



**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 assessed social, political, economic, security, human rights and humanitarian conditions in the country/territory of origin concerned. The pertinent international protection needs are analyzed 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>.

Table of Contents

I.	INTRODUCTION.....	3
II.	BACKGROUND INFORMATION.....	4
III.	ELIGIBILITY FOR INTERNATIONAL PROTECTION.....	6
A.	POTENTIAL RISK PROFILES	7
1.	<i>Individuals Associated with, or Perceived as Supportive of, the Government and the International Community, Including the International Security Assistance Force (ISAF).....</i>	<i>7</i>
a)	Civilians Associated with or Perceived as Supportive of ISAF.....	8
b)	Government Officials and Civil Servants.....	9
c)	Traditional Tribal and Religious Leaders	10
d)	Women in the Public Sphere	11
e)	Election Candidates and Workers.....	11
2.	<i>Humanitarian Workers and Human Rights Activists.....</i>	<i>12</i>
3.	<i>Journalists and Other Media Professionals</i>	<i>13</i>
4.	<i>Civilians Suspected of Supporting Armed Anti-Government Groups.....</i>	<i>16</i>
5.	<i>Members of Minority Religious Groups and Persons Perceived as Contravening Shari’a Law.....</i>	<i>18</i>
a)	Conversion from Islam	18
b)	Other Acts Contravening Shari’a Law.....	19
c)	Minority Religious Groups	19
6.	<i>Women with Specific Profiles.....</i>	<i>20</i>
a)	Sexual and Gender-Based Violence.....	21
b)	Harmful Traditional Practices	22
c)	Women Perceived as Contravening Social Mores	23
7.	<i>Children with Specific Profiles.....</i>	<i>25</i>
a)	Forced Recruitment	25
b)	Access to Education	26
c)	Sexual and Gender-Based Violence	27
8.	<i>Victims of Trafficking</i>	<i>27</i>
9.	<i>Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Individuals.....</i>	<i>28</i>
10.	<i>Members of (Minority) Ethnic Groups.....</i>	<i>29</i>
11.	<i>Blood Feuds.....</i>	<i>32</i>
B.	ELIGIBILITY UNDER BROADER INTERNATIONAL PROTECTION CRITERIA, INCLUDING COMPLEMENTARY FORMS OF PROTECTION.....	33
1.	<i>Civilian Casualties</i>	<i>34</i>
2.	<i>Security Incidents</i>	<i>36</i>
3.	<i>Conflict-Induced Displacements and Voluntary Returns.....</i>	<i>36</i>
4.	<i>Summary Regarding Generalized Violence.....</i>	<i>37</i>
C.	INTERNAL FLIGHT OR RELOCATION ALTERNATIVE.....	38
1.	<i>Individuals at Risk of Targeted Persecution.....</i>	<i>38</i>
2.	<i>Individuals Fleeing Generalized Violence.....</i>	<i>40</i>
D.	EXCLUSION FROM INTERNATIONAL REFUGEE PROTECTION	40
1.	<i>Members of the Security Forces, Including KhAD/WAD Agents and High-Ranking Officials of the Communist Regimes</i>	<i>42</i>
2.	<i>Members of Armed Groups and Militia Forces During and After the Communist Regimes</i>	<i>43</i>
3.	<i>Members of the Taliban, Hezb-e-Islami Hikmatyar and Other Armed Anti-Government Groups.....</i>	<i>43</i>

I. Introduction

These Guidelines supersede and replace the July 2009 *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*.¹ They are issued against a backdrop of a worsening security situation in certain parts of Afghanistan and sustained conflict-related human rights violations as well as contain information on the particular profiles for which international protection needs may arise in the current context in Afghanistan.² UNHCR's recommendations, as set out in these Guidelines, are summarized below.

All claims lodged by asylum-seekers, whether on the basis of the refugee criteria contained in the 1951 Convention or broader international protection criteria, including complementary forms of protection, 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.

UNHCR considers that individuals with the profiles outlined below require a particularly careful examination of possible risks. These risk profiles, while not necessarily exhaustive, include (i) individuals associated with, or perceived as supportive of, the Afghan Government and the international community, including the International Security Assistance Force (ISAF); (ii) humanitarian workers and human rights activists; (iii) journalists and other media professionals; (iv) civilians suspected of supporting armed anti-Government groups; (v) members of minority religious groups and persons perceived as contravening Shari'a law; (vi) women with specific profiles; (vii) children with specific profiles; (viii) victims of trafficking; (ix) lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals; (x) members of (minority) ethnic groups; and (xi) persons at risk of becoming victims of blood feuds.

In light of the worsening security environment in certain parts of the country and the increasing number of civilian casualties UNHCR considers that the situation can be characterized as one of generalized violence in Helmand, Kandahar, Kunar, and parts of Ghazni and Khost provinces. Therefore, Afghan asylum-seekers formerly residing in these areas may be in need of international protection under broader international protection criteria, including complementary forms of protection. In addition, given the fluid and volatile nature of the conflict, asylum applications by Afghans claiming to flee generalized violence in other parts of Afghanistan should each be assessed carefully, in light of the evidence presented by the applicant and other current and reliable information on the place of former residence. This latter determination will obviously need to include assessing whether a situation of generalized violence exists in the place of former residence at the time of adjudication.

UNHCR generally considers internal flight as a reasonable alternative where protection is available from the individual's own extended family, community or tribe in the area of prospective relocation. Single males and nuclear family units may, in certain circumstances, subsist without family and community support in urban and semi-urban areas with established infrastructure and under effective Government control. Given the breakdown in the traditional social fabric of the country caused by decades of war, massive refugee flows, and growing internal migration to urban areas, a case-by-case analysis will, nevertheless, be necessary.

In light of the serious human rights violations and transgressions 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) members of the security forces, including KhAD/WAD agents and high-ranking officials of the communist regimes; (ii) members and commanders of armed groups and militia forces during the communist regimes; (iii) members and commanders of the Taliban, Hezb-e-Islami Hikmatyar and other armed anti-Government groups; (iv)

¹ UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, July 2009, <http://www.unhcr.org/refworld/docid/4a6477ef2.html>.

² These Guidelines are based on information available to UNHCR as of 30 November 2010, unless otherwise stated.

organized crime groups; (v) members of Afghan security forces, including the NDS; and (vi) pro-Government paramilitary groups and militias.

II. Background Information

The intensification and spread of the armed conflict in Afghanistan took a heavy toll on the civilian population in 2009 and continued to worsen through the first half of 2010. At least 5,978 civilians were reported killed and injured in 2009, the highest number of civilian casualties³ recorded in one year since the fall of the Taliban in 2001.⁴ 3,268 casualties were recorded during the first six months of 2010, representing a 31 percent increase over the same period in 2009.⁵ Compared to previous years and contrary to seasonal trends, a significant increase in the number of security incidents has been observed during the first half of 2010. This increase is in part attributable to an increase in military operations in the southern region since February 2010 and to significant activities of armed anti-Government groups in the south-eastern and eastern regions of Afghanistan.⁶ It is reported that armed anti-Government groups remain responsible for the largest proportion of civilian casualties, whether due to targeted or indiscriminate attacks.⁷

The continued instability in Afghanistan has resulted in the shrinking of the humanitarian space, limiting the presence and activities of humanitarian workers and NGOs.⁸ Conflict-related human rights violations are on the rise, including in areas previously considered relatively stable.⁹ The escalation of the conflict between the Afghan and international military forces, and the Taliban and other armed groups, has contributed to limiting the access to health care and education, particularly in the southern and south-eastern regions of the country. A broad spectrum of civilians, including community elders, humanitarian personnel, doctors, teachers and construction workers has been targeted by armed anti-Government groups.¹⁰

Reported high levels of corruption, ineffective governance, a climate of impunity, lack of official impetus for the transitional justice process, weak rule of law and widespread reliance on traditional

³ Throughout this paper, the term “casualties” encompasses both fatalities and injuries.

⁴ UN Assistance Mission in Afghanistan (UNAMA), *Annual Report on Protection of Civilians in Armed Conflict, 2009*, January 2010, <http://www.unhcr.org/refworld/docid/4b4ef6d52.html>.

⁵ UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, <http://www.unhcr.org/refworld/docid/4c6120382.html>. According to the Afghanistan Independent Human Rights Commission (AIHRC), 1352 civilians were killed during the first seven months of 2010 as a result of the armed conflict; see AIHRC, *Civilian Casualty Figure: First Seven Months of 2010 (1st January - 31st July)*, 8 August 2010, <http://www.unhcr.org/refworld/docid/4cb067aa21.html>. According to the Afghan NGO Safety Office (ANSO), the total civilian fatalities (not including NGO workers) caused by the conflict has increased by 16 percent from 1,601 by 30 September 2009 to 1,862 by 30 September 2010; see ANSO, *ANSO Quarterly Data Report: Q.3.2010, 1 January 2010-30 September 2010*, 30 September 2010, p. 15, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/JALR-8A9DLQ>.

⁶ For example, in February 2010, ISAF and Afghan forces launched a large-scale military operation in Nad Ali and Marja districts of Helmand province, while in May, operation Hamkari was launched in Kandahar City and outlying districts; see UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, pp.15-17, <http://www.unhcr.org/refworld/docid/4c6120382.html>; UN Security Council, *Report of the Secretary-General pursuant to paragraph 40 of resolution 1917 (2010)*, S/2010/318, 16 June 2010, para. 18, <http://www.unhcr.org/refworld/docid/4c35675f2.html>; and ICRC, *Afghanistan: homemade bombs and improvised mines kill and maim civilians in south*, 14 April 2010, <http://www.icrc.org/web/eng/siteeng0.nsf/html/afghanistan-update-140410>.

⁷ According to ANSO, between 1 January and 30 September 2010, the number of attacks by armed anti-Government groups has increased by 59 percent compared to the same period in 2009; see ANSO, *ANSO Quarterly Data Report: Q.3.2010, 1 January 2010-30 September 2010*, 30 September 2010, p. 10, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/JALR-8A9DLQ>. Armed anti-Government groups were reportedly responsible for 76 percent of the civilian casualties during the January-July 2010 period; see UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, pp.1-13, <http://www.unhcr.org/refworld/docid/4c6120382.html>.

⁸ See, for example, OCHA, *Monthly Humanitarian Update – September 2010*, 7 October 2010, <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1175710>; UN General Assembly, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/64/911–S/2010/463, 14 September 2010, para. 37, <http://www.unhcr.org/refworld/docid/4ca187f62.html>; and ANSO, *ANSO Quarterly Data Report: Q.2.2010, Jan 1st-June 30th 2010*, 30 June 2010, <http://english.aljazeera.net/mritems/Documents/2010/7/19/201071954927192734anso-report.pdf>.

⁹ According to ANSO collected data, eight provinces have moved into a higher attack rate by armed anti-Government groups category in 2010, namely: Takhar, Baghlan, Balkh, Faryab, Nangahar, Paktya, Uruzgan and Badghis; see ANSO, *ANSO Quarterly Data Report: Q.3.2010, 1 January 2010-30 September 2010*, 30 September 2010, p. 14, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/JALR-8A9DLQ>.

¹⁰ See, for example, UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, <http://www.unhcr.org/refworld/docid/4c6120382.html>; Amnesty International, *Amnesty International Report 2010 - Afghanistan*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a845c.html>; UNAMA, *Annual Report on Protection of Civilians in Armed Conflict, 2009*, January 2010, <http://www.unhcr.org/refworld/docid/4b4ef6d52.html>; and AIHRC, *Report on the Situation of Economic and Social Rights in Afghanistan - IV*, December 2009, <http://www.unhcr.org/refworld/docid/4b3b2df72.html>.

dispute resolution mechanisms that do not comply with due process standards, contribute to the deteriorating human rights situation in the country.¹¹

The August 2009 Presidential and Council elections took place against the backdrop of heightened insecurity and were marred by allegations of fraud and irregularities.¹² The 18 September 2010 parliamentary elections, which also took place amid significant security challenges,¹³ attracted a low voter turnout and criticism relating to electoral violations and irregularities, including voter intimidation and fraud.¹⁴

During the first half of 2010, some efforts were made by the Government towards improving security, reintegration and reconciliation. They included the adoption of a peace and reintegration programme during the London Conference on Afghanistan, held on 28 January.¹⁵ In June 2010, the participants at the Consultative Peace Jirga, held in Kabul, endorsed the initiative of President Karzai to convene a national dialogue on avenues to restoring peace.¹⁶ The High Council for Peace established to foster reconciliation talks with the Taliban was created following recommendations from the Peace Jirga.¹⁷ The Taliban have reportedly rejected this latest attempt to initiate peace talks.¹⁸ According to several reports, however, some factions of armed anti-Government groups have been laying down arms.¹⁹

Internal displacement remains a complex phenomenon in Afghanistan. The number of conflict-induced internally displaced persons (IDPs) continues to rise and displacement is largely taking place in the southern and western regions²⁰ of Afghanistan. An estimated 131,984 people were displaced

¹¹ See, for example, Afghanistan Research and Evaluation Unit, *Corrupting the State or State-Crafted Corruption? Exploring the Nexus between Corruption and Subnational Governance*, June 2010, <http://www.unhcr.org/refworld/docid/4c21cd102.html>; 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.unhcr.org/refworld/docid/4bc2c8d62.html>; UNODC, *Corruption in Afghanistan: Bribery as reported by the victims*, January 2010, <http://www.unodc.org/documents/data-and-analysis/Afghanistan/Afghanistan-corruption-survey2010-Eng.pdf>; Human Rights Watch, *Selling Justice Short: Why Accountability Matters for Peace*, 7 July 2009, <http://www.unhcr.org/refworld/docid/4a52fd692.html>.

¹² The allegations of fraud and irregularities included allegations of ballot box stuffing, proxy voting, under-age voting and voters using multiple registration cards; see 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.unhcr.org/refworld/docid/4bc2c8d62.html>. EurasiaNet, *Afghanistan: Karzai declared president, but is Abdullah the real winner?*, 2 November 2009, <http://www.unhcr.org/refworld/docid/4b06756023.html>.

¹³ Insurgent violence was reported throughout Helmand province during election day; see Institute for War and Peace Reporting, *Helmand Vote Marred by Attacks*, 21 September 2010, <http://www.unhcr.org/refworld/docid/4c9c63e21a.html>. The Free and Fair Election Foundation of Afghanistan (FEFA) recorded 276 security incidents involving insurgents at and around voting places in 32 provinces, and 157 serious acts of violence in 28 provinces at the hands of powerbrokers and their supporters; see FEFA, *Election Day 2010: First Preliminary Observation Report*, 20 September 2010, http://www.feфа.org.af/index.php?option=com_content&view=article&id=110:election-day-2010-first-preliminary-observation-report-september-20-2010&catid=38:report.

¹⁴ Afghanistan's Independent Election Commission (IEC) has cancelled 1.3m votes in the parliamentary election because of fraud or other irregularities. The number of void votes amounts to nearly a quarter of the 5.6m ballots cast; see, for example, UN Security Council, *Top United Nations Official in Afghanistan, Briefing Security Council, Hails Polls, Other Key Events as 'Stepping Stones' towards Sovereign Authority*, SC/10046, 29 September 2010, <http://www.un.org/News/Press/docs/2010/sc10046.doc.htm>; BBC News, *Afghanistan rules 1.3m parliamentary votes are invalid*, 20 October 2010, <http://www.bbc.co.uk/news/world-south-asia-11582690>; and FEFA, *Election Day 2010: First Preliminary Observation Report*, 20 September 2010, http://www.feфа.org.af/index.php?option=com_content&view=article&id=110:election-day-2010-first-preliminary-observation-report-september-20-2010&catid=38:report. The final results of the September 2010 parliamentary elections were certified by the IEC on 1 December 2010; see UNAMA, *Statement by Staffan de Mistura on the final certification of election results*, 1 December 2010, <http://unama.unmissions.org/Default.aspx?tabid=1741&ctl=Details&mid=1882&ItemID=11091>.

¹⁵ 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.unhcr.org/refworld/docid/4bb44c5c2.html>.

¹⁶ UN Security Council, *Report of the Secretary-General pursuant to paragraph 40 of resolution 1917 (2010)*, S/2010/318, 16 June 2010, para. 47, <http://www.unhcr.org/refworld/docid/4c35675f2.html>.

¹⁷ On 28 September 2010, President Karzai announced the names of the 70 members of the High Council for Peace; see Associated Press, *Afghan government sets up 70-member peace council*, 29 September 2010, http://www.google.com/hostednews/ap/article/ALeqM5iqETCMPbriSHgWTvFp3qa4_s3eAD9IH2I580?docId=D9IH2I580.

¹⁸ See, for example, Reuters, *Taliban reject Karzai's peace council as "failed"*, 30 September 2010, <http://www.reuters.com/article/idUSTRE68T2O620100930>; and Agence France-Presse, *Taliban reject claims of Afghan peace approaches*, 29 September 2010, http://news.yahoo.com/s/afp/20100929/wl_asia_afp/afghanistanunrestpeacetaliban.

¹⁹ In August 2010, for example, ISAF has announced that over 20 Taliban insurgents laid down arms and reintegrated into the community in Badghais province, northwest Afghanistan; see Xinhua, *21 militants lay down arms in NW Afghanistan*, 24 August 2010, accessed on www.newsedge.com. Some former insurgents who have laid down arms are, however, reported to rejoin the insurgency; see Institute for War and Peace Reporting, *Afghan Former Militants Rejoin Insurgency*, 8 August 2010, <http://www.unhcr.org/refworld/docid/4c74d2ba1e.html>.

²⁰ Please note that throughout this paper, the regional designations 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), South-eastern (Ghazni, Paktia, Paktika, Khost), Southern (Helmand, Kandahar, Nimroz, Uruzgan and Zabul), North-eastern

between June 2009 and October 2010 due to the armed conflict.²¹ Lack of access to basic services, lack of livelihood opportunities, conflicts over access to pasture and arable land, as well as general insecurity have particularly affected IDPs and have, in some cases, led to further displacement. Vulnerable IDPs, such as female-headed households, widows, and orphaned and separated children have the greatest difficulty in accessing relief and assistance, including health care and education.²² In areas where Afghan authorities are unable to provide protection, IDPs are reported to be increasingly seeking protection from local strongmen, while in some conflict areas they sometimes rely on armed anti-Government groups for survival whether through voluntary or coerced support.²³

Millions of Afghans have been externally displaced as a result of decades of conflict in the country. The largest number of refugees has been hosted for years in Pakistan (currently *circa* 1.7 million) and Iran (currently *circa* one million).²⁴ During the period from January to September 2010, 14,203 asylum applications have been submitted globally – compared to 16,879 applications registered during the same period in 2009 – representing a 15 percent decrease.²⁵ In addition to those seeking international protection, there are large numbers of Afghans leaving the country due to socio-economic concerns. Such movements to and through Pakistan and Iran are decades long, and include seasonal migration and, in some cases, repeated border crossings.

