.⁴⁹⁹ These actors include not only organized criminal networks, but also warlords and AGEs. The crimes in question may be linked to the armed conflicts in Afghanistan.⁵⁰⁰ If this is the case, they would need to be assessed against applicable rules of international humanitarian law and may fall within the scope of war crimes as referred to in Article 1F(a), if committed from the early 1990s onwards.⁵⁰¹ Otherwise, such crimes may give rise to exclusion as serious non-political crimes within the meaning of Article 1F(b) of the 1951 Convention.⁵⁰²

In some cases, the question may arise whether Article 1F(c) of the 1951 Convention is applicable to acts committed by Afghan applicants. In UNHCR's view, this exclusion provision may apply only to crimes which, because of their nature and gravity, have an international impact in the sense that they

⁴⁹⁶ War crimes are serious violations of international humanitarian law (IHL) which entail individual responsibility directly under international law. The applicable rules of IHL and corresponding provisions of international criminal law differ, depending on whether the armed conflict is international (including situations of occupation) or non-international in character. For more detailed guidance, see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras. 30-32. In the context of a non-international armed conflict, the notion of "war crimes" may be applied to serious violations of the relevant rules of IHL (i.e. Common Article 3 of the 1949 Geneva Conventions, certain provisions of Additional Protocol II and rules of customary international law) from the early 1990s onwards. The International Criminal Tribunal for the former Yugoslavia (ICTY) held that by that time, violations of international humanitarian law applicable to non-international armed conflicts could be considered to entail criminal responsibility under customary international law; see *Prosecutor v. Dusko Tadic aka "Dule"*, *Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction*, IT-94-1, 2 October 1995, <http://www.refworld.org/docid/47dfb520.html>, para. 134. Serious violations of the aforementioned rules of IHL that occurred earlier could not be considered "war crimes", but they may fall within the scope of "serious non-political crimes" (Article 1F(b)) or, depending on the circumstances, "crimes against humanity" (Article 1F(a)).

⁴⁹⁷ For more detailed guidance, see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras. 33-36.

⁴⁹⁸ For an overview of various violations of international human rights and humanitarian law in Afghanistan, see, for example, Afghan Civil Society Forum, *A First Step on a Long Journey: How People Define Violence and Justice in Afghanistan (1958-2008)*, 2011, [http://www.af.boell.org/downloads/PDVJ_Final_20.4.2011\(1\).pdf](http://www.af.boell.org/downloads/PDVJ_Final_20.4.2011(1).pdf); Amnesty International, *Afghanistan - All Who Are Not Friends, Are Enemies: Taliban Abuses against Civilians*, 19 April 2007, <http://www.refworld.org/docid/4631c3ad2.html>; Human Rights Watch, *The Human Cost: The Consequences of Insurgent Attacks in Afghanistan*, 16 April 2007, <http://www.refworld.org/docid/463724452.html>; Afghanistan Justice Project, *Casting Shadows: War Crimes and Crimes against Humanity: 1978-2001*, 2005, <http://www.refworld.org/docid/46725c962.html>; and Crimes of War: Afghanistan (undated), <http://www.crimesofwar.org/a-z-guide/afghanistan/>. References to other reports documenting human rights violations can be found at Afghanistan Analysts Network (Ahmed Rashid), 27 July 2012, *The Cloak of Silence: Afghanistan's Human Rights Mappings*, <http://www.aan-afghanistan.org/index.asp?id=2885>. By early 2013, the publication of a report by the AIHRC documenting war crimes and crimes against humanity from 1978 to 2001 remained blocked by the Afghan government. See Human Rights Watch, *Afghanistan: Rights at Risk as Military Drawdown Advances*, 1 February 2013, <http://www.refworld.org/docid/5118bd4d2.html>; and Afghanistan Analysts Network (Ahmed Rashid), *ibid*.