Over 5.6 million Afghans have returned to Afghanistan since 2002; of which 4.4 million have been assisted by UNHCR. In 2010,²⁶ over 100,000 Afghans returned from Pakistan and Iran with the assistance of UNHCR.²⁷ Most returns, however, are occurring in the context of deteriorating conditions for Afghans.

III. Eligibility for International Protection

All claims lodged by asylum-seekers, whether on the basis of the refugee criteria in the 1951 Convention or broader international protection criteria, including complementary forms of protection, 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

(Kunduz, Takhar, Badakhshan and Baghlan), Northern (Balkh, Samangan, Jawzjan, Sari Pul and Faryab), and Western (Herat, Farah, Badghis and Ghor).

²¹ According to data on internal displacement managed jointly by UNHCR staff in the field and the Afghanistan Provincial Department of Refugees and Repatriation, an estimated 330,298 persons remained internally displaced at the end of October 2010. Of these, 117,089 IDPs remained in protracted displacement (displaced prior to 31 December 2002). Based on IDP profiling estimates, the top five provinces with the highest numbers of IDPs are Helmand, Badghis, Hirat, Nimroz and Ghor, where an estimated 99,698 IDPs are currently living. The top places of origin of IDPs are Helmand, Badghis and Faryab. For more information on recent conflict-induced internal displacement, see also: OCHA, *Monthly Humanitarian Update – October 2010*, 8 November 2010, <http://ochaonline.un.org/OCHALinkclick.aspx?link=ocha&docid=1177632>; and Agence France-Presse, *Thousands of Afghans displaced by fighting*, 29 September 2010, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/VVOS-89RT5Y?OpenDocument&rc=3&cc=afg>. According to the UN Secretary-General, during February 2010, some 27,700 people were displaced by military operations in Helmand province alone; see UN Security Council, *Report of the Secretary-General pursuant to paragraph 40 of resolution 1917 (2010)*, S/2010/318, 16 June 2010, para. 47, <http://www.unhcr.org/refworld/docid/4c35675f2.html>. Some 3,700 families reportedly remain displaced from their home communities in Helmand since the official end of Operation Moshtarak in late February 2010; see IRIN, *Afghanistan: UNHCR worried about growing number of conflict IDPs*, 3 November 2010, <http://www.unhcr.org/refworld/docid/4cd3c9d2c.html>. Growing numbers of Afghans reportedly continue to be displaced as a result of Operation Hamkari in Kandahar province, largely from the districts into Kandahar City and surrounding areas; see Oxfam, *Nowhere to Turn: The Failure to Protect Civilians in Afghanistan*, 19 November 2010, <http://www.oxfam.org/sites/www.oxfam.org/files/bn-nowhere-to-turn-afghanistan-191110-en.pdf>.

²² See, for example, 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.unhcr.org/refworld/docid/4c1732dc2.html>; Internal Displacement Monitoring Centre, *Internal Displacement: Global Overview of Trends and Developments in 2009 - Afghanistan*, 17 May 2010, <http://www.unhcr.org/refworld/docid/4bf252560.html>; and Internal Displacement Monitoring Centre, *Afghanistan: Armed conflict forces increasing numbers of Afghans to flee their homes*, 15 April 2010, <http://www.unhcr.org/refworld/docid/4bc80d3d2.html.stated>.

²³ Brookings-Bern Project on Internal Displacement, *Beyond the Blanket: Towards More Effective Protection for Internally Displaced Persons in Southern Afghanistan*, May 2010, pp. 68-72, <http://www.unhcr.org/refworld/docid/4c3d8cab2.html>.

²⁴ UNHCR, *2009 Global Trends*, 15 June 2010, <http://www.unhcr.org/4c11f0be9.pdf>.

²⁵ According to statistics compiled by UNHCR in relation to 44 industrialized countries in Europe, North America, Oceania and Asia. Figures valid as of 30 September 2010; see UNHCR, *Asylum Trends: Asylum claims in industrialized countries*. Accessed on 7 October 2010, <http://www.unhcr.org/statistics/Latest-monthly-asylum-data.zip>. Afghanistan figured amongst the top six countries of origin with 38,900 new asylum claims lodged during 2009; see UNHCR, *2009 Global Trends*, 15 June 2010, <http://www.unhcr.org/4c11f0be9.pdf>.

²⁶ Between January and 27 November 2010. A third of these returnees settled in the eastern region, another third in the central region, and the rest mainly in the north-eastern region.

²⁷ During May 2010, UNHCR and the Governments of Afghanistan and Pakistan agreed to extend the tripartite agreement governing the voluntary repatriation of registered Afghan refugees in Pakistan until 31 December 2012.

profiles outlined below require a particularly careful examination of possible risks. 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 below. Certain claims by asylum-seekers from Afghanistan may require examination for possible exclusion from refugee status.

The status of recognized refugees should be reviewed only 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; revocation of refugee status on the grounds of Article 1F of the 1951 Convention; or cessation of refugee status on the basis of Article 1C(1-4) of the 1951 Convention.²⁸ UNHCR considers that the current situation in Afghanistan does not warrant cessation of refugee status on the basis of Article 1C(5) of the 1951 Convention.

A. Potential Risk Profiles

1. *Individuals Associated with, or Perceived as Supportive of, the Government and the International Community, Including the International Security Assistance Force (ISAF)*

There is a systematic and sustained campaign by armed anti-Government groups to target civilians associated with, or perceived as supporting, the Afghan Government or the international community, particularly in areas where such groups are active.²⁹

Attacks by armed anti-Government groups, which have ranged from intimidation, assassinations, abductions and stand-off attacks, to the use of improvised explosive devices (IEDs) and suicide attacks, increasingly target civilians associated with or perceived as supportive of the Government and the international community/ISAF. Targeted civilians include Government officials and civil servants, Government-aligned tribal leaders, Ulema Council (a national clerics' body) members, religious scholars, judges, doctors, teachers,³⁰ and workers on reconstruction/development projects.³¹

The majority of targeted attacks on civilians by armed anti-Government groups have occurred in those groups' strongholds. However the number of targeted assassinations and executions of civilians has also increased in other parts of the country previously considered more secure.³² In the south-eastern and central regions, the number of assassinations and executions allegedly committed by armed anti-Government groups in 2010 has increased in comparison to 2009. Such targeted attacks rose dramatically in parts of the southern region, particularly in Kandahar, where the Taliban have been conducting a systematic and targeted assassination campaign since the beginning of 2010.³³ An

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

²⁹ For detailed information on human rights violations committed by insurgents in the context of the armed conflict in Afghanistan, see UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, <http://www.unhcr.org/refworld/docid/4c6120382.html>; and UNAMA, *Annual Report on Protection of Civilians in Armed Conflict, 2009*, January 2010, <http://www.unhcr.org/refworld/docid/4b4ef6d52.html>.

³⁰ For further information on the treatment of teachers, particularly women teachers, please refer to Section IIIA(6) Women with Specific Profiles.

³¹ UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, pp.1-13, <http://www.unhcr.org/refworld/docid/4c6120382.html>; ANSO, *ANSO Quarterly Data Report: Q.2.2010, Jan 1st-June 30th 2010*, 30 June 2010, <http://english.aljazeera.net/mritems/Documents/2010/7/19/201071954927192734anso-report.pdf>; UN Security Council, *Report of the Secretary-General pursuant to paragraph 40 of resolution 1917 (2010)*, S/2010/318, 16 June 2010, para. 19, <http://www.unhcr.org/refworld/docid/4c35675f2.html>; and UNAMA, *Annual Report on Protection of Civilians in Armed Conflict, 2009*, January 2010, <http://www.unhcr.org/refworld/docid/4b4ef6d52.html>.

³² The Consultative Peace Jirga, aimed at defining the framework for an intra-Afghan dialogue and facilitating discussions on the mechanisms for the peace process, came under rocket fire and suicide attacks during its opening session on 2 June 2010. None of the 1,600 participants were hurt. The Taliban, which dismissed the conference before it began and threatened delegates with death, reportedly claimed responsibility for the attacks; see Radio Free Europe/Radio Liberty, *Insurgent violence mars start of Afghan 'peace Jirga'*, 2 June 2010, <http://www.unhcr.org/refworld/docid/4c172b2ac.html>; and UN Security Council, *Report of the Secretary-General pursuant to paragraph 40 of resolution 1917 (2010)*, S/2010/318, 16 June 2010, <http://www.unhcr.org/refworld/docid/4c35675f2.html>. In January 2010, for example, a series of coordinated attacks against ministries and other targets by presumed Taliban militants in Kabul killed at least 10 people and injured 32. Seven of those responsible were among the dead; see Guardian, *Taliban militants attack Afghan capital*, 18 February 2010, <http://www.guardian.co.uk/world/2010/jan/18/taliban-militants-attack-kabul-centre>.

³³ During the first four months of 2010, on average, seven assassinations were carried out every week against the civilian population by anti-Government groups – almost twice as many as during the same period in 2009. In May and June, the number of assassinations carried out by armed anti-Government groups escalated to an average of 18 per week. UNAMA recorded 183 executions and 165 abduction incidents in the first six months of 2010; see UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010,

average of 21 assassinations per week (compared to seven per week during the same period in 2009) was recorded from June to mid-September 2010, mostly in the southern and south-eastern regions.³⁴

UNHCR considers that persons associated with, or perceived as supportive of, the Government and the international community and forces, including Government officials, Government-aligned tribal and religious leaders, judges, teachers and workers on reconstruction/development projects, may, depending on the individual circumstances of the case, be at risk on account of their (imputed) political opinion, particularly in areas where armed anti-Government groups are operating or have control.³⁵

a) *Civilians Associated with or Perceived as Supportive of ISAF*

A recently intercepted message from Mullah Omar, the spiritual leader of the Taliban movement, ordered Taliban members to capture and kill any Afghan who is supporting or working for Coalition forces or the Government of Afghanistan, as well as any Afghan women who are helping or providing information to Coalition forces. The message, which departs from his previous instructions to minimize civilian deaths,³⁶ has fuelled fears of Taliban retaliation among ISAF civilian support personnel,³⁷ such as Afghan interpreters.³⁸

The increased targeting of civilians is perceived as part of an effort by armed anti-Government groups to gain control over territories and populations.³⁹ Local inhabitants are reportedly coerced into supporting anti-Government groups through threats or the use of force. These intimidation tactics are compounded by the reduced public confidence in the capacity of the Afghan Government and international forces to maintain security and provide basic services.⁴⁰ Intimidation tactics used by

pp. 11, <http://www.unhcr.org/refworld/docid/4c6120382.html>. According to the Department for Safety and Security, 29 persons were assassinated countrywide during the first week of July alone. Among them were a school headmaster and a teacher, four former employees of an international military base, elders, six construction workers, as well as a senior Afghanistan National Police (ANP) counterterrorism official and his bodyguard. The last two were assassinated near Kabul City.

³⁴ See, for example, UN General Assembly, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/64/911-S/2010/463, 14 September 2010, para. 16, <http://www.unhcr.org/refworld/docid/4ca187f62.html>.

³⁵ 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.unhcr.org/refworld/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 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 may seek to seriously harm the applicant by reason of an imputed political opinion on his return to Afghanistan in the reasonably foreseeable future.

³⁶ See, for example, The Long War Journal, *Mullah Omar orders Taliban to attack civilians, Afghan women*, 28 July 2010, http://www.longwarjournal.org/archives/2010/07/mullah_omar_orders_t.php; and ISAF, *ISAF Spokesman Discusses Taliban Message*, 18 July 2010, <http://www.isaf.nato.int/article/isaf-releases/isaf-spokesman-discusses-taliban-message.html>.

³⁷ See, for example, Canadian Press DataFile, *Afghan translators afraid for their lives with Canadian pullout imminent*, 2 August 2010, accessed on www.newsedge.com. In July 2010, following the departure of the Dutch forces for which they have been working, Afghan interpreters in Uruzgan province have expressed fear of being killed by the Taliban; see *Thaindian News, Afghan interpreters denied Dutch visas, fear being killed by Taliban*, 22 July 2010, http://www.thaindian.com/newsportal/world-news/afghan-interpreters-denied-dutch-visas-fear-being-killed-by-taliban_100399914.html.

³⁸ Recent examples of interpreters being targeted by armed anti-Government groups include: in August 2010, an Afghan interpreter was killed alongside two members of the Spanish military contingent in the north-western province of Baghdis; see *Montreal Gazette, Afghan kills two military trainers; Second incident. Taliban claims assailant affiliated with them*, 26 August 2010, accessed on www.newsedge.com; and *The New York Times, Afghanistan: Police Trainee Kills 2 Spanish Officers and Interpreter*, 26 August 2010, <http://www.nytimes.com/2010/08/26/world/asia/26afghan.html>; also, in August 2010, Taliban and the Islamic Party the Hizb-e-Islami members claimed responsibility for the killing of eight foreigners and their two local interpreters in northeast Badakshan province of Afghanistan; see *China Economic Information Service (Xinhua), Urgent: 2 militants groups claim responsibility for killing 8 foreigners in NE Afghanistan*, 7 August 2010, accessed on www.newsedge.com; and in May 2010, the Taliban claimed the abduction and killing of four Afghan interpreters in the Khost province allegedly because of their work with the US military and a Western construction company; see *The New York Times, Taliban Say They Killed 4 Afghan Interpreters*, 16 May 2010, <http://www.nytimes.com/2010/05/16/world/asia/16kabul.html>. For other reports of killings of Afghan interpreters associated with the international military forces, see Reuters, *Factbox - Military Deaths in Afghanistan*, 24 May 2010, <http://in.reuters.com/article/idINIndia-48743620100524>.

³⁹ UN Security Council, *Report of the Secretary-General pursuant to paragraph 40 of resolution 1917 (2010)*, S/2010/318, 16 June 2010, <http://www.unhcr.org/refworld/docid/4c35675f2.html>. See also Brookings-Bern Project on Internal Displacement, *Beyond the Blanket: Towards More Effective Protection for Internally Displaced Persons in Southern Afghanistan*, May 2010, pp. 68-72, <http://www.unhcr.org/refworld/docid/4c3d8cab2.html>.

⁴⁰ See, for example, UN General Assembly, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/64/911-S/2010/463, 14 September 2010, para. 37, <http://www.unhcr.org/refworld/docid/4ca187f62.html>. Most districts in the south, southwest, southeast, east and large swathes in the central regions of Afghanistan are classified as “an extreme risk, hostile environment” for UN and aid community operations; see UN General Assembly, *The situation in Afghanistan and its implications*

armed anti-Government groups against the civilian population reportedly include: individual or community warnings or threats, often in the form of “night letters” (*shab nameha*), to stop working for, or supporting, the Government or international forces, upon pain of death;⁴¹ as well as setting up road blocks.⁴² It is also reported that individuals, including children, suspected of “spying” on behalf of the Afghan military or international forces have been summarily executed by armed anti-Government groups.⁴³

b) Government Officials and Civil Servants

Local and central Government officials of all levels, and their family members, are at increased risk of being targeted in areas where armed anti-Government groups operate or control.⁴⁴ Several provincial and deputy Governors have been targeted through killings, IED attacks and abductions in 2010. They include the Deputy Governor of Khost (injured on 7 January 2010), the District Governor of Chisht Sharif district in Herat (killed on 17 January 2010), the acting District Governor of Sayadabad district in Wardak province (abducted on 15 June 2010),⁴⁵ the District Governor of Arghandab in Kandahar

for international peace and security: report of the Secretary-General, A/64/705-S/2010/127, 10 March 2010, para. 38, <http://www.unhcr.org/refworld/docid/4bb44c5c2.html>.

⁴¹ According to information available to UNHCR. See also Human Rights Watch, *The “Ten-Dollar Taliban” and Women’s Rights Afghan Women and the Risks of Reintegration and Reconciliation*, 13 July 2010, <http://www.unhcr.org/refworld/docid/4c3c07372.html>; and Human Rights Watch, “We Have the Promises of the World”: *Women’s Rights in Afghanistan*, 3 December 2009, <http://www.unhcr.org/refworld/docid/4b179c4a2.html>.

⁴² See UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, p. 6, <http://www.unhcr.org/refworld/docid/4c6120382.html>.

⁴³ In the first half of 2010, UNAMA documented four cases where armed anti-Government groups reportedly executed children soon after they were abducted on allegations of spying; see UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, p. 11, <http://www.unhcr.org/refworld/docid/4c6120382.html>. On 9 June 2010, for example, anti-Government groups reportedly executed a seven-year-old boy as an informant in Helmand province; see The New York Times, *Taliban Aim at Officials in a Wave of Killings*, 9 June 2010, <http://www.nytimes.com/2010/06/10/world/asia/10taliban.html>; and Hands Off Cain, *Afghanistan: Taleban Hang 7-Year-Old Boy To Punish Family*, 8 June 2010, <http://www.handsoffcain.info/news/index.php?iddocumento=13309223>. According to a spokesman for the provincial Governor, the boy would have informed Afghan security forces about planted explosives; see New York Daily News, *Taliban hang 7-year-old boy accused of being a spy, suicide bomber kills 40 at Afghanistan wedding*, 10 June 2010, http://www.nydailynews.com/news/world/2010/06/10/2010-06-10_taliban_hang_7yearold_boy_accused_of_being_a_spy_suicide_bomber_kills_40_at_afgh.html. In February 2009, two children were reportedly executed and another was severely beaten in the Sayad Abad District of Wardak province for having publicly greeted the international forces; see UNAMA, *Annual Report on Protection of Civilians in Armed Conflict, 2009*, January 2010, <http://www.unhcr.org/refworld/docid/4b4ef6d52.html>.

⁴⁴ The former sub-governor of Maroof district and the Kandahar deputy mayor were killed in two separate attacks in the southern Kandahar province on 5 October 2010; see Tolo News, *Deputy Mayor and Former District Chief Killed in Kandahar*, 5 October 2010, <http://tolonews.com/en/afghanistan/695-deputy-mayor-and-former-district-chief-killed-in-kandahar>. See also Reuters, *Afghan ambush kills 9 and wounds 25 in restive south*, 5 October 2010, <http://www.reuters.com/article/idUSSGE6940KJ20101005>. On 14 September 2010, the newly appointed police chief for northern Kunduz province survived a Taliban ambush in neighbouring Baghlan province; see AlertNet, *Factbox-Security developments in Afghanistan, Sept 14*, 14 September 2010, <http://www.alertnet.org/thenews/newsdesk/SGE68D0G6.htm>. From March to June 2010, according to reports from the police, military sources, witnesses and local Government officials, there have been at least 11 assassinations in Kandahar province, mostly of low-level officials. Among the victims were Mohammed Hassan Wolsi, the Head of the Agriculture and Livestock Cooperative in the province, shot on 2 April; an 18-year-old Afghan woman who worked at Development Alternatives, Inc., an implementing partner of USAID, in Kandahar; Hajji Abdul Hay, the brother of a prominent member of Parliament, shot in the bazaar in the city; a bodyguard who worked for the provincial council chairman, Ahmed Wali Karzai. In addition, the deputy mayor of Kandahar, Hajji Azizullah Yarmal, was shot to death while he was praying in a mosque on 19 April 2010, and Abdul Majeed Babai, the Head of the Information and Culture Department of Kandahar, was killed in a motorcycle drive-by shooting in February; see The New York Times, *Taliban Aim at Officials in a Wave of Killings*, 9 June 2010, <http://www.nytimes.com/2010/06/10/world/asia/10taliban.html>; and The Washington Post, *Taliban assassinations now weapon of choice*, 22 May 2010, http://seattletimes.nwsource.com/html/nationworld/2011931983_afghantarget23.htm. During 2009, several similar targeted attacks have taken place. On 15 December 2009, a remotely detonated roadside IED killed Koshk District police chief Colonel Abdul Karim and three other police near the district headquarters. On 27 August 2009, Qari Jan Gir, the Head of the Justice Department of Kunduz, was killed by an IED. On 19 July 2009, gunmen killed Jan Mohammad, a candidate for provincial council in Kunduz, while he was campaigning. Other targeted killings include on 21 June 2009, a series of attacks on Government buildings in Jalalabad and Gardez that killed nine persons; and an attack on 4 May 2009 that killed the mayor of Mehterlam City in Laghman; see US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>. For further reports of targeted assassinations by the Taliban, see also, Institute for the Study of War, *The Taliban campaign for Kandahar*, December 2009, http://www.understandingwar.org/files/The_Talibans_Campaign_For_Kandahar.pdf.

⁴⁵ UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, p. 9, <http://www.unhcr.org/refworld/docid/4c6120382.html>.

province (killed on 15 June 2010),⁴⁶ and the Deputy Governor of Ghazni province (killed on 28 September 2010).⁴⁷

The intensification of the armed conflict and the targeted attacks and intimidation have been effective in slowing the hiring of (notably lower level) Government workers in certain areas,⁴⁸ and have affected the freedom of movement of unarmed civil servants.⁴⁹ It has been noted that judges and prosecutors routinely face death threats and other forms of intimidation.⁵⁰ Furthermore, teachers, pupils and educational facilities are increasingly the target of threats and direct attacks by the Taliban and other anti-Government groups,⁵¹ in areas where such groups are active, but also increasingly in parts of the country previously considered more secure; attacks by conservative elements opposed to girls' education are also reported.⁵²

c) Traditional Tribal and Religious Leaders

There are increasing reports of anti-Government groups targeting local traditional leaders, such as tribal elders, *mullahs* and *pirs*, perceived as supporters of the Government or the international community, or simply viewed as non-supportive of anti-Government groups.⁵³

⁴⁶ On 15 June 2010, Haji Abdul Jabbar, the District Governor of the Arghandab district, his son and driver were killed after the Taliban detonated a bomb near their vehicle in Kandahar City; see The Long War Journal, *Taliban assassinate key district governor in Kandahar*, 15 June 2010, http://www.longwarjournal.org/archives/2010/06/taliban_assassinate_1.php. See also UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, p. 9, <http://www.unhcr.org/refworld/docid/4c6120382.html>.

⁴⁷ On 28 September 2010, a suicide bomber killed Ghazni province's Deputy Governor, Mohammad Kazim Allahyar, as he drove to work. Six people, including the Deputy Governor, were killed, and eight other people were seriously injured; see BBC News, *Weeping Karzai laments Afghan woes*, 28 September 2010, <http://www.bbc.co.uk/news/world-south-asia-11424198>; and Islamic Republic of Afghanistan, Office of the President, *President Karzai Decries Terrorist Attack that Killed Deputy Ghazni Governor*, 28 September 2010, http://president.gov.af/Contents/88/Documents/2246/ghazni_eng.html. The Head of Nahrin District of Baghlan Province, Ahmad Masud Joshanpur, was killed alongside his driver in an ambush attack on 6 September 2010; see World News Connection, *District chief, his driver killed in Afghan north*, 7 September 2010, accessed on www.newsedge.com; and Xinhua, *Anti-Government Militants Gun Down District Chief in N. Afghanistan*, 7 September 2010, accessed on www.newsedge.com. On 20 August 2010, Taliban insurgents kidnapped a district chief in eastern Kunar province; see Reuters, *Factbox-Security developments in Afghanistan, Aug 21*, 21 August 2010, www.reuters.com/article/idUSTRE67K0WN20100821.

⁴⁸ See, for example, The New York Times, *Taliban Aim at Officials in a Wave of Killings*, 9 June 2010, <http://www.nytimes.com/2010/06/10/world/asia/10taliban.html>.

⁴⁹ Access for civil servants reportedly decreased in 39 districts (out of a total of 364), with 30 percent of districts only partly accessible to unarmed Government officials; 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, para. 38, <http://www.unhcr.org/refworld/docid/4bb44c5c2.html>.

⁵⁰ The Washington Post, *Kandahar slides into lawlessness as Taliban attacks force government to retreat*, 14 March 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/13/AR2010031300574.html>. See also US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>. It is reported that the Taliban issued warnings to employees of the provincial and national Governments in Kandahar to resign from their posts or face assassination. Amongst the Government officials killed by the Taliban in 2008 was a Kandahar high court judge; see Institute for the Study of War, *The Quetta shura Taliban in Southern Afghanistan*, 21 December 2009, http://www.understandingwar.org/files/QuettaShuraTaliban_1.pdf.

⁵¹ Attacks reportedly included intimidation of pupils and teachers; placement of IEDs on school premises; abductions, beatings and killing of school staff; and arson and other violent targeted attacks; see, for example, Human Rights Watch, *The "Ten-Dollar Talib" and Women's Rights Afghan Women and the Risks of Reintegration and Reconciliation*, 13 July 2010, <http://www.unhcr.org/refworld/docid/4c3c07372.html>; and UN Security Council, *Report of the Secretary-General pursuant to paragraph 40 of resolution 1917 (2010)*, S/2010/318, 16 June 2010, <http://www.unhcr.org/refworld/docid/4c35675f2.html>. According to UNICEF, from January to June 2009, there were 470 confirmed targeted attacks on schools, teachers, staff, and pupils, resulting in 30 deaths and 186 injuries to schoolchildren, teachers, and other school employees. According to data from the Afghan Ministry of Education, from April to August 2009, anti-Government groups attacked 102 schools using explosives or arson and killed 105 students and teachers. For example, in the Khus Uruzgan district of Uruzgan province, official schools reportedly closed after anti-Government groups abducted and beat the teachers; see US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>.

⁵² For further information on the treatment of female teachers and pupils, see Section III(A)6 Women with Specific Profiles.

⁵³ On 5 October 2010, Haji Habibullah, a member of Kandahar Clerics Council and the former Head of Maroof district was killed by unknown gunmen. The Taliban claimed responsibility for the attack; see Tolo News, *Deputy Mayor and Former District Chief Killed in Kandahar*, 5 October 2010, <http://tolonews.com/en/afghanistan/695-deputy-mayor-and-former-district-chief-killed-in-kandahar>. In August 2010, the director of the province's office of tribal affairs in Zabul Province was assassinated by unidentified gunmen; see The New York Times, *In Afghanistan, More Attacks on Officials and a Protest Over a Deadly NATO Raid*, 18 August 2010, <http://www.nytimes.com/2010/08/19/world/asia/19afghan.html>. According to the Ministry of Interior, at least 71 pro-Government clerics were killed by the Taliban in 2009. Tolo TV reported that on 9 September 2009, anti-Government groups killed a mullah in a mosque in Ghazni province after he spoke out against insurgent forces; see UN Security Council, *Report of the Secretary-General pursuant to paragraph 40 of resolution 1917 (2010)*, S/2010/318, 16 June 2010, <http://www.unhcr.org/refworld/docid/4c35675f2.html>; and US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>.

d) Women in the Public Sphere

There are reports of targeting of women in the public sphere, including female parliamentarians, provincial council members,⁵⁴ civil servants, journalists, lawyers, teachers, human rights activists and women working for international organizations. They have been targeted by armed anti-Government groups, particularly in areas under their control; local traditional and religious power-holders; families and community members; and in some instances, by Government authorities. Women in the public sphere are often perceived as transgressing social norms⁵⁵ and are at times accused of engaging in immoral behaviour by conservative religious leaders, including those with vested political interests.⁵⁶ As a result, women in the public sphere may be subject to intimidation, threats, including through 'night letters' and handbills posted in public places, as well as physical attacks and killings.⁵⁷ Cases of harassment, intimidation and attacks on women in the public sphere reportedly do not receive the full attention of law enforcement authorities.⁵⁸

e) Election Candidates and Workers

In the run-up to the September 2010 parliamentary elections, several incidents of election-related violence, including assassinations,⁵⁹ abductions,⁶⁰ and intimidation⁶¹ of candidates and campaign staff were reported. Armed anti-Government groups and campaigning local powerbrokers were suspected to be responsible.⁶² While record numbers of women took part in the parliamentary elections, women candidates were particularly targeted by armed anti-Government groups, political

⁵⁴ For example, in April 2010, Provincial councillor, Neda Pyani, was injured in a drive-by shooting in Pul-e Khumri, Baghlan province; see Pajkwok, *Baghlan Provincial Council member attacked*, 6 April 2010, <http://www.highbeam.com/doc/1G1-223257967.html>. In a second assassination attempt, on 6 March 2010, parliamentarian Fawzia Kufi was attacked by unidentified gunmen; see Human Rights Watch, *The "Ten-Dollar Talib" and Women's Rights Afghan Women and the Risks of Reintegration and Reconciliation*, 13 July 2010, p. 33, <http://www.unhcr.org/refworld/docid/4c3c07372.html>.

⁵⁵ For further information on the treatment of women perceived as transgressing social norms, see Section III(A)6 Women with Specific Profiles.

⁵⁶ See, for example, 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, para. 26, <http://www.unhcr.org/refworld/docid/4bc2c8d62.html>.

⁵⁷ See, for example, Amnesty International, *Amnesty International Report 2010 - Afghanistan*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a845c.html>. At least 22 complaints of attacks against women in public life were reported between January and December 2009 according to an unpublished document by the AIHRC; see AIHRC, *Violence against Women in 2009*, unpublished, as quoted in Human Rights Watch, *The "Ten-Dollar Talib" and Women's Rights Afghan Women and the Risks of Reintegration and Reconciliation*, 13 July 2010, p.24, <http://www.unhcr.org/refworld/docid/4c3c07372.html>. See also Human Rights Watch, *"We Have the Promises of the World": Women's Rights in Afghanistan*, 3 December 2009, <http://www.unhcr.org/refworld/docid/4b179c4a2.html>; and UNAMA, *Silence is Violence: End the Abuse of Women in Afghanistan*, 8 July 2009, <http://www.unhcr.org/refworld/docid/4a548f532.html>.

⁵⁸ For example, according to the AIHRC, there was no prosecution in the cases of two social and political women activists killed in 2009; see AIHRC, *Press Release on International Women's Day*, 6 March 2010, http://www.aihrc.org/af/2010_eng/Eng_pages/Press_Releases/2010/pre_6_Mar_2010.pdf. For further information, see also Human Rights Watch, *The "Ten-Dollar Talib" and Women's Rights Afghan Women and the Risks of Reintegration and Reconciliation*, 13 July 2010, <http://www.unhcr.org/refworld/docid/4c3c07372.html>; and UNAMA, *Silence is Violence: End the Abuse of Women in Afghanistan*, 8 July 2009, pp.17-18, <http://www.unhcr.org/refworld/docid/4a548f532.html>.

⁵⁹ Four candidates and at least 15 campaign workers were killed prior to 18 September 2010; see AlertNet, *Factbox-Some issues in Afghanistan's parliamentary election*, 13 September 2010, <http://www.alertnet.org/thenews/newsdesk/SGE681139.htm>. On 29 August 2010, candidate Haji Abdul Manan Noorzai was killed as he walked to a mosque in the Shindand district of Herat province. On 24 July 2010, the Taliban abducted Najibullah Gulisanti, a candidate in Ghazni province; he was killed two weeks later after Taliban demands for a prisoner exchange were rejected. On 23 July 2010, Sayedullah Sayed, a candidate and religious scholar, was killed and 20 others were wounded when the mosque in which he was speaking was bombed in Khost province; see Human Rights Watch, *Afghanistan: Unchecked Violence Threatens Election*, 9 September 2010, <http://www.hrw.org/en/news/2010/09/09/afghanistan-unchecked-violence-threatens-election>.

⁶⁰ For example, ten campaign workers for Fawzia Gilani, a female parliamentary candidate, were abducted by gunmen in August 2010 in southern Herat Province. Five of them were found dead a week later; see The New York Times, *Afghan Candidate's Campaign Workers Abducted*, 26 August 2010, http://www.nytimes.com/2010/08/27/world/asia/27afghan.html?_r=1.

⁶¹ FEFA reported 200 acts of election-related intimidation between the middle of July and end of August 2010; see FEFA, *FEFA Encourages Voting, Urges Election Complaints Body to Enforce Laws*, 17 September 2010, http://www.fefa.org.af/index.php?option=com_content&view=article&id=97:fefa-encourages-voting-urges-election-complaints-body-to-enforce-laws&catid=38:report. For example, two staff members of the IEC were killed a few days before the September 2010 elections in Balkh province; see UN News Center, *UN deplores killing of Afghan electoral workers on eve of parliamentary polls*, 16 September 2010, <http://www.un.org/apps/news/story.asp?NewsID=35962&Cr=afghan&Cr1=>. Prior to the September 2010 parliamentary elections, the Taliban called on the Afghan population to boycott the election warning that "everything and everyone affiliated with the election is our target." See Agence France-Presse, *Taliban death threats hang over Afghan elections*, 4 September 2010, <http://www.google.com/hostednews/afp/article/ALeqM5hCTk4qFHVpaqNQksGrdE6tY92y4w>.

⁶² FEFA reported 61 incidents of election-related violence ahead of the 18 September 2010 polls, including 49 incidents targeting candidates and campaign staff; see FEFA, *FEFA Encourages Voting, Urges Election Complaints Body to Enforce Laws*, 17 September 2010, http://www.fefa.org.af/index.php?option=com_content&view=article&id=97:fefa-encourages-voting-urges-election-complaints-body-to-enforce-laws&catid=38:report.

rivals and community members opposed to women in public life. Both women and men candidates complained about the unresponsiveness of law enforcement authorities to their security concerns during the campaign.⁶³

2. Humanitarian Workers and Human Rights Activists

The volatile security situation in Afghanistan continues to restrict the operations of humanitarian and aid organizations, particularly in the southern and eastern regions.⁶⁴ Humanitarian workers in areas where there are insurgent activities or infiltration by Taliban and/or Hezb-e-Islami continue to be targeted by these groups based on their perceived association with the central Government and the international community. National staff working for some UN agencies or international and local non-governmental organizations (INGOs and NGOs, respectively) reportedly face intimidation, attacks, abduction and death at the hands of the Taliban⁶⁵ and other armed anti-Government groups, particularly in areas where these groups are active.⁶⁶ Family members of humanitarian workers have also been targeted, especially if they live in areas where aid is delivered.⁶⁷

Although the Afghanistan NGO Safety Office (ANSO) reported a decrease in the numbers of kinetic attacks (such as IEDs strikes and small arms attacks) on NGO staff and premises by armed anti-Government groups in the first nine months of 2010,⁶⁸ the risk of such attacks against NGOs undertaking demining activities remains high due to their perceived role in battlefield clearance.⁶⁹ The decrease in kinetic attacks is attributed to enhanced security measures and a more lenient attitude towards aid workers by anti-Government armed groups.⁷⁰ However, targeted attacks on NGOs are

⁶³ See, for example, Institute for War and Peace Reporting, *Wave of Attacks on Herat Candidates*, 15 September 2010, <http://www.unhcr.org/refworld/docid/4c931ab72c.html>; Los Angeles Times, *Women running for Afghanistan parliament now have tougher time*, 6 September 2010, <http://articles.latimes.com/2010/sep/06/world/la-fg-afghanistan-campaign-danger-20100907>; and Washington Post, *Insurgent groups rouse fear before Afghan elections; Attacks are making the process dangerous for candidates and voters alike*, 24 August 2010, accessed on www.newsedge.com. FEFA observers reported that nine out of the ten threats directed at specific 2010 parliamentary elections candidates targeted female candidates; see Afghanistan's 2010 Elections: FEFA Observer Reports, *Afghanistan: Election Monitor Details Campaign Misconduct and Violence*, 21 August 2010, <http://fefa2010.wordpress.com/2010/08/21/afghanistan-election-monitor-details-campaign-misconduct-and-violence/>.

⁶⁴ See, for example, UN General Assembly, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/64/911-S/2010/463, 14 September 2010, para. 37, <http://www.unhcr.org/refworld/docid/4ca187f62.html>. In light of the numerous attacks on aid workers in the past four years, about two-thirds of the country has been deemed either inaccessible or high-risk by most international aid organizations, as well as UN agencies; see IRIN, *Analysis: Humanitarian space easing in Afghanistan?*, 8 July 2010, <http://www.irinnews.org/Report.aspx?ReportId=89776>. Direct attacks against the aid community have reportedly limited the accessibility of development programmes in 94 districts considered "very high risk" and 81 districts assessed as "high risk"; 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, para. 38, <http://www.unhcr.org/refworld/docid/4bb44c5c2.html>.

⁶⁵ Taliban's Book of Rules, "Layeha", which is reportedly their code of conduct, states that: "[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 madrassa or anything else." See Layeha (rulebook) to the Mujahideen, undated, <http://www.newsweek.com/2006/12/11/the-taliban-s-book-of-rules.html>.

⁶⁶ See, for example, UN Security Council, *Report of the Secretary-General pursuant to paragraph 40 of resolution 1917 (2010)*, S/2010/318, 16 June 2010, <http://www.unhcr.org/refworld/docid/4c35675f2.html>; and UNAMA, *Annual Report on Protection of Civilians in Armed Conflict, 2009*, January 2010, <http://www.unhcr.org/refworld/docid/4b4ef6d52.html>. ANSO reported anti-Government groups kidnapped 20 aid workers during 2009; all abductees were local staff. Most of the abducted workers were reportedly released unharmed, usually due to the efforts of community elders, although one person was reportedly killed while resisting an abduction attempt. On 27 November 2009, gunmen attacked and killed the provincial head of Afghanistan's Red Crescent Society in Takhar, as he was walking home. President Karzai reportedly ordered an investigation into the attack; see US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>.