⁴⁹⁹ According to UNODC, all actors involved in destabilizing Afghanistan are directly or indirectly linked to the drug economy. Insurgents' access to the opium economy results in increased military capabilities, prolongs conflict and fuels insecurity across Afghanistan as groups fight for control of routes and territory. See UN Office on Drugs and Crime, *Addiction, Crime and Insurgency. The Transnational Threat of Afghan Opium*, October 2009, <http://www.refworld.org/docid/4ae1660d2.html>. See also Civil-Military Fusion Centre, *Counter-Narcotics in Afghanistan*, August 2012, https://www.cimicweb.org/cmo/afg/Documents/Economic/CFC_Afghanistan-Counter-Narcotics-Volume_Aug2012.pdf; and Ekaterina Stepanova, *Illicit Drugs and Insurgency in Afghanistan*, *Perspectives on Terrorism*, Vol. 6, No. 2 (2012), pp. 4-18, <http://www.terrorismanalysts.com/pt/index.php/pot/article/view/stepanova-illicit-drugs/375>.

⁵⁰⁰ See for example UNODC, *Afghanistan Opium Survey 2012*, May 2013, http://www.unodc.org/documents/crop-monitoring/Afghanistan/Afghanistan_OS_2012_FINAL_web.pdf, pp. 47-48.

⁵⁰¹ As noted in footnote 496 above, where such acts were linked with a non-international armed conflict and took place from the early 1990s onward, they may give rise to exclusion under Article 1F(a) – "war crimes". Serious violations of the rules of IHL applicable to a non-international armed conflict before that time may result in exclusion based on Article 1F(b) – "serious non-political crimes committed outside the country of refuge prior to admission to that country as a refugee" – or Article 1F(a) – "crimes against humanity".

⁵⁰² For more detailed guidance, see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras. 37-45.

are capable of infringing on international peace and security or the friendly relations between States.⁵⁰³

For exclusion to be justified, individual responsibility must be established in relation to a crime within the scope of Article 1F. Such responsibility flows from a person having committed a crime or participated in its commission in a manner that gives rise to criminal liability, for example through ordering, instigating, aiding and abetting, or by contributing to the commission of a crime by a group of persons acting with a common purpose. For persons in positions of authority within a military or civilian hierarchy, individual responsibility may also arise on the basis of command/superior responsibility. Defences to criminal responsibility, if any, as well as considerations related to proportionality apply. Evidence about practices of forced recruitment, including in particular of children, needs to be taken into consideration in this regard.

Membership in government armed forces, police, intelligence or security apparatus, or in an armed group or militia, is not in itself a sufficient basis to exclude an individual from refugee status. The same applies to government officials and civil servants. In all such cases, it is necessary to consider whether the individual concerned was personally involved in excludable acts, or participated in the commission of such acts in a manner that gives rise to individual responsibility under the relevant criteria of international law. A careful assessment of the circumstances pertaining to each individual case is required.⁵⁰⁴

In 2008, the Government adopted the National Stability and Reconciliation Law,⁵⁰⁵ which grants amnesty from prosecution to all those who were engaged in armed conflict before the formation of the Interim Administration in Afghanistan in December 2001.⁵⁰⁶ In UNHCR's view, this does not mean that exclusion may not be applied where crimes within the scope of Article 1F were committed prior to that date. Given the heinous nature of many of the crimes committed by various actors in Afghanistan throughout the past decades, UNHCR considers that the amnesty law is without incidence for the examination of the possible application of exclusion clauses under Article 1F.⁵⁰⁷

⁵⁰³ For more detailed guidance, see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras. 46-49. See also UNHCR, *Yasser al-Sirri (Appellant) v. Secretary of State for the Home Department (Respondent) and DD (Afghanistan) (Appellant) v. Secretary of State for the Home Department (Respondent): UNHCR'S Composite Case in the Two Linked Appeals*, 23 March 2012, <http://www.refworld.org/docid/4f6c92b12.html>.

⁵⁰⁴ These considerations would apply to applicants who held official functions as government officials or civil servants in the Afghan Interim Administration between December 2001 and July 2002, the Afghan Transitional Administration between July 2002 and October 2004, or the Government of Afghanistan since the formation of the first Government led by President Karzai in late 2004. For more detailed guidance, see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras. 50-73 and paras. 76-78.

⁵⁰⁵ There is some confusion as to the exact date and circumstances of the adoption of the law. The law was passed by Parliament in 2007, but following international pressure President Karzai promised not to sign it. In January 2010, it emerged that the law had been gazetted in 2008, although according to some sources, it was not published until January 2010; see UN General Assembly, *The situation in Afghanistan and its Implications for International Peace and Security: Report of the Secretary-General*, A/64/705-S/2010/127, 10 March 2010, <http://www.refworld.org/docid/4bb44c5c2.html>; and Human Rights Watch, *Afghanistan: Repeal Amnesty Law*, 10 March 2010, <http://www.hrw.org/en/news/2010/03/10/afghanistan-repeal-amnesty-law>.