⁶⁷ According to a reputable NGO source in Kabul.

⁶⁸ According to ANSO collected data, there has been a 36 percent decrease in small arms incidents and a 38 percent decrease in IED attacks against NGOs from January to end of September 2010, while the number of fatalities has increased by 47 percent reportedly as a result of "lawlessness, extremism and ambient violence"; see ANSO, *ANSO Quarterly Data Report: Q.3.2010, 1 January 2010-30 September 2010*, 30 September 2010, pp. 5-6 and 15, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/JALR-8A9DLQ>. The UN Office for the Coordination of Humanitarian Affairs (OCHA) reported, however, that in March 2010, the number of incidents affecting the aid community had increased, particularly in the southern region. Incidents included: an attack by three suicide bombers on an INGO compound in Lashkar Gha; attacks on and abductions of de-mining workers; looting of a number of NGO offices; and an attack on an NGO vehicle in Herat province passing through a demonstration against local police; see OCHA, *Afghanistan, Monthly humanitarian update*, March 2010, [http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/FBUO-84NJ4J-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/FBUO-84NJ4J-full_report.pdf/$File/full_report.pdf).

⁶⁹ For example, in Kandahar and Uruzgan provinces, four attacks in 2010 were directed against demining NGOs and resulted in seven fatalities; see ANSO, *ANSO Quarterly Data Report: Q3.2010, 1 January 2010-30 September 2010*, pp. 5-6, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/JALR-8A9DLQ>.

⁷⁰ Qari Yusuf Ahmadi, a Taliban spokesman, reportedly stated that the insurgents would ensure security for aid agencies in areas under their control provided aid workers liaised with them first. He also warned that aid used for political and military gains would not be tolerated, and that insurgent fighters were instructed to attack aid distributions by Government and foreign forces; see IRIN, *Analysis: Humanitarian space*

still commonplace.⁷¹ For instance, incidents of politically and criminally motivated abductions of NGO staff by armed anti-Government groups have increased significantly during 2010.⁷²

Human rights activists reportedly face threats and harassment.⁷³ Defenders of women's rights have faced discrimination and intimidation by the authorities. They also face systematic violence and threats at the hands of anti-Government armed groups, local warlords and militias.⁷⁴ Women who are vocal in defense of their own rights are sometimes perceived as questioning Islamic values, and may, as a consequence, face death threats and intimidation by the Taliban and other conservative elements.⁷⁵

In light of the foregoing, UNHCR considers that humanitarian workers and human rights activists, who are perceived to be associated with the Government and/or the international community, or to express or hold critical views on sensitive issues, such as corruption, conservative practices related to Islam and women's rights, may be at risk on account of their (imputed) political opinion or religious views, depending on the circumstances of the individual case.

3. Journalists and Other Media Professionals

Freedom of expression and the right to print and publish without prior clearance by the authorities is guaranteed by law.⁷⁶ The new Media Law, which came into force in July 2009 has raised some concerns. These include the lack of clarity as to the breadth of restrictions on media content,⁷⁷ which

easing in Afghanistan?, 8 July 2010, <http://www.irinnews.org/Report.aspx?ReportId=89776>; and IRIN, *Afghanistan: Talking to the Taliban*, 11 March 2010, <http://www.irinnews.org/Report.aspx?ReportId=88390>.

⁷¹ See, for example, Oxfam, *Nowhere to Turn: The Failure to Protect Civilians in Afghanistan*, 19 November 2010, <http://www.oxfam.org/sites/www.oxfam.org/files/bn-nowhere-to-turn-afghanistan-191110-en.pdf>. Some of the recently reported attacks on humanitarian workers include: regular abductions of NGO staff in the Northern region, particularly in Balkh, Faryab and Baghlan provinces; see ANSO, *The ANSO Report: 1-15 September 2010*, 2010, [http://www.afgnsso.org/2010/The%20ANSO%20Report%20\(16-30%20September%202010\).pdf](http://www.afgnsso.org/2010/The%20ANSO%20Report%20(16-30%20September%202010).pdf); and ANSO, *The ANSO Report: 16-30 September 2010*, 30 September 2010, [http://www.afgnsso.org/2010/The%20ANSO%20Report%20\(1-15%20September%202010\).pdf](http://www.afgnsso.org/2010/The%20ANSO%20Report%20(1-15%20September%202010).pdf). In early August 2010, ten humanitarian workers on a medical mission were killed in southern Badakhshan. Both the Taliban and Hezb-e Islami of Gulbuddin Hikmatyar claimed responsibility for the attack; see UN General Assembly, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/64/911-S/2010/463, 14 September 2010, para. 16, <http://www.unhcr.org/refworld/docid/4ca187f62.html>. During July 2010, at least 11 NGO staff were abducted in Farayab, Wardak, Baghlan and Herat provinces; at the time of the ANSO report, all but two had been released unharmed due to local community intervention; see *The ANSO Report: 16-31 July 2010*, 2010, [http://www.afgnsso.org/2010/THE%20ANSO%20REPORT%20\(16-31%20July%202010\).pdf](http://www.afgnsso.org/2010/THE%20ANSO%20REPORT%20(16-31%20July%202010).pdf). On 2 June 2010, Afghan security forces reportedly found three IEDs placed in front of an INGO office in Hisa-e Duwumi, Kohistan District. The IEDs were allegedly intended to target regional staff expected to visit the office; see ANSO, *The ANSO Report; Country Summary 1-15 June 2010*, 15 June 2010, p. 2, <http://www.afgnsso.org/2010/THE%20ANSO%20REPORT%20%281-15%20June%202010%29.pdf>.

⁷² NGO abductions have increased by 60 percent in the first nine months of 2010 in comparison to the same period in 2009, and have occurred mostly in the North of the country, including Faryab and Baghlan provinces. According to ANSO, all 64 Afghan nationals abducted until 30 September 2010 were released following negotiations led by family members, friends and representatives of the local community. The motivations for the abduction of NGO staff reportedly include: intimidation relating to religion, politics and association with military/Government actors, as well as personal disputes and monetary gain; see ANSO, *ANSO Quarterly Data Report: Q3.2010*, 1 January 2010-30 September 2010, pp. 7-8, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/JALR-8A9DLQ>.

⁷³ See, for example, Freedom House, *Freedom in the World 2010 - Afghanistan*, 3 May 2010, <http://www.unhcr.org/refworld/docid/4c0ceb0d28.html>. The Afghan Independent Human Rights Commission reportedly came under increasing pressure from the Government in 2009 to curtail its activities, including through the threat of legal action against one of the commissioners by the Attorney General's Office; see Human Rights Watch, *World Report 2010 - Afghanistan*, 20 January 2010, <http://www.unhcr.org/refworld/docid/4b586cfc.html>.

⁷⁴ In April 2010, Nida Khyani, a female Provincial Council member, was left in critical condition after being attacked in a drive-by shooting in Pul-e-Khumri, the provincial capital of Baghlan in northern Afghanistan; see Amnesty International, *Attack on Afghan female politician highlights growing risk to women*, 8 April 2010, <http://www.unhcr.org/refworld/docid/4bc80afdc.html>. See also Guardian, *Afghan feminists fighting from under the burqa*, 30 April 2010, <http://www.guardian.co.uk/world/2010/apr/30/afghanistan-women-feminists-burqa>; and Amnesty International, *Afghan women human rights defenders tell of intimidation and attacks*, 8 March 2010, <http://www.unhcr.org/refworld/docid/4ba88b021e.html>. In April 2009, the Taliban assassinated Sitara Achekzai, a secretary of the Kandahar Provincial Council and prominent women's rights activist. Those responsible have not been brought to justice; see Human Rights Watch, *The "Ten-Dollar Taliban" and Women's Rights Afghan Women and the Risks of Reintegration and Reconciliation*, 13 July 2010, <http://www.unhcr.org/refworld/docid/4c3c07372.html>.

⁷⁵ For example, a women's rights activist who raised marital rape with a group of Government officials in 2007, has allegedly received intimidating phone calls, and in 2008 was reportedly put on a Taliban assassination list; see Human Rights Watch, *"We Have the Promises of the World": Women's Rights in Afghanistan*, 3 December 2009, <http://www.unhcr.org/refworld/docid/4b179c4a2.html>.

⁷⁶ Article 34 of the Constitution of Afghanistan, 3 January 2004, <http://www.unhcr.org/refworld/docid/404d8a594.html>.

⁷⁷ Article 45 of the Media Law restricts, *inter alia*, works and materials contrary to the principles of Islam or other religions and sects; works that publicize religions other than Islam; and works and materials that are contrary to the Constitution and Penal Code; see US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>.

may leave scope for violations and abuse.⁷⁸ Similar provisions in the previous Media Law⁷⁹ have reportedly resulted in the arrest and intimidation of journalists critical of Government policies and exposing corruption.⁸⁰ The delayed dissemination of the new Media Law was perceived by many observers as an attempt to maintain control of Radio Television Afghanistan (RTA), the public broadcaster, during last year's Presidential elections.⁸¹

Curbs on the media continue to be reported. Journalists and other media professionals covering issues considered as sensitive, such as the armed conflict, corruption and drug trafficking, may be subject to intimidation, harassment and violence at the behest of the authorities and at the hands of armed anti-Government groups, warlords, militia leaders and organized criminal elements.⁸² Similarly, reporting on drug trafficking may expose journalists to targeting and remains a hazardous activity.⁸³ According to reports, journalists continue to be arrested and may face prosecution for expressing or disseminating dissenting political opinions and non-conformist views on Islam, or views perceived as such.⁸⁴

⁷⁸ 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, para. 57, <http://www.unhcr.org/refworld/docid/4bc2c8d62.html>.

⁷⁹ Mass Media Law of Afghanistan, 2006, <http://www.mfa.gov.af/Documents/massmedialaw.pdf>.

⁸⁰ The inclusion of a criminal defamation provision in the 2009 Media Law was also regarded as unjustifiable restriction on freedom of expression; 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, para. 38, <http://www.unhcr.org/refworld/docid/4bb44c5c2.html>. Concerns were also raised about the composition and role of the two regulatory bodies, i.e. the High Media Council and the Media Commission, which, allegedly, allow interference by the Government; see 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, para. 57, <http://www.unhcr.org/refworld/docid/4bc2c8d62.html>.

⁸¹ See, for example, 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, para. 57, <http://www.unhcr.org/refworld/docid/4bc2c8d62.html>; and Radio Free Europe/Radio Liberty, *Afghan media law delay raises fears over fair poll*, 9 April 2009, <http://www.unhcr.org/refworld/docid/49e4433a23.html>. In August 2009, security forces reportedly assaulted and briefly detained 15 foreign and local journalists who ignored a Government-issued directive to refrain from reporting any violence on Election Day; see, for example, Committee to Protect Journalists, *Afghan police beat, detain journalists during election*, 20 August 2009, <http://www.unhcr.org/refworld/docid/4b25fba8.html>; and US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>. Furthermore, following the August 2009 elections, at least 20 cases of intimidation, harassment and violence against Afghan journalists and media organizations reporting on suspected cases of electoral fraud or irregularities were recorded; see Amnesty International, *Afghan candidates must stop intimidation of journalists*, 7 October 2009, <http://www.unhcr.org/refworld/docid/4acd4262c.html>.

⁸² On 5 September 2010, Sayed Hamid Noori, a prominent Afghan journalist, was stabbed to death outside his home; see Committee to Protect Journalists, *Sayed Hamid Noori*, 5 September 2010, <http://cpj.org/killed/2010/sayed-hamid-noori.php>; and Tolo TV, *Deputy of Afghan Journalists Association Stabbed to Death*, 6 September 2010, <http://www.tolonews.com/en/afghanistan/454-a-journalist-killed-in-kabul>. An investigation into his death was ordered by President Karzai; see Islamic Republic of Afghanistan, Office of the President, *President Karzai Orders Immediate Probe into Journalist Murder*, 6 September 2010, http://president.gov.af/Contents/91/Documents/2191/journalist_eng.html. According to a local media organization, there were 83 incidents of violence against media personnel in 2009, including 3 journalists killed, 42 imprisoned, 21 physically assaulted and 13 intimidated by insurgents or Government officials; 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, para. 38, <http://www.unhcr.org/refworld/docid/4bb44c5c2.html>. See also Afghan Arzu TV, *Around 85 cases of violence against journalists reported in Afghan north*, 13 January 2010, http://www.newssafety.org/index.php?option=com_content&view=article&id=17460:85-cases-of-violence-against-journalists-reported-in-afghan-north&catid=109:afghanistan-media-safety&Itemid=100105, which reports 85 incidents of violence against media professionals. On 3 December 2009, for example, gunmen from the Islamic Revolution Movement party (Hezb-e Harakat Inqelab-e Eslami) reportedly physically assaulted and held a Sepehr TV journalist and a cameraman in Kabul. On 5 October 2009, police reportedly assaulted Wahkt News Agency (WNA) cameraman and photographer Mohammad Naeem while he was documenting the killing of a businessman and two security personnel by unidentified gunmen wearing military uniforms. The police confiscated Naeem's camera and reportedly assaulted and detained him for almost an hour before the Afghan Independent Journalists' Association and WNA representatives intervened. It is also reported that, on 26 August 2009, Kandahar City police severely beat a local journalist after the latter visited the site of a bombing. On 30 July 2009, police and NDS personnel reportedly attacked four journalists covering a public demonstration against the police killing of a fruit seller; see US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>.

⁸³ See, for example, Committee to Protect Journalists, *Attacks on the Press 2009: Afghanistan*, 16 February 2010, <http://cpj.org/2010/02/attacks-on-the-press-2009-afghanistan.php>.

⁸⁴ For example, Emrooz TV, a privately-owned Dari-language station broadcasting out of the western city of Herat and known for its criticism of Iran, as well as its music and entertainment programmes, was ordered by the information ministry to stop broadcasting on the grounds that it was fomenting sectarian rifts and acting against the national interest; see Institute for War and Peace Reporting, *Afghan Journalists Angered by Media Bans*, 15 October 2010, <http://www.unhcr.org/refworld/docid/4cbd44371a.html>. Some independent media outlets and publications have reportedly 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 2010 - Afghanistan*, 3 May 2010, <http://www.unhcr.org/refworld/docid/4c0ceb0d28.html>. On 20 October 2009, the editors of the Mandagar Daily and Nukhost Daily were arrested for publishing allegedly imbalanced information about the Ministry of Interior (MOI). The editors were released after three hours and the Ministry of Information and Culture described MOI's actions as illegal; see US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>. In 2009, six journalists

Many media outlets are reportedly linked to influential political figures and tribal leaders.⁸⁵ Furthermore, armed anti-Government groups, including the Taliban, attempt to manipulate the media by exerting threats and attacks against journalists in hopes of shaping favourable public opinion.⁸⁶

The deteriorating security conditions in the country continue to pose a serious risk to the lives of journalists, who face targeted abductions by armed anti-Government groups.⁸⁷ Local guides, interpreters, and fixers for international journalists are also targeted.⁸⁸ Apart from security challenges, reporting on the armed conflict is also subject to restrictions. In March 2010, the Government reportedly requested that the media not report live from the scene of a terrorist attack anywhere in Afghanistan.⁸⁹ According to reports, journalists who meet with the Taliban are frequently detained by security forces, *inter alia*, on suspicion of collaboration with armed anti-Government groups.⁹⁰

from a Kabul-based newspaper were reportedly arrested after the publication of an article questioning the divine revelation of religion. Furthermore, Sayed Perwiz Kambakhsh, a journalist for Jahan-e Naw (New World) daily, was sentenced to death on charges of blasphemy for having downloaded and distributed an article about the role of women in Islam. His sentence was commuted to 20 years' imprisonment on appeal, and he left the country after receiving a Presidential pardon in August 2009; see 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, paras. 55-59, <http://www.unhcr.org/refworld/docid/4bc2c8d62.html>.

⁸⁵ There are also allegations that the Government often allocates broadcast licenses to local figures to curry political favour; see Committee to Protect Journalists, *Attacks on the Press 2009: Afghanistan*, 16 February 2010, <http://cpj.org/2010/02/attacks-on-the-press-2009-afghanistan.php>. See also Institute for War and Peace Reporting, *Afghan Journalists Under Fire*, 12 January 2010, <http://www.unhcr.org/refworld/docid/4b4f21001a.html>, regarding local Government officials' pressure tactics and control of media in Kandahar.

⁸⁶ As a result, reconstruction efforts are allegedly under-reported; see for example, US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>. Armed anti-Government groups reportedly used murder, arson, kidnapping, and intimidation to try to stop reporting they see as unsympathetic; see Human Rights Watch, *World Report 2010 - Afghanistan*, 20 January 2010, <http://www.unhcr.org/refworld/docid/4b586cfec.html>.

⁸⁷ In January 2010, two French journalists and their three Afghan colleagues were kidnapped allegedly by a Taliban group, while on assignment in the eastern province of Kapisa; see Committee to Protect Journalists, *Five missing, apparently kidnapped in Afghanistan*, 4 January 2010, <http://www.unhcr.org/refworld/docid/4b66e3501f.html>. They were still held hostage at the beginning of June 2010; see Reporters Without Borders, *Afghan leaders call for release of journalists held hostage*, 6 June 2010, <http://en.rsf.org/afghanistan-hostages-journalists-peace-06-06-2010.37680.html>. In November 2009, a Norwegian freelance television producer and his Afghan translator were released from captivity in Kunar province, near the Pakistan border. Their freedom came after quiet negotiations between the Norwegian Embassy and a Taliban group holding them, with the cooperation of the Afghan Government; see Committee to Protect Journalists, *Journalist and translator freed in Afghanistan*, 12 November 2009, <http://www.unhcr.org/refworld/docid/4b25fc121c.html>. In September 2009, the Taliban kidnapped New York Times reporters Stephen Farrell and Sultan Mohammed Munadi. Four days after the two were taken by Taliban forces south of Kunduz, British commandos rescued Farrell, but did not save Munadi, who was killed during the mission under circumstances that were not explained; see Article 19, *Afghanistan: Article 19 Calls for Investigation into Journalist's Death*, 15 September 2009, <http://www.unhcr.org/refworld/docid/4ab091f72.html>. At least 15 journalists were reportedly abducted by the Taliban and other armed anti-Government or criminal groups since 2007; see Committee to Protect Journalists, *Attacks on the Press 2009: Afghanistan*, 16 February 2010, <http://cpj.org/2010/02/attacks-on-the-press-2009-afghanistan.php>.

⁸⁸ See, for example, Nasim Fekrat, *Afghanistan's not so free press*, Foreign Policy, 7 July 2010, http://afpak.foreignpolicy.com/posts/2010/07/07/afghanistans_not_so_free_press; Committee to Protect Journalists, *Attacks on the Press 2009: Afghanistan*, 16 February 2010, <http://cpj.org/2010/02/attacks-on-the-press-2009-afghanistan.php>; and National Post, *Taliban issued death threat to Afghan "fixers"*, 16 March 2009, <http://www2.canada.com/calgaryherald/news/reallife/greenguide/story.html?id=1395771>.

⁸⁹ The prohibition, which applies to both national and international media outlets, followed an attack on 26 February 2010 on two guest houses in the centre of Kabul City that left at least 22 people dead and over 40 wounded; see, for example, AIHRC, *Media reporting restriction and censorship imposed by the Afghanistan government*, 3 March 2010, http://www.aihrc.org.af/2010_eng/Eng_pages/Press_Releases/2010/Pre_4_mar_2010.pdf; EurasiaNet, *Afghanistan: Constitutional crisis brews in Kabul over new government media restrictions*, 3 March 2010, <http://www.unhcr.org/refworld/docid/4b966e752.html>; and Committee to Protect Journalists, *Afghan government curtails reporting on insurgent attacks*, 2 March 2010, <http://www.unhcr.org/refworld/docid/4b9658fec.html>. In addition, it is reported that Afghan internet service providers have been ordered to block thousands of websites linked to armed anti-Government groups, such as the Taliban; see Institute for War and Peace Reporting, *Afghan Journalists Angered by Media Bans*, 15 October 2010, <http://www.unhcr.org/refworld/docid/4cbd44371a.html>.

⁹⁰ For example, Hojatullah Mujadadi, a radio station director, was arrested on 18 September 2010 at a voting station in Kapisa. Despite President Karzai's order for his release, Mujadadi continues to be detained by the National Directorate of Security (NDS) in reportedly poor conditions and without access to legal counsel. It later transpired that the arrest was allegedly based on a confession extracted by force from an opponent of a former Kapisa Governor, who was accused of planning a suicide bombing in the province of Kapisa. In recent months, Mujadadi had reported being threatened by both the governor and NDS officials because of his independent coverage of events in the province. Earlier this year, he was reportedly approached by NDS officials to cooperate with them, including through providing information about his contacts; see Reporters Without Borders, *Pretext for radio journalist's arrest concocted by NDS and Kapisa politicians*, 3 November 2010, <http://www.unhcr.org/refworld/docid/4cd3ca802c.html>; and Reporters Without Borders, *Intelligence agency tried to force journalist Mujadadi to be informer before arresting him*, 18 October 2010, <http://www.unhcr.org/refworld/docid/4cc51ccf1e.html>. Hojatullah Mujadadi was one of the three Afghan journalists reportedly released on 24 September 2010, after President Karzai's intervention. They are believed to have been arrested for having regular contact with the Taliban as part of their work as journalists and had been initially suspected of being "Taliban propagandists"; see Reporters Without Borders, *Three journalists freed after President Karzai intervenes*, 24 September 2010, <http://www.unhcr.org/refworld/docid/4ca19fbb1a.html>; and the Islamic Republic of Afghanistan, Office of the President, *President Karzai Orders Information Ministry to Take Action for the Release of Detained Afghan Journalists*, 23 September 2010, <http://president.gov.af/Contents/91/Documents/2232/president%20orders%20culture12222.html>. Similarly, in June 2009, two Al-Jazeera journalists were detained by the NDS for three days, accused of bias in the production of a report on the Taliban in the north of Afghanistan; see UNAMA, *Annual Report on Protection of Civilians in Armed Conflict, 2009*, January 2010,

In light of the foregoing, UNHCR considers that journalists and other media professionals, who report on sensitive issues, including, but not limited to, the armed conflict, political corruption, Islamic values and drug trafficking, may be at risk on the ground of their (imputed) political opinion or religious views.

4. Civilians Suspected of Supporting Armed Anti-Government Groups

Civilians suspected of collaborating with, or otherwise supporting, armed anti-Government groups may face arbitrary detention, including detention without charge, and ill-treatment by ISAF or Afghan authorities.⁹¹

According to reports, persons detained by US forces⁹² are held for lengthy periods and denied due process rights, such as access to legal counsel.⁹³ Allegations of ill-treatment, including sleep deprivation and physical abuse, have also been made by several former Bagram detainees.⁹⁴ In response to criticism, the US authorities introduced, in November 2009, a detainee review procedure at Bagram.⁹⁵ Concerns remain, however, as to the lack of access to legal counsel and the possibility of use of evidence obtained through duress before the review board.⁹⁶

Persons detained on national security grounds by the Afghan National Directorate of Security (NDS) may also reportedly be subject to ill-treatment and torture.⁹⁷ The NDS operates under an undisclosed

<http://www.unhcr.org/refworld/docid/4b4ef6d52.html>; and Amnesty International, *Amnesty International Report 2010 - Afghanistan*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a845c.html>.

⁹¹ See, for example, UNAMA, *February 2010 Mission Report by the Special Representative of the Secretary-General for Children in Armed Conflict on visit to Afghanistan*, 26 February 2010, <http://www.unhcr.org/refworld/docid/4c0e143b2.html>; 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 the field of human rights*, A/HRC/13/62, 11 January 2010, <http://www.unhcr.org/refworld/docid/4bc2c8d62.html>.

⁹² According to ICRC, as of September 2010, some 900 Afghans were detained by US forces at the Bagram Theatre Internment Facility (BTIF), on the US army base at Bagram airport. Most of the 900 detainees were Afghans captured by the international military forces in southern and eastern Afghanistan; see ICRC, *Persons detained by the US in relation to armed conflict and the fight against terrorism – the role of the ICRC*, Operational update, 14 September 2010, <http://www.icrc.org/web/eng/siteeng0.nsf/html/united-states-detention>. Other estimates place the number of detained Afghans at 700; see Amnesty International, *Amnesty International Report 2010 - Afghanistan*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a845c.html>. The existence of a second detention facility at Bagram airbase has been recently confirmed by the ICRC; see BBC News, *Red Cross confirms 'second jail' at Bagram, Afghanistan*, 11 May 2010, http://news.bbc.co.uk/2/hi/south_asia/8674179.stm.

⁹³ See, for example, Amnesty International, *Amnesty International Report 2010 - Afghanistan*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a845c.html>.

⁹⁴ The allegations of abuse concern the second detention facility at Bagram, which Afghans refer to as the “Tor Jail” or “Black Jail” and is physically distinct from the BTIF. Based on interviews conducted in July 2010 with former detainees, the Open Society Institute consistently recorded, the following types of treatment: exposure to excessive cold and/or excessive light; inadequate food; inadequate bedding and blanketing; disorientation and lack of natural light; sleep deprivation; denial of religious duties; lack of physical exercise; detrimental impact from an accumulation of confinement conditions; lack of transparency and denial of ICRC access to detainees; see Open Society Institute, *Confinement Conditions at a U.S. Screening Facility on Bagram Air Base*, 14 October 2010, <http://www.unhcr.org/refworld/docid/4cbc418f2.html>; see BBC News, *Red Cross confirms 'second jail' at Bagram, Afghanistan*, 11 May 2010, http://news.bbc.co.uk/2/hi/south_asia/8674179.stm; and BBC News, *Afghans 'abused at secret prison' at Bagram airbase*, 15 April 2010, http://news.bbc.co.uk/2/hi/south_asia/8621973.stm. Although ICRC is allowed access to Bagram and, as of October 2009, had carried out over 140 detention visits, access is still denied to the AIHRC; see 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.unhcr.org/refworld/docid/4bc2c8d62.html>.

⁹⁵ The procedures provide, *inter alia*, an opportunity for detainees to challenge the basis for their detention before a review board, including by submitting evidence and summoning witnesses. The procedures also purport to authorize the detention and internment at Bagram of anyone who meets one of two criteria: “(i) persons who planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001, and persons who harbored those responsible for those attacks; or (ii) persons who were part of, or substantially supported, Taliban or al-Qaida forces or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy forces.” See American Civil Liberties Union, *Detainee Review Procedures at Bagram Theater Internment Facility (BTIF)*, November 2009, document released on 14 May 2010, http://www.aclu.org/files/pdfs/natsec/bagram20100514/03bagramcentcom_46-51.pdf. For comments on the draft review procedures see, for example, Amnesty International, *USA: Government opposes habeas corpus review for any Bagram detainees; reveals 'enhanced' administrative review procedures*, 16 September 2009, <http://www.unhcr.org/refworld/docid/4ab1ef9e2.html>. See also BBC News, *New rights for Afghan prisoners*, 14 September 2009, http://news.bbc.co.uk/2/hi/south_asia/8255519.stm; and Radio Free Europe/Radio Liberty, *Afghan body hails planned U.S. change on detainees*, 13 September 2009, <http://www.unhcr.org/refworld/docid/4aaf5c8fc.html>.

⁹⁶ See AIHRC, *Afghan Observers Need Access to Bagram*, 19 October 2009, http://www.aihrc.org.af/English/Eng_pages/Press_releases_eng/2009/pre_access_2_Bagram_19Oct2009.pdf.

⁹⁷ See, for example, AIHRC, *The Situation of Detention Centers and Prisons in Afghanistan*, 25 June 2010, p. 15, <http://www.unhcr.org/refworld/docid/4c3c882f2.html>; Amnesty International, *Amnesty International Report 2010 - Afghanistan*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a845c.html>; and Human Rights Watch, *Afghanistan: Investigate Death in Custody*, 21 December 2009, <http://www.unhcr.org/refworld/docid/4b39caf91c.html>.

legal framework,⁹⁸ and independent monitors are not allowed regular access to its detention facilities.⁹⁹ Detention of children by NDS on the ground of suspected association with, or support of, armed anti-Government groups is reported,¹⁰⁰ as are incidents of ill-treatment and intimidation of child detainees during interrogation.¹⁰¹ The UK's policy and practice of transferring suspected insurgents into NDS custody¹⁰² was challenged following allegations of ill-treatment and torture of detainees.¹⁰³ Based on the available evidence, the UK High Court found UK transfers to NDS Kabul unlawful.¹⁰⁴ It should be noted, however, that a committee to review the cases of suspected insurgents detained without evidence or charge was established by Presidential Decree on 5 June 2010, pursuant to recommendations during the Peace Jirga.¹⁰⁵

In light of the foregoing, UNHCR considers that civilians suspected of supporting armed anti-Government groups may be at risk 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, combatants should not be considered as asylum-seekers unless it is established that they have genuinely and permanently renounced military activities.¹⁰⁶ 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 always needs to be exercised with great caution.¹⁰⁷ Where children associated with armed groups are alleged to have committed crimes, it is important to

⁹⁸ See, for example, Freedom House, *Freedom in the World 2010 - Afghanistan*, 3 May 2010, <http://www.unhcr.org/refworld/docid/4c0ceb0d28.html>; and UNAMA, *February 2010 Mission Report by the Special Representative of the Secretary-General for Children in Armed Conflict on visit to Afghanistan*, 26 February 2010, <http://www.unhcr.org/refworld/docid/4c0e143b2.html>.

⁹⁹ Human Rights Watch, *Afghanistan: Investigate Death in Custody*, 21 December 2009, <http://www.unhcr.org/refworld/docid/4b39caf91c.html>.

¹⁰⁰ See, for example, Reuters, *Canada slammed for Afghan child prisoner handover*, 29 November 2010, <http://ca.reuters.com/article/topNews/idCATRE6AS45S20101129>. Approximately 110 children have been detained by the NDS and international military forces on national security grounds, including for their alleged involvement or association with the Taliban and other armed anti-Government groups; see UN Secretary-General, *Children and armed conflict: report of the Secretary-General*, A/64/742 - S/2010/181, 13 April 2010, para. 47, <http://www.unhcr.org/refworld/docid/4bfcc6a2.html>. See also US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>.

¹⁰¹ Forced confessions and the use of harsh interrogation techniques by the Afghan National Police and the NDS were documented, including the use of electric shocks and beating; see UN Secretary-General, *Children and armed conflict: report of the Secretary-General*, A/64/742 - S/2010/181, 13 April 2010, para. 53, <http://www.unhcr.org/refworld/docid/4bfcc6a2.html>; and UNAMA, *February 2010 Mission Report by the Special Representative of the Secretary-General for Children in Armed Conflict on visit to Afghanistan*, 26 February 2010, <http://www.unhcr.org/refworld/docid/4c0e143b2.html>. It is reported that all minors previously held in the Bagram facility had been released and that the newly-built Parwan facility was open to visits from UNICEF and UNAMA child protection staff.

¹⁰² Several other ISAF countries have agreements with the Afghan Government to transfer detainees into NDS custody. Following allegations of ill-treatment of detainees transferred into the custody of Afghan authorities, Canada has suspended detainee transfers on one occasion (November 2007 – February 2008) and has temporarily “paused” such transfers on three separate occasions in 2009; see Government of Canada, *Canadian Forces Release Statistics on Afghanistan Detainees*, current as of September 2010, http://www.afghanistan.gc.ca/canada-afghanistan/news-nouvelles/2010/2010_09_22b.aspx?lang=eng. See also Amnesty International, *Amnesty International Report 2010 - Afghanistan*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a845c.html>; and Amnesty International, *Afghanistan - Detainees transferred to torture: ISAF complicity?*, 13 November 2007, <http://www.unhcr.org/refworld/docid/473969ab2.html>.

¹⁰³ See, for example, Telegraph, *Britain 'hands over prisoners in Afghanistan to face torture'*, 19 April 2010, <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/7607442/Britain-hands-over-prisoners-in-Afghanistan-to-face-torture.html>.

¹⁰⁴ *R (on the application of Evans) v. Secretary of State for Defence*, [2010] EWHC 1445 (Admin), 25 June 2010, <http://www.unhcr.org/refworld/docid/4c4049be2.html>. The Court also found that transfers to NDS Kandahar and NDS Lashkar Gah could continue, provided that set safeguards are observed, i.e. “(i) all transfers must be made on the express basis that the UK monitoring team is to be given access to each transferee on a regular basis, with the opportunity for a private interview on each occasion; (ii) each transferee must in practice be visited and interviewed in private on a regular basis; and (iii) the UK must consider the immediate suspension of further transfers if full access is denied at any point without an obviously good reason or if a transferee makes allegations of torture or serious mistreatment by NDS staff which cannot reasonably and rapidly be dismissed as unfounded.”

¹⁰⁵ UN General Assembly, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/64/911-S/2010/463, 14 September 2010, para. 20, <http://www.unhcr.org/refworld/docid/4ca187f62.html>. According to the Afghanistan Analysts Network, the Committee, which is headed by the Afghanistan Minister of Justice and has already commenced work, will focus on security detainees against whom the evidence was inadequate to try in court; see Afghanistan Analysts Network, *Reviewing prisoners after the peace jirga*, 15 June 2010, <http://aan-afghanistan.com/index.asp?id=828>.

¹⁰⁶ UNHCR Executive Committee, No. 94 (LIII) - 2002, *Conclusion on the civilian and humanitarian character of asylum*, 8 October 2002, <http://www.unhcr.org/refworld/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.unhcr.org/refworld/docid/452b9bca2.html>.

¹⁰⁷ 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, paras. 58-64, <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>.

bear in mind that they may be victims of offences against international law and not just perpetrators.¹⁰⁸

5. Members of Minority Religious Groups and Persons Perceived as Contravening Shari'a Law

Freedom of religion and the corollary right to manifest one's religion in private or public are guaranteed by the Afghan Constitution.¹⁰⁹ The Constitution contains, however, a repugnancy provision stating that no law can be contrary to Islam and defers to Shari'a law for matters not explicitly stipulated therein.¹¹⁰ Therefore, converts from Islam to other faiths and individuals perceived as contravening Shari'a law may face severe punishment, compounded by societal discrimination and stigma. Furthermore, members of minority religious groups¹¹¹ are reported to experience some degree of discrimination, which in extreme cases could be tantamount to persecution.¹¹² UNHCR considers that persons perceived as contravening Shari'a law, including persons accused of blasphemy and converts from Islam, as well as members of minority religious groups, may be at risk on the ground of religion, depending on the individual circumstances of the case.¹¹³

a) Conversion from Islam

Conversion from Islam is considered apostasy and is punishable by death according to several interpretations of Shari'a law.¹¹⁴ A person who has converted from Islam has three days to recant his/her conversion or otherwise face death by stoning, be deprived of all property and possessions, and have their marriage declared invalid.¹¹⁵ Although, in recent years the death penalty for conversion from Islam has reportedly not been carried out,¹¹⁶ arrests for conversion to Christianity have recently been reported.¹¹⁷ The arrests were reportedly made after calls by Members of Parliament for the arrest

¹⁰⁸ 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"; see UN Children's Fund (UNICEF), *The Paris Principles. Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, February 2007, paras. 3.6 & 3.7, <http://www.unhcr.org/refworld/docid/465198442.html>.

¹⁰⁹ Article 2 of the Constitution of Afghanistan, 3 January 2004, <http://www.unhcr.org/refworld/docid/404d8a594.html>. Pursuant to Article 2 of the Constitution, Islam is the official religion of the State.

¹¹⁰ Pursuant to Article 3, "no law shall contravene the tenets and provisions of the holy religion of Islam," while Article 130 recognizes the applicability of *Hanafi* jurisprudence to cases where statutory law is silent; see Constitution of Afghanistan, 3 January 2004, <http://www.unhcr.org/refworld/docid/404d8a594.html>.

¹¹¹ Pursuant to Article 2 of the Constitution, Islam is the official religion of the State. According to estimates, over 99 percent of the Afghan population is Muslim – with *circa* 80 percent Sunni and 20 percent Shi'a. Non-Muslim religious groups, including Hindus, Sikhs, Christians, Baha'i and Jews, represent less than 0.1 percent of the population; see Government of the Islamic Republic of Afghanistan, *The Second Periodic Report under the Covenant of Economic, Cultural and Social Rights, Common Core Document*, 2006, <http://www.mfa.gov.af/Documents/HR-Reports/Common-Core-Documents.pdf>.

¹¹² 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.unhcr.org/refworld/docid/4090f9794.html>.

¹¹³ 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.unhcr.org/refworld/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.unhcr.org/refworld/docid/4afd6a8d2.html>.

¹¹⁴ The Constitution is silent on issues of conversion from Islam.

¹¹⁵ Under Shari'a law, the age of criminal responsibility of a person of sound mind is 18 years if a man, and 16, if a woman; see US Department of State, *2010 Report on International Religious Freedom – Afghanistan*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d0bb64.html>.