⁵⁰⁶ The adoption of the law drew widespread national and international criticism and calls for its repeal; see, for example, Afghanistan Research and Evaluation Unit, *The State of Transitional Justice in Afghanistan: Actors, Approaches and Challenges*, April 2010, <http://www.refworld.org/docid/4bc6ccb42.html>; UN News Centre, *Top UN Human Rights Official in Afghanistan Calls for Repeal of Amnesty Law*, 25 March 2010, <http://www.un.org/apps/news/story.asp?NewsID=34198>; Human Rights Watch, *Afghanistan: Repeal Amnesty Law*, 10 March 2010, <http://www.hrw.org/en/news/2010/03/10/afghanistan-repeal-amnesty-law>; and AIHRC, *Discussion Paper on the Legality of Amnesties*, 21 February 2010, <http://www.refworld.org/docid/4bb31a5e2.html>.

⁵⁰⁷ UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, para. 75. Such amnesty from prosecution would be incompatible with the duty of States to investigate and prosecute crimes under international humanitarian law and violations of non-derogable human rights law; see Rule 159 (Amnesty) of the ICRC, *Customary International Humanitarian Law*, Cambridge: Cambridge Univ. Press, 2005, reprinted 2009, http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule159. Several international jurisdictions have stated that that war crimes and serious human rights violations may not be the subject of amnesty; see, for example, *Prosecutor v. Anto Furundzija (Trial Judgement)*, IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998, <http://www.refworld.org/docid/40276a8a4.html>; and *Case of Barrios Altos v. Peru*, Inter-American Court of Human Rights, 14 March 2001, http://www.corteidh.or.cr/docs/casos/articulos/seriec_75_ing.pdf.

In the context of Afghanistan, careful consideration needs to be given in particular to the following profiles:

- (i) Former members of the armed forces and the intelligence/security apparatus, including KhAD/WAD agents, as well as former officials of the Communist regimes;
- (ii) Former members and commanders of armed groups and militia forces during the Communist regimes;
- (iii) (Former) members and commanders of the Taliban, the Haqqani Network, Hezb-e-Islami Hekmatyar and other AGEs;
- (iv) (Former) members of the ANSF, including the NDS, the ANP and the ALP;
- (v) (Former) members of paramilitary groups and militias; and
- (vi) (Former) members of groups and networks engaged in organized crime.

More detailed information on serious human rights abuses and violations of international humanitarian law by members of the first four above-mentioned groups is provided below.

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

Members of military, police and security services, as well as high-ranking Government officials during the Taraki, Hafizullah Amin, Babrak Karmal, and Najibullah regimes,⁵⁰⁸ were involved in operations subjecting civilians to arrest, disappearances, torture, inhuman and degrading treatment and punishment, and extrajudicial executions.⁵⁰⁹ These included the mass killings after the 1978 *coup d'état* and the reprisals against resistance to the decrees on land-reforms issued under Hafizullah Amin's regime. In addition, incidents of deliberate targeting of civilians during military operations are well-documented.⁵¹⁰

In this context, careful consideration needs to be given to cases of former employees of the *Khadamate Ettelaate Dowlati* (KhAD), the State Information Service, which later became the *Wezarat-e Amniyat-e Dowlati* (WAD) or Ministry of State Security.⁵¹¹ Although the functions of the KhAD/WAD evolved over time, culminating in the coordination and undertaking of military operations following the withdrawal of Soviet troops in 1989, it also included non-operational (support) directorates at central, provincial and district levels.⁵¹² Information available to UNHCR does not link the support directorates to human rights violations in the same manner as the operational units. Thus the mere fact of having been an employee of the KhAD/WAD would not automatically lead to exclusion, taking into account that UNHCR has not been able to confirm that there was a

⁵⁰⁸ This period of recent Afghan history started with a military *coup d'état* on 27 April 1978 that brought to power a Government dominated by the PDPA, continued during the Soviet occupation that started on 27 December 1979, and lasted until the fall of the Najibullah Government on 15 April 1992.