¹¹⁶ US Department of State, *2010 Report on International Religious Freedom – Afghanistan*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d0bb64.html>. The last conversion case to be tried in Afghanistan is believed to be that of Abdul Rahman, who was arrested in 2006 for converting to Christianity. Following international outcry, he was eventually released after an Afghan court found him mentally incompetent. He fled Afghanistan shortly thereafter and found asylum abroad; see, for example, M. Knust, *The case of an Afghan apostate – The Right to a fair Trial between Islamic law and Human Rights in the Afghan Constitution*, Max Planck NYB, Vol. 10, 2006, pp. 591 & ff., http://www.mpil.de/shared/data/pdf/knust_case_of_an_afghan_apostate.pdf; BBC, *Mood hardens against Afghan convert*, 24 March 2006, <http://news.bbc.co.uk/2/hi/4841334.stm>; and EurasiaNet, *Afghanistan: Apostasy case reveals constitutional contradictions*, 22 March 2006, <http://www.unhcr.org/refworld/docid/46f2581a17.html>.

¹¹⁷ Two Afghan men, accused of converting to Christianity were, at the time of writing, detained in Kabul awaiting trial. According to a prosecution lawyer, Musa Sayed, 45, and Ahmad Shah, 50, could face the death penalty; see Agence France Presse, *Afghans accused of Christian conversion*, 28 November 2010, <http://www.dailytelegraph.com.au/news/breaking-news/afghans-accused-of-christian->

and execution of alleged Christian converts following a television broadcast of footage showing their baptism in May 2010.¹¹⁸ Often seen by family members and other traditional social structures as a source of shame, converts from Islam may also face isolation, pressure to recant and, in some cases, physical harm. As a result, converts often conceal their faith and avoid worshipping in public.¹¹⁹

b) Other Acts Contravening Shari'a Law

Persons accused of committing crimes against Shari'a law, such as blasphemy, apostasy, homosexuality and adultery (*zina*), are at risk not only of social rejection and violence at the hands of their families, community members and the Taliban,¹²⁰ but also of formal prosecution.¹²¹ In a publicized but not isolated case,¹²² journalist Parviz Kambakhsh was sentenced to death on charges of insulting religious values. He was accused of downloading from the Internet and distributing among fellow students an article criticizing polygamy in Islam in 2008.¹²³ Kambakhsh went into exile after being released from prison as the result of an unpublicized Presidential pardon in September 2009.¹²⁴

c) Minority Religious Groups

In May 2007, the General Directorate of Fatwas and Accounts of the Afghan Supreme Court declared the Baha'i faith distinct from Islam and a form of blasphemy, and ruled all Baha'i converts as apostates.¹²⁵ It is reported that the small Baha'i community in the country have lived a covert existence since.¹²⁶

According to some reports, members of the Hindu and Sikh communities continue to face societal discrimination, harassment and, in some cases, violence at the hands of members of other religious

conversion/story-e6freuyi-1225962393870; and CNN, *Afghan Christian faces trial for alleged conversion from Islam*, 21 November 2010, <http://religion.blogs.cnn.com/2010/11/21/afghan-christian-faces-trial-for-alleged-conversion-from-islam/?hpt=T2&replytocom=171618>.

¹¹⁸ See, for example, AsiaNews, *Two Afghan converts to Christianity risk the death penalty*, 29 November 2010, <http://www.asianews.it/news-en/Two-Afghan-converts-to-Christianity-risk-the-death-penalty-20123.html>; and Rawa News, *Afghan lawmaker calls for execution of Christian converts from Islam*, 5 June 2010, <http://www.rawa.org/temp/runews/2010/06/05/afghan-lawmaker-calls-for-execution-of-christian-converts-from-islam.html>. There have also been unconfirmed reports of arrest and torture of the Christian converts appearing in the footage; see AsiaNews, *Appeal for Afghan Christians, sentenced to death for their faith*, 15 June 2010, <http://www.asianews.it/news-en/Appeal-for-Afghan-Christians--sentenced-to-death-for-their-faith-18680.html>.

¹¹⁹ US Department of State, *2010 Report on International Religious Freedom – Afghanistan*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d0bb64.html>; and US Commission on International Religious Freedom, *USCIRF Annual Report 2010 - The Commission's Watch List: Afghanistan*, 29 April 2010, <http://www.unhcr.org/refworld/docid/4be284070.html>.

¹²⁰ For example, in August 2010, a couple, who allegedly had an adulterous affair, were stoned and killed by the Taliban in the northern Afghan province of Kunduz; see, for example, Guardian, *Taliban stone Afghan couple to death for adultery*, 16 August 2010, <http://www.guardian.co.uk/world/2010/aug/16/taliban-couple-stoned-afghanistan>. President Karzai ordered that the perpetrators be brought to justice; see Reuters, *Karzai condemns stoning of Afghan couple for adultery*, 17 August, 2010, <http://uk.reuters.com/article/idUKTRE67G23Z20100817>. Earlier in August 2010, the Taliban also reportedly flogged and killed a pregnant widow in western Baghdis province; see BBC News, *Taliban 'kill adulterous Afghan couple'*, 16 August 2010, <http://www.bbc.co.uk/news/world-south-asia-10983494>. In a similar incident, in April 2009, two Afghan teenagers accused of having premarital sex were reportedly killed by the Taliban in the western Nimroz Province; see Radio Free Europe/Radio Liberty, *Young Afghan couple killed by Taliban*, 14 April 2009, <http://www.unhcr.org/refworld/docid/49edb5f123.html>.

¹²¹ For further analysis of the treatment of persons perceived as contravening Shari'a law, please refer to Section A(6) Women with Specific Profiles and Section A(9) Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Individuals.

¹²² In a separate case, Ghaus Zalmai and Mullah Qari Mushtq, a journalist and a mosque leader, were sentenced to 20 years' imprisonment for publishing an independent translation of the Koran, which allegedly misinterpreted verses about alcohol, begging, homosexuality, and adultery. As a result of lobbying by Ulema Council and Parliament members, they were granted a Presidential pardon on 20 March 2010; see US Department of State, *2010 Report on International Religious Freedom – Afghanistan*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d0bb64.html>; and US Commission on International Religious Freedom, *USCIRF Annual Report 2010 - The Commission's Watch List: Afghanistan*, 29 April 2010, <http://www.unhcr.org/refworld/docid/4be284070.html>.

¹²³ See BBC, *Afghan 'blasphemy' death sentence*, 23 January 2008, http://news.bbc.co.uk/2/hi/south_asia/7204341.stm. In February 2008, the sentence was commuted to 20 years by the Afghan Supreme Court; see US Commission on International Religious Freedom, *USCIRF Annual Report 2010 - The Commission's Watch List: Afghanistan*, 29 April 2010, <http://www.unhcr.org/refworld/docid/4be284070.html>.

¹²⁴ US Commission on International Religious Freedom, *USCIRF Annual Report 2010 - The Commission's Watch List: Afghanistan*, 29 April 2010, <http://www.unhcr.org/refworld/docid/4be284070.html>.

¹²⁵ See, for example, Freedom House, *Freedom in the World 2010 - Afghanistan*, 3 May 2010, <http://www.unhcr.org/refworld/docid/4c0ceb0d28.html>; and US Commission on International Religious Freedom, *USCIRF Annual Report 2010 - The Commission's Watch List: Afghanistan*, 29 April 2010, <http://www.unhcr.org/refworld/docid/4be284070.html>. The ruling has reportedly created uncertainties regarding the possibility of inter-marriage between Baha'i women and Muslim (i.e. of Sunni or Shi'a denominations) men; see US Department of State, *2010 Report on International Religious Freedom – Afghanistan*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d0bb64.html>.

¹²⁶ Some estimates place the Baha'i population at 400, 300 of which are living in Kabul; see US Department of State, *2010 Report on International Religious Freedom – Afghanistan*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d0bb64.html>.

groups.¹²⁷ Sikh and Hindu communities also experience problems with land confiscation by local authorities and commanders, as well as obtaining land for cremation.¹²⁸

Furthermore, non-Muslim marriages are reportedly not registered in Afghanistan. In practice, however, non-Muslims may be married provided they do not publicly acknowledge their non-Muslim beliefs. Inter-marriage between Muslim men and non-Muslim women is also allowed, although the opposite is not.¹²⁹

6. Women with Specific Profiles

Human rights abuses against women and girls during the Taliban rule from 1996 through 2001 are well documented.¹³⁰ Since 2001, the Government has taken important measures towards the improvement of the situation of women in the country. These include steps taken to ensure women's political participation, the implementation of international standards for the protection of women's rights into national legislation,¹³¹ as well as the establishment of the Ministry for Women's Affairs mandated to ensure gender mainstreaming.¹³²

However, the situation of women and girls remains of serious concern on a number of fronts. This is particularly the case in areas under the effective control of the Taliban and Hezb-i-Eslami (Gulbuddin), where women in a wide range of professions, including civil servants, are reportedly targeted.¹³³ UNHCR considers that women with the specific profiles outlined below, including victims of sexual and gender-based violence, and harmful traditional practices, as well as women perceived as contravening social mores, may be at risk on the ground of membership of a particular social group, religion and/or (imputed) political opinion depending on the individual circumstances of the case.¹³⁴

¹²⁷ For instance, some Sikh and Hindu children attending regular schools have suffered harassment at the hands of students of majority faiths; see US Department of State, *2010 Report on International Religious Freedom – Afghanistan*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d0bb64.html>; and AIHRC, *Report on the Situation of Economic and Social Rights in Afghanistan - IV*, December 2009, p. 6, <http://www.unhcr.org/refworld/docid/4b3b2df72.html>. See also RFI, *Sikhs struggle for recognition in Islamic republic*, 14 November 2009, http://www.rfi.fr/actuen/articles/119/article_5843.asp; and The Guardian, *Afghanistan's marginalised Hindus*, 2 August 2009, <http://www.guardian.co.uk/commentisfree/belief/2009/aug/02/afghanistan-hindus>;

¹²⁸ Hindus and Sikhs reportedly often chose not to pursue restitution through the courts for fear of retaliation, particularly when powerful local leaders occupied their property; see US Department of State, *2010 Report on International Religious Freedom – Afghanistan*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d0bb64.html>; and RFI, *Sikhs struggle for recognition in Islamic republic*, 14 November 2009, http://www.rfi.fr/actuen/articles/119/article_5843.asp.

¹²⁹ Under Afghan law, all citizens are considered Muslim by default; see US Embassy, Kabul, *Public Services and Information*, accessed on 1 December 2010, <http://kabul.usembassy.gov/marriage.html>; and US Department of State, *2010 Report on International Religious Freedom – Afghanistan*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d0bb64.html>.

¹³⁰ Taliban 'decrees' greatly restricted women's movement, behavior and dress, as well as virtually all aspects of their lives. See, for example, Human Rights Watch, *Humanity Denied: Systematic Violations of Women's Rights in Afghanistan*, 29 October 2001, <http://www.unhcr.org/refworld/docid/3bdeb9ef4.html>; UN Sub-Commission on the Promotion and Protection of Human Rights, *The Implementation of Human Rights with Regard to Women, Report of the Secretary-General on the situation of women and girls in Afghanistan, submitted in accordance with Sub-Commission resolution 1999/14*, E/CN.4/Sub.2/2000/18, 21 July 2000, <http://www.unhcr.org/refworld/docid/3ae6aeb14.html>; Amnesty International, *Women in Afghanistan: Pawns in men's power struggles*, 1 November 1999, <http://www.unhcr.org/refworld/docid/3ae6a99513.html>; Danish Immigration Service, *Report on Fact-finding Mission to Afghanistan (1 November - 29 November 1997)*, 1 July 1998, pp. 54-65, <http://www.unhcr.org/refworld/docid/3ae6a5d30.html>; and Amnesty International, *Women in Afghanistan: The violations continue*, June 1997, <http://www.unhcr.org/refworld/docid/48298bcfaf.html>.

¹³¹ The Constitution of Afghanistan guarantees equal rights to both women and men; see Article 22 of the Constitution of Afghanistan, 3 January 2004, <http://www.unhcr.org/refworld/docid/404d8a594.html>. In addition, the Elimination of Violence Against Women Law which criminalizes various forms of violence against women was adopted in July 2009; see Human Rights Watch, *World Report 2010 - Afghanistan*, 20 January 2010, <http://www.unhcr.org/refworld/docid/4b586cfec.html>.

¹³² See, for example, UN Commission on the Status of Women, *The situation of women and girls in Afghanistan*, E/CN.6/2006/5, 30 December 2005, paras. 19-26, <http://www.unhcr.org/refworld/docid/46c5b3080.html>. The Ministry of 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/english/index.php>.

¹³³ Human Rights Watch, *The "Ten-Dollar Talib" and Women's Rights Afghan Women and the Risks of Reintegration and Reconciliation*, 13 July 2010, pp. 24-35, <http://www.unhcr.org/refworld/docid/4c3c07372.html>. For further analysis on the treatment of women in the public sphere, see Section IIIA(1) Persons Associated with, or Perceived as Supportive of, the Government and the International Community, Including the International Security Assistance Force (ISAF).

¹³⁴ Rape and other forms of sexual and gender-based violence, such as domestic violence and trafficking, may amount to persecution, particularly where the State is unwilling or unable to provide effective protection. For further guidance see UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/02/01, 7 May 2002, <http://www.unhcr.org/refworld/docid/3d36f1c64.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,

a) Sexual and Gender-Based Violence

Afghanistan has recently taken legislative steps to criminalize violence against women, including sexual violence, domestic violence, forced and under-age marriage.¹³⁵ However, sexual and gender-based violence against women in Afghanistan is reportedly endemic.¹³⁶ Women perceived as not conforming to the gender roles ascribed to them by society, tradition and law may be subject to sexual and gender-based violence, including “honour killings”, rape, abduction, forced abortion and domestic violence.¹³⁷ 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. As sexual acts committed outside marriage are widely believed in Afghan society to

<http://www.unhcr.org/refworld/docid/3d36f23f4.html>. According to the Committee against Torture, the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of gender-based violence, such as rape, domestic violence and trafficking, facilitates and enables non-State actors to commit such acts with impunity, the State’s indifference or inaction provides a form of encouragement and/or *de facto* permission; see UN Committee Against Torture (CAT), *General Comment No. 2: Implementation of Article 2 by States Parties*, CAT/C/GC/2, 24 January 2008, <http://www.unhcr.org/refworld/docid/47ac78ce2.html>. In *N v. Sweden*, Application no. 23505/09, 20 July 2010, <http://www.unhcr.org/refworld/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 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, 21 September 2010, <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/RRTA/2010/822.html>, where the Refugee Review Tribunal of Australia 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. For further guidance on trafficked women or women at risk of being (re)trafficked, also refer to 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.unhcr.org/refworld/docid/443679fa4.html>.

¹³⁵ The Elimination of Violence Against Women Law, issued by Presidential decree in July 2009, criminalizes various forms of violence against women, including rape. The Law also provides for the establishment of a new committee in the Office of the Attorney General mandated to monitor and investigate violence against women; see Human Rights Watch, *The “Ten-Dollar Talib” and Women’s Rights Afghan Women and the Risks of Reintegration and Reconciliation*, 13 July 2010, <http://www.unhcr.org/refworld/docid/4c3c07372.html>.

¹³⁶ See, for example, UNAMA, *UNAMA Press Conference, Kabul - Ines Alberdi, Executive Director of UNIFEM*, 25 November 2010, <http://www.unhcr.org/refworld/docid/4cf3883d2.html>. It is reported that domestic violence occurs in 95 percent of Afghan households; see Freedom House, *Freedom in the World 2010 - Afghanistan*, 3 May 2010, <http://www.unhcr.org/refworld/docid/4c0ceb0d28.html>. According to a nationwide survey, 87.2 percent had experienced at least one form of physical, sexual, or psychological violence or forced marriage in their lifetimes; see Global Rights, *Living with Violence: A National Report on Domestic Abuse in Afghanistan*, March 2008, http://www.globalrights.org/site/DocServer/final_DVR_JUNE_16.pdf?docID=9803. Furthermore, human rights observers report an overall increase of cases of female self-immolation and other forms of suicide. According to a recent study by Former Deputy Health Minister, Faizullah Kakar, based on Afghan Health Ministry records and hospital reports, an estimated 2,300 women and girls attempt suicide annually mainly due to mental illness, domestic violence and/or socio-economic hardship; see UNAMA, *High rates of suicide and domestic violence against Afghan women, new reports show*, 7 August 2010, <http://unama.unmissions.org/Default.aspx?tabid=1783&ctl=Details&mid=1882&ItemID=9932>. The findings have not been confirmed by the Afghan authorities. In August 2010, the Ministry of Women’s Affairs had recorded over 1,900 cases of violence against women and only 37 suicides in the past two years. The figures only take into account reported cases and, as such, are believed to underestimate the actual situation; see IRIN, *Afghanistan: Attempted suicide by women, girls on the rise?*, 6 August 2010, <http://www.unhcr.org/refworld/docid/4c64f11bc.html>. For other reports of self-immolation, see also, The New York Times, *For Afghan Wives, a Desperate, Fiery Way Out*, 7 November 2010, <http://www.nytimes.com/2010/11/08/world/asia/08burn.html>; Time, *Afghanistan: When Women Set Themselves on Fire*, 7 July 2010, <http://www.time.com/time/world/article/0,8599,2002340,00.html>; Institute for War and Peace Reporting, *Female Suicide On Rise in Herat*, 7 June 2010, <http://www.unhcr.org/refworld/docid/4c11f8051a.html>; RAWA, *A Young Afghan Girl Committed Self-immolation*, 24 January 2010, <http://www.rawa.org/temp/runews/2010/01/24/a-young-girl-committed-self-immolation.html>; RAWA, *A Newly-Married Bride Dies of Self-Immolation in Afghanistan*, 10 January 2010, <http://www.rawa.org/temp/runews/2010/01/10/a-newly-married-bride-dies-of-self-immolation.html>; and AIHRC, *Report on the Situation of Economic and Social Rights in Afghanistan - IV*, December 2009, p. 18, <http://www.unhcr.org/refworld/docid/4b3b2df72.html>.

¹³⁷ According to Afghan and UNAMA officials, women in Afghanistan suffer “extremely high rates of domestic violence”. Nearly 2,000 cases of violence against women were reported between October 2006 and mid-2009, according to an updated Violence against Women Primary Database Report by the Afghan Ministry of Women’s Affairs (MoWA) and UNIFEM, with support from UNAMA and the Afghanistan Information Management System (AIMS); see UNAMA, *High rates of suicide and domestic violence against Afghan women, new reports show*, 7 August 2010, <http://unama.unmissions.org/Default.aspx?tabid=1783&ctl=Details&mid=1882&ItemID=9932>. See also AIHRC, *Press Release on International Women’s Day*, 6 March 2010, http://www.aihrc.org.af/2010_eng/Eng_pages/Press_Releases/2010/pre_6_Mar_2010.pdf; and Human Rights Watch, *“We Have the Promises of the World”: Women’s Rights in Afghanistan*, 3 December 2009, <http://www.unhcr.org/refworld/docid/4b179c4a2.html>. However, 2,081 cases of violence against women in Afghanistan were recorded by the AIHRC in 2008 alone; see AIHRC, *Report on the Situation of Economic and Social Rights in Afghanistan - IV*, December 2009, p. 18, <http://www.unhcr.org/refworld/docid/4b3b2df72.html>. According to the Department of Women’s Affairs in Baghlan province, 74 cases of violence against women were reported from January to November 2009, including six killings, three suicides, 10 runaways, 10 cases of food deprivation, eight forced marriages, seven broken engagements, and other cases of physical abuse; see US Department of State, *2009 Report on International Religious Freedom - Afghanistan*, 26 October 2009, <http://www.unhcr.org/refworld/docid/4ae8616357.html>.

dishonour families, victims of rape have faced ostracism, forced abortions and even death.¹³⁸ Prior to the recent criminalization of rape through the adoption of the Elimination of Violence against Women Law, women who were victims of rape could be prosecuted alongside their attackers for adultery (*zina*), a factor which further deterred reporting of such crimes.¹³⁹ It should be noted, however, that human rights observers have highlighted serious challenges in the implementation of the new law, which have still to be addressed.¹⁴⁰

The stigma attached to sexual violence falls on the victim rather than the perpetrator. There is also a lack of access to effective forms of justice and remedies for victims. This has resulted in sexual violence remaining largely unaddressed by either law enforcement or society.¹⁴¹ In some cases, women and girls escaping domestic violence are encouraged to return or are forcibly returned to their families by law enforcement authorities rather than being afforded protection.¹⁴² Effective prosecution of violent sexual crimes, including rape, is also reportedly undermined in some areas by the impunity enjoyed by perpetrators. The perpetrators often have links to powerful commanders, members of armed anti-Government groups, organized criminal networks, or local powerbrokers.¹⁴³

b) Harmful Traditional Practices

Harmful traditional practices are pervasive in Afghanistan, occurring in varying degrees in both rural and urban communities throughout the country, and among all ethnic groups.¹⁴⁴ Rooted in discriminatory views about the role and position of women in the Afghan society, traditional harmful practices disproportionately affect women and girls.¹⁴⁵ Such practices include child and forced marriages,¹⁴⁶ the giving away of girls to settle disputes, exchange marriages, forced isolation in the home and honour killings.¹⁴⁷ As a culturally accepted practice, forced marriage is used to settle debts

¹³⁸ See, for example, UNAMA, *Silence is Violence: End the Abuse of Women in Afghanistan*, 8 July 2009, pp. 21-32, <http://www.unhcr.org/refworld/docid/4a548f532.html>; and Watchlist on Children and Armed Conflict, *Setting the Right Priorities: Protecting Children Affected by Armed Conflict in Afghanistan*, 14 June 2010, p. 29, <http://www.watchlist.org/reports/pdf/Afghanistan%20Report%202010.pdf>.

¹³⁹ Human Rights Watch, "We Have the Promises of the World": *Women's Rights in Afghanistan*, 3 December 2009, <http://www.unhcr.org/refworld/docid/4b179c4a2.html>.

¹⁴⁰ See, for example, UNAMA, *UNAMA Press Conference, Kabul - Ines Alberdi, Executive Director of UNIFEM*, 25 November 2010, <http://www.unhcr.org/refworld/docid/4cf3883d2.html>; and IRIN, *Afghanistan: Women's rights trampled despite new law*, 8 March 2010, <http://www.unhcr.org/refworld/docid/4b9a1e83c.html>.

¹⁴¹ 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 the field of human rights*, A/HRC/13/62, 11 January 2010, para. 27, <http://www.unhcr.org/refworld/docid/4bc2c8d62.html>.

¹⁴² Reported examples include the case of two young girls, 13 and 14 years old, who having fled their homes in Oshaan village, Dolaina District, Ghor Province to escape domestic violence at the hands of their much older husbands, were arrested in neighbouring Herat Province and sent back to Oshaan. They were publicly flogged on return for leaving their husbands; see *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>. See also Human Rights Watch, "We Have the Promises of the World": *Women's Rights in Afghanistan*, 3 December 2009, <http://www.unhcr.org/refworld/docid/4b179c4a2.html>; and UNAMA, *Arbitrary Detention in Afghanistan: A Call For Action, Volume I - Overview and Recommendations*, January 2009, <http://www.unhcr.org/refworld/docid/49d07f272.html>.

¹⁴³ According to information available to UNHCR. According to a UNAMA report, in 39 percent of the cases analyzed in the northern region, the perpetrators were directly linked to powerbrokers thereby enjoying immunity from prosecution and social condemnation; see UNAMA, *Silence is Violence: End the Abuse of Women in Afghanistan*, 8 July 2009, pp. 21-32, <http://www.unhcr.org/refworld/docid/4a548f532.html>.

¹⁴⁴ According to a UNAMA report based on research carried out in nearly all 34 provinces of Afghanistan; see UNAMA, *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, 9 December 2010, <http://www.unhcr.org/refworld/docid/4d00c4e82.html>.

¹⁴⁵ See UNAMA, *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, 9 December 2010, <http://www.unhcr.org/refworld/docid/4d00c4e82.html>.

¹⁴⁶ According to UNIFEM, 57 percent of all marriages that take place in Afghanistan are child marriages (under the legal age of 16), and 70 to 80 percent are forced marriages; see UNIFEM Afghanistan, *The Situation of Women in Afghanistan*, UNIFEM Afghanistan Fact Sheet, last updated February 2010, <http://afghanistan.unifem.org/media/pubs/factsheet/10/index.html>. Marriages of girls shortly after reaching puberty are reportedly condoned in rural areas; see Human Rights Watch, "We Have the Promises of the World": *Women's Rights in Afghanistan*, 3 December 2009, <http://www.unhcr.org/refworld/docid/4b179c4a2.html>. During 2008-2009, 190 cases of forced marriage were registered by the AIHRC and 186 cases were recorded by the Ministry of Women's Affairs. According to the AIHRC, there is a direct correlation between forced marriages and domestic violence; see AIHRC, *Report on the Situation of Economic and Social Rights in Afghanistan - IV*, December 2009, p. 57, <http://www.unhcr.org/refworld/docid/4b3b2df72.html>. Accurate and reliable statistics on forced and child marriages are, however, difficult to obtain due to the undocumented nature of such marriages. The AIHRC estimated that over 38 percent of women have been victims of forced marriage; see AIHRC, *Evaluation report on General Situation of Women in Afghanistan*, 2005, http://www.aihrc.org/af/rep_eng_wom_situation_8_march.htm#_ftn7.

¹⁴⁷ According to a UNAMA report based on research carried out in nearly all 34 provinces of Afghanistan; see UNAMA, *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, 9 December 2010, <http://www.unhcr.org/refworld/docid/4d00c4e82.html>. For in-depth information on the current marriage practices in Afghanistan, including

or strengthen a family's status through social alliances. Coerced forms of marriage in Afghanistan include: (i) 'sale' marriage, i.e. women and girls sold for a fixed quantity of goods, cash or simply to settle a family debt; (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;¹⁴⁸ and (iii) *baadal*, when two families exchange their daughters in an attempt to minimize marriage costs.¹⁴⁹ Economic insecurity and ongoing conflict perpetuates the problem of child marriages. The practice is often seen as a means of survival for the girl and her family.¹⁵⁰

The Elimination of Violence against Women Law, which 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, is reportedly yet to be fully implemented.¹⁵¹ This is partly due to the unwillingness and inability of some law enforcement authorities to apply the Law, a main factor permitting harmful traditional practices to persist.¹⁵² While a number of investigations and prosecutions have been undertaken under the Law in some provinces, serious concerns as to its implementation persist.¹⁵³

c) Women Perceived as Contravening Social Mores

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.¹⁵⁴ Most Afghan women in rural areas do not leave the family compound without a *burqa* and a male companion, due to societal and familial pressure.¹⁵⁵ Unaccompanied women or women lacking a male "guardian" (*mahram*), including divorced women, unmarried women who are not virgins, and women whose marriage engagements have been broken, continue to face social stigma and general discrimination.¹⁵⁶ Women without male support and protection generally lack the

baadal (exchange marriage), bride price and polygamy, see Afghanistan Research and Evaluation Unit, *Decisions, Desires and Diversity: Marriage Practices in Afghanistan*, February 2009, <http://www.unhcr.org/refworld/docid/4992cc722.html>; and Women and Children Legal Research Foundation, *Early marriage in Afghanistan*, 2008, http://www.wclrf.org/English/eng_pages/Researches/Early%20Marrige%20with%20cover.pdf.

¹⁴⁸ Although in decline, it is reported that *baad* marriages are still used in dispute resolution; see, for example, Afghanistan Research and Evaluation Unit, *Community-Based Dispute Resolution Processes in Nangarhar Province*, December 2009, <http://www.unhcr.org/refworld/docid/4b3870cf2.html>; *Community-Based Dispute Resolution Processes in Bamiyan Province*, December 2009, <http://www.unhcr.org/refworld/docid/4b38706e2.html>; and Afghanistan Research and Evaluation Unit, *Decisions, Desires and Diversity: Marriage Practices in Afghanistan*, February 2009, <http://www.unhcr.org/refworld/docid/4992cc722.html>. See for example the case of a two-year old girl who has been traded away in *baad*, to make up for the sexual misconduct of her uncle; see Institute for War and Peace Reporting, *Afghan Girls Suffer for Sins of Male Relatives*, 26 March 2009, <http://www.unhcr.org/refworld/docid/49dc4b201c.html>.

¹⁴⁹ See, for instance, Institute for War and Peace Reporting, *Afghan Runaways Flee Forced Marriages*, 26 November 2010, <http://www.unhcr.org/refworld/docid/4cf4a3e32c.html>; Institute for War and Peace Reporting, *Afghanistan's Frustrated Singles*, 26 April 2009, <http://www.unhcr.org/refworld/docid/49f7ff541e.html>; and AIHRC, *Economic and Social Rights Report III*, December 2008, pp. 34-35, <http://www.unhcr.org/refworld/docid/4a03f56b2.html>.

¹⁵⁰ Widespread poverty also reportedly leads struggling families to "sell" girls for marriage, particularly to much older men; see UNAMA, *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, 9 December 2010, pp. 18-19, <http://www.unhcr.org/refworld/docid/4d00c4e82.html>; and UNICEF, *Forced and early marriages still common for girls in Afghanistan*, 17 March 2010, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/MUMA-83N3QL>.

¹⁵¹ See UNAMA, *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, 9 December 2010, <http://www.unhcr.org/refworld/docid/4d00c4e82.html>.

¹⁵² It is reported that law enforcement authorities received little or no guidance from national-level authorities on how to apply the law, particularly in relation to other criminal laws. In many rural and remote provinces, the Law remains both unknown and unimplemented; see UNAMA, *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, 9 December 2010, <http://www.unhcr.org/refworld/docid/4d00c4e82.html>.

¹⁵³ For example, as of November 2010, prosecutors in Heart province had filed charges under the Law in 88 cases, while 11 prosecutions were currently under way at national level; see UNAMA, *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, 9 December 2010, pp. 18-19, <http://www.unhcr.org/refworld/docid/4d00c4e82.html>.

¹⁵⁴ 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.unhcr.org/refworld/docid/4c1732dc2.html>. For further analysis of the treatment of women perceived as contravening Shari'a law, see Section III(A)5 Members of Minority Religious Groups and Persons Perceived as Contravening Shari'a Law.

¹⁵⁵ Although many women in urban areas no longer wear the burqa, most still wear some form of head covering either by personal choice or due to community pressure; see US Department of State, *2010 Report on International Religious Freedom - Afghanistan*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d0bb64.html>; and US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>.

¹⁵⁶ 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

means of survival, given existing social norms imposing restrictions on women living alone, including limitations on their freedom of movement.

Detention on the ground of perceived “morality crimes,” such as “running away” from home¹⁵⁷ (including in situations of domestic violence),¹⁵⁸ being improperly unaccompanied¹⁵⁹ or refusing marriage, also occurs.¹⁶⁰ In such matters, customary law often takes precedence over criminal or civil law.¹⁶¹ Detention for breaches of customary or Shari’a law disproportionately affects women and girls.¹⁶² Women and girls who run away are often also prosecuted under “intention” to commit *zina* (sexual intercourse outside of marriage) charges.¹⁶³ Since adultery and “morality crimes” may elicit honour killings, detention of women accused of such acts has been, in some instances, justified by the authorities as a protective measure.¹⁶⁴

Adopted in March 2009, the Shiite Personal Status Law¹⁶⁵ sanctioned, in its initial form, marital rape and restrictions on Shiite women’s freedom of movement outside their home without their husbands’ permission, save in situations of emergency.¹⁶⁶ Amended following domestic and international criticism, the law retains some of the contentious provisions, including discriminatory provisions

*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.unhcr.org/refworld/docid/4a548f532.html>. See also Womankind Worldwide, *Taking Stock Update: Afghan Women and Girls Seven Years On*, February 2008, p. 25, <http://www.womankind.org.uk/upload/Taking%20Stock%20Report%2068p.pdf>.*

¹⁵⁷ According to the Head of the northern branch of the AIHRC, the number of girls running away from home, often fleeing forced marriages or domestic violence, has risen in recent years. Detention for running away is still a reality. During a recent visit of women’s prisons, Fawzia Nawabi, head of the AIHRC women’s department, reportedly met 15 girls imprisoned for running away from home in Balkh province, 22 in Jawzjan province, eight in Sar-i Pol province and four in Samangan province; see Institute for War and Peace Reporting, *Afghan Runaways Flee Forced Marriages*, 26 November 2010, <http://www.unhcr.org/refworld/docid/4cf4a3e32c.html>. Running away from home is stigmatized in Afghanistan. While not specifically defined in the Penal Code, 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, p. 58, <http://www.unhcr.org/refworld/docid/4b3b2df72.html>.

¹⁵⁸ According to an opinion issued by the High Council of the Supreme Court of Afghanistan on 1 August 2010, the act of running away as a result of domestic violence is not considered a religious (moral) crime where the woman seeks shelter/protection with a relative or the appropriate authorities. Running away to a stranger’s house is, however, considered against Shari’a principles and subject to discretionary punishment. A copy of the Supreme Court decree (in Dari) is on record with UNHCR. In practice, however, women fleeing domestic violence may face severe punishment. In a well-publicized case, an 18 year old girl who fled her husband’s home because of domestic violence was sentenced to having her ears and nose cut by the local judge, a Taliban commander; see Time, *Afghan Women and the Return of the Taliban*, 29 July 2010, <http://www.time.com/time/world/article/0,8599,2007238,00.html>. It is reported that Afghan authorities have recently arrested the victim’s father-in-law in connection with the case. However, previous reports of Taliban’s involvement in the case were denied by the head of the AIHRC in Uruzgan province. The victim was reportedly given away by her family in childhood to settle a “blood debt”; see BBC News, *Arrest in case of Afghan teenager who had face maimed*, 7 December 2010, <http://www.bbc.co.uk/news/world-south-asia-11937681>. In addition, women and girls escaping domestic violence may be forcibly returned to their families by law enforcement authorities rather than being afforded protection; see, for example, 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>.

¹⁵⁹ “Improper accompaniment” is considered a crime according to Hanafi jurisprudence. Women have also 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, p.7, <http://www.unhcr.org/refworld/docid/49d07f272.html>.

¹⁶⁰ UNAMA, *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, 9 December 2010, <http://www.unhcr.org/refworld/docid/4d00c4e82.html>. Women and girls who have committed morality crimes are also at risk of repercussions from their family members; see Institute for War and Peace Reporting, *No Life Outside for Female Ex-Cons in Afghanistan*, 24 August 2010, <http://www.unhcr.org/refworld/docid/4c762dc72c.html>; and Human Rights Watch, “*We Have the Promises of the World*”: *Women’s Rights in Afghanistan*, 3 December 2009, <http://www.unhcr.org/refworld/docid/4b179c4a2.html>. According to a 2008 study, most women were imprisoned for “moral crimes”, primarily *zina* (30 percent) or running away (24 percent); see Women and Children Legal Research Foundation, *Women’s Access to Justice – Problems and Challenges*, 2008, http://www.wclrf.org/English/eng_pages/Researches/Women_a_t_Justice/WATJ.pdf.

¹⁶¹ Human Rights Watch, “*We Have the Promises of the World*”: *Women’s Rights in Afghanistan*, 3 December 2009, <http://www.unhcr.org/refworld/docid/4b179c4a2.html>. It should also be noted that Court cases on family issues are dealt with under a civil code based on the *Hanafi* school of Sunni Islam, which applies regardless of whether the person is Sunni or Shi’a.

¹⁶² UNAMA, *Arbitrary Detention in Afghanistan: A Call For Action, Volume I - Overview and Recommendations*, January 2009, p. 6, <http://www.unhcr.org/refworld/docid/49d07f272.html>.

¹⁶³ UNAMA, *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, 9 December 2010, <http://www.unhcr.org/refworld/docid/4d00c4e82.html>.

¹⁶⁴ US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>.

¹⁶⁵ Shiite Personal Status Law, March 2009, <http://www.unhcr.org/refworld/docid/4a24ed5b2.html>. 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 percent of the Afghan population.

¹⁶⁶ See, for example, Human Rights Watch, “*We Have the Promises of the World*”: *Women’s Rights in Afghanistan*, 3 December 2009, <http://www.unhcr.org/refworld/docid/4b179c4a2.html>.

regarding guardianship, inheritance, under-age marriages, and limitations on movements outside the home.¹⁶⁷

7. Children with Specific Profiles

Among the most vulnerable groups in Afghanistan, children bear the brunt of the ongoing armed conflict. The Taliban and other anti-Government armed groups are reportedly responsible for the vast majority of the human rights violations against children.¹⁶⁸ UNHCR considers that children with the specific profiles outlined below,¹⁶⁹ including child soldiers, school-age children, particularly girls, as well as children victims of sexual and gender-based violence, may be at risk on the ground of membership of a particular social group, religion and/or (imputed) political opinion depending on the individual circumstances of the case.¹⁷⁰ 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.¹⁷¹

a) Forced Recruitment

In April 2010, the Afghan Ministry of Interior formally banned under-age recruitment in the police and provided for the demobilization and reintegration of children serving in the police forces at the time.¹⁷² However, there are concerns that children have been recruited by the Afghan security forces, including the Afghan National Security Forces and the Afghan National Police.¹⁷³ Forced recruitment of children by armed groups, including the Taliban, the Haqqani network, Hezb-i-Islami, the Tora Bora Front and Jamat Sunat al-Dawa Salafia, is reported, particularly in the southern, south-eastern and eastern regions. Internally displaced children and children part of isolated populations in conflict-affected areas are particularly at risk of recruitment into armed anti-Government groups.¹⁷⁴ Such groups have reportedly abducted children for the purposes of military training in Pakistan. These

¹⁶⁷ See, for example, US Department of State, *2010 Report on International Religious Freedom - Afghanistan*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d0bb64.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 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.unhcr.org/refworld/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, paras. 4 and 21-23, <http://www.unhcr.org/refworld/docid/4bc2c8d62.html>, denouncing the law as legitimizing harmful traditional and customary practices that disadvantage women and calling for its repeal.