⁵⁰⁹ See, for example, UN Commission on Human Rights, *Report on the Situation of Human Rights in Afghanistan prepared by the Special Rapporteur, Mr. Felix Ermacora, in accordance with Commission on Human Rights Resolution 1985/38, E/CN.4/1986/24*, 17 February 1986, <http://www.refworld.org/docid/482996d02.html>; Human Rights Watch, "Tears, Blood and Cries" *Human Rights in Afghanistan since the Invasion 1979 – 1984*, US Helsinki Watch Report, December 1984, <http://hrw.org/reports/1984/afghan1284.pdf>; and Amnesty International, *Violations of Human Rights and Fundamental Freedoms in the Democratic Republic of Afghanistan*, ASA/11/04/79, September 1979.

⁵¹⁰ Human Rights Watch, *The Forgotten War: Human Rights Abuses and Violations of the Laws of War since the Soviet Withdrawal*, 1 February 1991, <http://www.hrw.org/reports/1991/afghanistan/>; and Human Rights Watch, *By All Parties to the Conflict: Violations of the Laws of War in Afghanistan*, Helsinki Watch/Asia Watch report, March 1988, <http://hrw.org/reports/1988/afghan0388.pdf>.

⁵¹¹ In 1986, the KhAD was upgraded to ministry level and from then on was known as WAD (*Wezarat-e Amniyat-e Dowlati* or Ministry of State Security). For detailed information on (i) the origins of the KhAD/WAD; (ii) its structure and staffing; (iii) linkages between these services and the Afghan military and militias; (iv) the distinction between operational and support services; and (v) rotation and promotion policies within the KhAD/WAD, see UNHCR, *Note on the Structure and Operation of the KhAD/WAD in Afghanistan 1978-1992*, May 2008, <http://www.refworld.org/docid/482947db2.html>.

⁵¹² These directorates included administration and finance, personnel, propaganda and counter-propaganda, logistics, telecommunications and decoding. See UNHCR, *Note on the Structure and Operation of the KhAD/WAD in Afghanistan 1978-1992*, May 2008, <http://www.refworld.org/docid/482947db2.html>, paras. 15-17.

systematic rotation policy inside the KhAD/WAD.⁵¹³ The individual exclusion assessment needs to take into consideration the individual's role, rank and functions within the organization.

In cases of applicants who held official functions during the Communist regimes, it is necessary to examine the nature of their positions and the tasks and responsibilities entrusted to them. When examining the possible application of exclusion under Article 1F to a former official of these regimes, an individualized assessment is required to determine whether the applicant was associated with crimes within the scope of Article 1F in a manner that gives rise to individual responsibility. Exclusion of such persons merely on the basis of their former membership of the State administration, without evidence that they have committed excludable crimes or participated in their commission through one of the modes for incurring individual responsibility established in international law, would not be consistent with international refugee law.

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

The activities of members of armed groups and militia forces⁵¹⁴ during the period of the armed resistance against the Communist regimes and the Soviet occupation – from 27 April 1978 until the fall of Najibullah in April 1992 – may give rise to exclusion concerns. Examples of relevant acts include political assassinations, reprisals and extrajudicial killings, and rape, including of civilians for reasons such as working for Government institutions and schools, or transgressing Islamic principles and norms. Other reported crimes by armed groups and militia forces include extrajudicial executions of prisoners of war and attacks on civilian targets.⁵¹⁵ The armed conflict between 1992 and 1995, in particular, was characterized by serious violations of international human rights and humanitarian law, including the shelling of urban centres by all parties to the conflict.⁵¹⁶

3. Members of the Taliban, the Haqqani Network, Hezb-e-Islami Hekmatyar and Other AGEs

Elements from the former Taliban regime, combined with new recruits, started to mount armed operations in Afghanistan as early as 2002. The group remains the main threat to the Government of Afghanistan.⁵¹⁷

⁵¹³ UNHCR, *Note on the Structure and Operation of the KhAD/WAD in Afghanistan 1978-1992*, May 2008, <http://www.refworld.org/docid/482947db2.html>. In this Note, UNHCR observes that “UNHCR is not able to confirm that there was a systematic rotation policy inside KhAD/WAD. Sources consulted by UNHCR affirmed that rotations within the KhAD/WAD structures were largely based on expertise and experience. In emergency situations, staff may have been shifted to work on a given operation, but within its area of expertise. Military personnel operated within its rank and levels of expertise. One expert [...] stated that, in his view, there was no mandatory rotation; he believes that people could change jobs within the KhAD/WAD, but that it was not a rule or requirement. In the view of that source, such a rotation policy would have gone against any sense of professionalism within the institution. Other sources state that the activities of KhAD/WAD officers were regulated by a number of principles, one of which was confidentiality. For this reason, they believe that the KhAD/WAD could not resort to a general rotation policy, as this would have risked disclosure of information from one Directorate to another.” Ibid., para. 24. See also *DS (Afghanistan) v. Secretary of State for the Home Department* [2009] EWCA Civ 226, 24 March 2009 (England and Wales Court of Appeal), <http://www.refworld.org/docid/49ca60ae2.html>, where the applicant, a Tajik who worked as *Khad* agent, claimed to be at risk of persecution by non-State agents, i.e. a senior commander of the Northern Alliance. The Court dismissed the asylum appeal holding that since the applicant had been a member of an organization engaged in large-scale torture and had known about the abuses, he was excludable from refugee protection. See also *Judgment of the Hague District Court in the Case concerning a KhAD/WAD member from Afghanistan*, 20 May 2008 (Netherlands, Hague District Court), <http://www.refworld.org/docid/49997af9d.html>.

⁵¹⁴ Specific commanders and members of the Islamic parties with armed factions requiring careful scrutiny include *Hezb-e-Islami* (Hekmatyar and Khalis), *Hezb-e-Wahdat* (both branches or all nine parties that formed *Hezb-e-Wahdat*), *Jamiat-e-Islami* (including *Shura-e-Nezar*), *Jonbesh-e-Melli-Islami*, *Ittehad-e-Islami*, *Harakat-e-Inqilab-e-Islami* (led by Mohammad Nabi Mohammadi) and *Harakat-e-Islami*.

⁵¹⁵ Human Rights Watch, *The Forgotten War: Human Rights Abuses and Violations of the Laws of War since the Soviet Withdrawal*, 1 February 1991, <http://www.hrw.org/reports/1991/afghanistan/>; and Human Rights Watch, *By All Parties to the Conflict: Violations of the Laws of War in Afghanistan*, Helsinki Watch/Asia Watch report, March 1988, <http://hrw.org/reports/1988/afghan0388.pdf>.

⁵¹⁶ See for instance Human Rights Watch, *Blood-Stained Hands: Past Atrocities in Kabul and Afghanistan's Legacy of Impunity*, 7 July 2005, <http://www.refworld.org/docid/45c2c89f2.html>; Amnesty International, *Afghanistan: Executions, Amputations and Possible Deliberate and Arbitrary Killings*, ASA 11/05/95, April 1995, <http://www.refworld.org/docid/48298bca2.html>; and Amnesty International, *Afghanistan: The Human Rights Crisis and the Refugees*, ASA 11/002/1995, 1 February 1995, <http://www.refworld.org/docid/3ae6a9a613.html>.

⁵¹⁷ Afghanistan Research and Evaluation Unit, *Thirty Years of Conflict: Drivers of Anti-Government Mobilisation in Afghanistan 1978-2011*, January 2012, <http://www.areu.org.af/EditionDetails.aspx?EditionId=573&ContentId=7&ParentId=7&Lang=en-US>; Council on Foreign Relations, *The Taliban in Afghanistan: Backgrounder*, 6 October 2011, <http://www.cfr.org/afghanistan/taliban-afghanistan/p10551>; International Crisis Group, *The Insurgency in Afghanistan's Heartland*, Asia Report No. 207, 27 June 2011, <http://www.crisisgroup.org/en/regions/asia/south-asia/afghanistan/207-the-insurgency-in-afghanistans-heartland.aspx>. The Taliban are led by Mullah Mohammad Omar; he and the leadership council are based in Quetta, Pakistan. Despite considerable fragmentation among

The applicability of the exclusion clauses is relevant in relation to former members and military commanders of the Taliban, during its time in power and following its ouster, in cases where there is sufficient evidence to support findings of serious reasons for considering that they were associated with serious abuses of human rights and/or violations of humanitarian law. As noted in Section II.C.1.b, there are widespread reports about deliberate attacks on civilians by Taliban forces, summary executions, and illegal punishments meted out by parallel justice structures enforced by the Taliban. Some of these acts may constitute war crimes.

The applicability of the exclusion clauses will also need to be considered in relation to individual members and military commanders of *Al-Qaeda*,⁵¹⁸ the Haqqani Network,⁵¹⁹ *Hezb-e-Islami* (Party of Islam) *Hekmatyar*,⁵²⁰ and *Tora-Bora Nizami Mahaz* (Tora-Bora Military Front).⁵²¹

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

The applicability of the exclusion clauses will need to be considered in relation to members of the ANSF, in cases where there are indications that they may have been associated with serious abuses of human rights and/or violations of humanitarian law. As noted in Section II.C.1.a, elements of the ANSF are reported to have committed serious human rights violations, including unlawful killings; torture and cruel, inhuman or degrading treatment or punishment; and sexual violence, including rape of detainees and the sexual exploitation of children.

Taliban forces, there is a hierarchical structure that reaches from Mullah Omar and others on the leadership council down to the district and village level in Afghanistan. International Crisis Group, *ibid.*, p. 13.

⁵¹⁸ Following the killing of Osama Bin Laden during a raid carried out by US commandos in Abbotabad, Pakistan in May 2011, Ayman al-Zawahiri, who had been Al-Qaeda's second-in-command, became Bin Laden's successor as leader of Al-Qaeda. See American Foreign Policy Council, *World Almanac of Islamism: Taliban* (page accessed on 31 January 2013; last updated 14 July 2011), <http://almanac.afpc.org/al-qaeda>.

⁵¹⁹ The Haqqani Network, while enjoying a large measure of tactical autonomy, shares many of the Taliban's political and ideological objectives. See Institute for the Study of War, *The Haqqani Network: A Foreign Terrorist Organization*, 5 September 2012, <http://www.understandingwar.org/background/haqqani-network-foreign-terrorist-organization>; American Foreign Policy Council, *World Almanac of Islamism: Taliban* (page accessed on 31 January 2013; last updated 14 July 2011), <http://almanac.afpc.org/taliban>; Combatting Terrorism Center at West Point, *The Haqqani Nexus and the Evolution of al-Qaida*, 14 July 2011, <http://www.ctc.usma.edu/wp-content/uploads/2011/07/CTC-Haqqani-Report-Rassler-Brown-Final-Web.pdf>.

⁵²⁰ American Foreign Policy Council, *World Almanac of Islamism: Taliban* (page accessed on 31 January 2013; last updated 14 July 2011), <http://almanac.afpc.org/taliban>; National Consortium for the Study of Terrorism and Responses to Terrorism (START), *Hizb-I Islami Gulbuddin (HIG)* (undated, page accessed on 31 January 2013), http://www.start.umd.edu/start/data_collections/tops/terrorist_organization_profile.asp?id=4405; International Crisis Group, *The Insurgency in Afghanistan's Heartland*, Asia Report No. 207, 27 June 2011, <http://www.crisisgroup.org/en/regions/asia/south-asia/afghanistan/207-the-insurgency-in-afghanistans-heartland.aspx>; and Human Rights Watch, *The Human Cost: The Consequences of Insurgent Attacks in Afghanistan*, Volume 19 No. 6(C), April 2007, <http://www.hrw.org/reports/2007/afghanistan0407/>.

⁵²¹ The *Tora-Bora Nizami Mahaz* is an offshoot of the *Hezb-e-Islami* (Khalis) and was created by Anwarul Haq Mujahid, the son of Afghan Mujahideen leader Maulvi Yunis Khalis, to organize resistance to US-led foreign forces primarily in eastern Afghanistan. The group is reported to be allied with the Taliban. See American Foreign Policy Council, *World Almanac of Islamism: Taliban* (page accessed on 31 January 2013; last updated 14 July 2011), <http://almanac.afpc.org/taliban>; and The News International, *New Taliban Group Named after Tora-Bora*, 26 February 2007, <http://www.afghanistannewscenter.com/news/2007/february/feb272007.html#20>.