¹⁶⁸ See, for example, UN Secretary-General, *Children and armed conflict: report of the Secretary-General*, A/64/742 - S/2010/181, 13 April 2010, para 30, <http://www.unhcr.org/refworld/docid/4bfce6a2.html>.

¹⁶⁹ For further analysis on the treatment of girls subject to harmful traditional practices and sexual and gender-based violence, see Section IIIA(6) Women with Specific Profiles.

¹⁷⁰ 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.unhcr.org/refworld/docid/3d36f23f4.html>; and 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.unhcr.org/refworld/docid/443679fa4.html>.

¹⁷¹ 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.unhcr.org/refworld/docid/4b2f4f6d2.html>. The New Zealand Refugee Status Appeals Authority recently found that the appellants, two Afghan children, faced a risk of being targeted for serious violence by anti-Government insurgents at school, together with a risk of being harassed, physically harmed or kidnapped while travelling to and from school: "[c]umulatively, in the context of serious violence being perpetrated against schools and students by insurgents targeting symbols of the government and the "west", and in the context of corporal punishment occurring within schools, there is a real chance of the appellants coming to serious harm." The appellants were found to be at risk of persecution on account of their membership of a particular social group, i.e. children; see *Refugee Appeal Nos. 76305, 76306, 76307 & 76308*, 30 June 2010, paras. 142-146, <http://www.unhcr.org/refworld/docid/4c3ebb052.html>.

¹⁷² See UN Security Council, *Report of the Secretary-General pursuant to paragraph 40 of resolution 1917 (2010)*, S/2010/318, 16 June 2010, <http://www.un.org/Docs/sc/sgrep10.htm>. Disciplinary action is also to be taken against the recruiters; see UN News Service, *Afghan prohibition of under-age police recruitment wins UN applause*, 10 May 2010, <http://www.unhcr.org/refworld/docid/4be90fc9c.html>.

¹⁷³ See, for example, Watchlist on Children and Armed Conflict, *Setting the Right Priorities: Protecting Children Affected by Armed Conflict in Afghanistan*, 14 June 2010, <http://www.watchlist.org/reports/pdf/Afghanistan%20Report%202010.pdf>; and 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.unhcr.org/refworld/docid/4c1732dc2.html>.

¹⁷⁴ UN Human Rights Council, *Annual report of the Special Representative of the Secretary-General for Children and Armed Conflict, Radhika Coomaraswamy*, A/HRC/15/58, 3 September 2010, Annex 1, p. 18, <http://www.unhcr.org/refworld/docid/4c8f28b32.html>; and UNAMA, *February 2010 Mission Report by the Special Representative of the Secretary-General for Children in Armed Conflict on visit to Afghanistan*, 26 February 2010, p. 5, <http://www.unhcr.org/refworld/docid/4c0e143b2.html>.

children have also been used to carry out suicide attacks or to plant explosives, often resulting in their own deaths.¹⁷⁵

b) Access to Education

The deterioration of the security situation has also had a detrimental effect on education.¹⁷⁶ Armed anti-Government groups, as well as conservative elements in some communities that are opposed to the education of girls, have increased their attacks on schools, teachers and pupils, particularly schoolgirls. Such attacks have spread throughout the country, with a notable increase in areas around Kabul, Wardak, Logar and Khost, and in the eastern provinces of Laghman, Kunar and Nangarhar. Areas previously considered stable, such as Takhar and Badakhshan, are now also affected.¹⁷⁷ Attacks range from intimidation of pupils and teachers, placement of IEDs on school premises, abductions, beatings and killing of school staff, to arson and other targeted violent attacks on schools.¹⁷⁸ “Night letters” were reportedly disseminated by armed anti-Government groups warning teachers and pupils not to attend school, and IEDs were placed on routes used to walk to school.¹⁷⁹ As a result, a significant number of schools were destroyed or closed on a permanent or temporary basis, particularly in the southern, south-eastern, northern and central regions.¹⁸⁰ In June 2010, the UN Human Rights Council formally condemned the attacks against schools and students, especially attacks against schoolgirls.¹⁸¹

¹⁷⁵ According to a US military report, Afghan children as young as 3 years old are being used by the Taliban as human shields or to gather spent cartridges, and teenagers are being given motorcycles for planting roadside bombs; see USA Today, *U.S. military report: Taliban uses youths in Afghan fight*, 13 September 2010, http://www.usatoday.com/news/world/afghanistan/2010-09-12-child-soldiers-afghanistan_N.htm. According to UNAMA, children, as young as 13, are reportedly used by the Taliban as suicide bombers. On 22 February 2010, a young boy detonated his suicide vest targeting a prominent Government tribal leader in Nangarhar province. 14 civilians were killed as a result; see UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, p. 4, <http://www.unhcr.org/refworld/docid/4c6120382.html>. See also UN Secretary-General, *Children and armed conflict: report of the Secretary-General*, A/64/742 - S/2010/181, 13 April 2010, para. 47, <http://www.unhcr.org/refworld/docid/4bfce6a2.html>; UNAMA, *February 2010 Mission Report by the Special Representative of the Secretary-General for Children in Armed Conflict on visit to Afghanistan*, 26 February 2010, p. 5, <http://www.unhcr.org/refworld/docid/4c0e143b2.html>; and UNAMA, *Annual Report on Protection of Civilians in Armed Conflict*, 2009, January 2010, <http://www.unhcr.org/refworld/docid/4b4ef6d52.html>.

¹⁷⁶ See, for example, UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, p. 11, <http://www.unhcr.org/refworld/docid/4c6120382.html>.

¹⁷⁷ See, for example, Human Rights Watch, *The “Ten-Dollar Taliban” and Women’s Rights Afghan Women and the Risks of Reintegration and Reconciliation*, 13 July 2010, <http://www.unhcr.org/refworld/docid/4c3c07372.html>; UN Secretary-General, *Children and armed conflict: report of the Secretary-General*, A/64/742 - S/2010/181, 13 April 2010, para. 50, <http://www.unhcr.org/refworld/docid/4bfce6a2.html>; and Human Rights Watch, *“We Have the Promises of the World”: Women’s Rights in Afghanistan*, 3 December 2009, <http://www.unhcr.org/refworld/docid/4b179c4a2.html>.

¹⁷⁸ According to Government officials, armed men burned down a girls’ primary school in the Alengar district of Laghman province during the night of 8 November 2010; see CNN, *Girls’ school burned down in Afghanistan, Qurans destroyed*, 9 November 2010, <http://edition.cnn.com/2010/WORLD/asiapcf/11/09/afghanistan.school.torched/index.html>. In August 2010, a girls’ school in the east side of Kabul was reportedly the target of a poison attack. The incident followed a pattern of repeated attacks seemingly in opposition to girls’ education. According to Pajhwok Afghan News, 73 schoolgirls and teachers were treated for symptoms related to an air-borne poison, while according to Reuters, 40 schoolgirls were hospitalized following the attack. The previous poisoning incident was reported in June when around 50 schoolgirls fell sick in Ghazni province; see NATO Civil-Military Fusion Centre, *Afghanistan Review*, 1 September 2010, [https://www.cimicweb.org/Documents/CFC_AFG_Newsletters_Archive/CFC_Weekly_Sector_Review-Afghanistan_\(01-Sep-10\).pdf](https://www.cimicweb.org/Documents/CFC_AFG_Newsletters_Archive/CFC_Weekly_Sector_Review-Afghanistan_(01-Sep-10).pdf); and AlertNet, *Afghan girls fall ill after apparent gas poisoning*, 25 August 2010, <http://www.alertnet.org/thenews/newsdesk/SGE6700EQ.htm>. See also Watchlist on Children and Armed Conflict, *Setting the Right Priorities: Protecting Children Affected by Armed Conflict in Afghanistan*, 14 June 2010, <http://www.watchlist.org/reports/pdf/Afghanistan%20Report%202010.pdf>; and UN Security Council, *Report of the Secretary-General pursuant to paragraph 40 of resolution 1917 (2010)*, S/2010/318, 16 June 2010, <http://www.un.org/Docs/sc/sgrep10.htm>. It is also reported that, from January to November 2009, at least 23 pupils were killed and 342 suffered serious or minor injuries from such incidents, while 24 teachers and education personnel lost their lives and 41 were injured throughout the country; see UN Secretary-General, *Children and armed conflict: report of the Secretary-General*, A/64/742 - S/2010/181, 13 April 2010, <http://www.unhcr.org/refworld/docid/4bfce6a2.html>.

¹⁷⁹ On 29 February 2010, for example, threatening letters demanding the closure of a school in the capital of Baghlan province were allegedly sent by the Taliban; see UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, p. 11, <http://www.unhcr.org/refworld/docid/4c6120382.html>.

¹⁸⁰ See, for example, UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, p. 11, <http://www.unhcr.org/refworld/docid/4c6120382.html>. As of April 2010, in Helmand province more than 70 percent of schools closed, while in Zabul province, more than 80 percent closed; see UN Secretary-General, *Children and armed conflict: report of the Secretary-General*, A/64/742 - S/2010/181, 13 April 2010, <http://www.unhcr.org/refworld/docid/4bfce6a2.html>. According to the Afghan Minister of Education, as of February 2010, 450 schools remained closed due to the insurgency, affecting 200,000 children and 3,000 teachers; see UNAMA, *February 2010 Mission Report by the Special Representative of the Secretary-General for Children in Armed Conflict on visit to Afghanistan*, 26 February 2010, p. 10, <http://www.unhcr.org/refworld/docid/4c0e143b2.html>.

¹⁸¹ UN Human Rights Council, *Addressing attacks on school children in Afghanistan*, A/HRC/RES/14/15, 23 June 2010, <http://www.unhcr.org/refworld/docid/4c2c59492.html>.

c) Sexual and Gender-Based Violence

Sexual abuse and violence against children, including at the hands of family members, is reportedly commonplace in Afghanistan.¹⁸² Furthermore, the practice of *bacha bazi* (boy play) – keeping young boys for sexual and social entertainment, particularly by older and powerful men – has a degree of social acceptance,¹⁸³ particularly in the north of the country.¹⁸⁴ According to some reports, the practice, which involves boys as young as 10, is condoned and in some cases protected by the local authorities.¹⁸⁵ The general climate of impunity and the vacuum in rule of law has adversely affected the reporting of sexual abuse and violence against children to the authorities and the prosecution of perpetrators.¹⁸⁶ Children subjected to the practice of *bacha bazi* – who are often driven into the practice by poverty, coercion or force –¹⁸⁷ need to be considered by adjudicators as victims and survivors of rape, rather than persons freely exercising a sexual preference.

8. Victims of Trafficking

According to reports, Afghan men, women and children are trafficked internally and internationally for forced labour¹⁸⁸ and sexual exploitation.¹⁸⁹ Afghan men are trafficked to Iran, Pakistan, Greece, the Gulf States, and possibly Southeast Asian countries, for forced labour and debt bondage in the agriculture and construction sectors.¹⁹⁰ Children are reportedly trafficked internally for sexual exploitation, domestic servitude and forced labour, including forced begging (through organized professional begging rings), and to a lesser extent trans-nationally for the purposes of forced prostitution and forced labour in the drug smuggling/trafficking trade in Pakistan and Iran.¹⁹¹ Although efforts are being made by the authorities to investigate and prosecute trafficking

¹⁸² According to data collected by AIHRC between 2003 and 2010, boys may be at higher risk of sexual abuse than girls; see Watchlist on Children and Armed Conflict, *Setting the Right Priorities: Protecting Children Affected by Armed Conflict in Afghanistan*, 14 June 2010, p. 29, <http://www.watchlist.org/reports/pdf/Afghanistan%20Report%202010.pdf>. For further information on the sexual abuse and violence against children, see also UN Secretary-General, *Children and armed conflict: report of the Secretary-General*, A/64/742 - S/2010/181, 13 April 2010, para 49, <http://www.unhcr.org/refworld/docid/4bfce6a2.html>; and Reuters, *Afghan children face world's worst conditions-UN*, 18 March 2010, <http://www.alertnet.org/thenews/newsdesk/SGE62G0G9.htm>. For further analysis on the treatment of girls subject to sexual and gender-based violence, see Section IIIA(6) Women with Specific Profiles.

¹⁸³ UN Secretary-General, *Children and armed conflict: report of the Secretary-General*, A/64/742 - S/2010/181, 13 April 2010, <http://www.unhcr.org/refworld/docid/4bfce6a2.html>; and US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>. The practice is seen as a symbol of status, as boys (known as *halekon* in the South of the country, and *bacha bi reesh*, “boys without beards” in other areas) are sometimes shared with other men at parties and gatherings.

¹⁸⁴ See, for instance, BBC News, *The sexually abused dancing boys of Afghanistan*, 7 September 2010, <http://www.bbc.co.uk/news/world-south-asia-11217772>; and ABC News, *The Warlord's Tune: Afghanistan's war on children*, 22 February 2010, <http://www.abc.net.au/news/stories/2010/02/22/2826024.htm>.

¹⁸⁵ See, for example, UN Secretary-General, *Children and armed conflict: report of the Secretary-General*, A/64/742 - S/2010/181, 13 April 2010, para 49, <http://www.unhcr.org/refworld/docid/4bfce6a2.html>; and ABC News, *The Warlord's Tune: Afghanistan's war on children*, 22 February 2010, <http://www.abc.net.au/news/stories/2010/02/22/2826024.htm>. Perpetrators include or are linked to local power holders, such as Government officials, powerful commanders, members of armed groups and criminal gangs; see UNAMA, *Silence is Violence: End the Abuse of Women in Afghanistan*, 8 July 2009, <http://www.unhcr.org/refworld/docid/4a548f532.html>.

¹⁸⁶ There have reportedly been few attempts by the Afghan authorities to clamp down on the *bacha bazi* tradition; see BBC News, *The sexually abused dancing boys of Afghanistan*, 7 September 2010, <http://www.bbc.co.uk/news/world-south-asia-11217772>. See also Watchlist on Children and Armed Conflict, *Setting the Right Priorities: Protecting Children Affected by Armed Conflict in Afghanistan*, 14 June 2010, p. 29, <http://www.watchlist.org/reports/pdf/Afghanistan%20Report%202010.pdf>; UN Secretary-General, *Children and armed conflict: report of the Secretary-General*, A/64/742 - S/2010/181, 13 April 2010, para 49, <http://www.unhcr.org/refworld/docid/4bfce6a2.html>; and Reuters, *Afghan children face world's worst conditions-UN*, 18 March 2010, <http://www.alertnet.org/thenews/newsdesk/SGE62G0G9.htm>. The Ministry of Interior has reported 17 cases of child rape during 2009, although, according to the AIHRC, most child sexual abusers were not arrested; see US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>.

¹⁸⁷ See, for instance, BBC News, *The sexually abused dancing boys of Afghanistan*, 7 September 2010, <http://www.bbc.co.uk/news/world-south-asia-11217772>; and ABC News, *The Warlord's Tune: Afghanistan's war on children*, 22 February 2010, <http://www.abc.net.au/news/stories/2010/02/22/2826024.htm>.

¹⁸⁸ Forced labour is prohibited under Article 49 of the Constitution of Afghanistan, 3 January 2004, <http://www.unhcr.org/refworld/docid/404d8a594.html>.

¹⁸⁹ See, for example, US Department of State, *Trafficking in Persons Report 2010 - Afghanistan*, 14 June 2010, <http://www.unhcr.org/refworld/docid/4c1884102.html>; and AIHRC, *Report on the Situation of Economic and Social Rights in Afghanistan - IV*, December 2009, p. 57, <http://www.unhcr.org/refworld/docid/4b3b2df72.html>.

¹⁹⁰ See, for example, US Department of State, *Trafficking in Persons Report 2010 - Afghanistan*, 14 June 2010, <http://www.unhcr.org/refworld/docid/4c1884102.html>.

¹⁹¹ See, for example, US Department of State, *Trafficking in Persons Report 2010 - Afghanistan*, 14 June 2010, <http://www.unhcr.org/refworld/docid/4c1884102.html>; AIHRC, *Report on the Situation of Economic and Social Rights in Afghanistan - IV*, December 2009, p. 57, <http://www.unhcr.org/refworld/docid/4b3b2df72.html>; and UNICEF, *Situation Analysis of Vulnerable Groups of Children in Three Border areas: Islam Qala, Zaranj and Torkham*, 2008, http://www.childtrafficking.com/Docs/bendiksen_lise_08_analysis_1009.pdf.

incidents,¹⁹² no convictions for trafficking-related offences have been reported.¹⁹³ Furthermore, there are serious concerns that some victims of trafficking are punished for acts they may have committed as a result of being trafficked.¹⁹⁴ NGOs – the main providers of victim protective services – may also face threats and harassment at the hands of the local community, particularly when assisting victims of perceived “honour” crimes, such as rape.¹⁹⁵

In light of the foregoing, UNHCR considers that victims of trafficking and persons at risk of being trafficked or re-trafficked, particularly women and children, may be at risk on account of their membership of a particular social group, depending on the individual circumstances of the case.¹⁹⁶

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

A crime under the Afghan Penal Code punishable by “long imprisonment”,¹⁹⁷ “homosexual conduct” also constitutes a *Hudood* crime punishable by death under Shari’a law.¹⁹⁸ It is reported, however, that the relevant Penal Code provisions are only sporadically enforced,¹⁹⁹ and that no death sentences have been handed out since the fall of the Taliban.²⁰⁰

Given the pervading strong social taboos, there is little information available on the treatment of LGBTI individuals in Afghanistan. Although overt homosexual relations are generally not tolerated, some reports indicate that sexual acts between men, sometimes including boys, are not uncommon.²⁰¹ Furthermore, NGOs that are actively working on LGBTI issues reportedly remain underground.²⁰²

¹⁹² On 14 July 2008, the Law on Combating Human Abduction and Trafficking was endorsed by President Karzai and published in the official gazette. A positive step towards preventing human abduction and trafficking, 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.unhcr.org/refworld/docid/4b3b2df72.html>. The Law prescribes penalties of life imprisonment for sex trafficking and “maximum term” imprisonment for labour trafficking, which in practice is between eight and 15 years.

¹⁹³ During 2009, the Ministry of Interior identified 360 victims of sex trafficking, including 44 women, 211 men, 13 girls, and 70 boys, and 24 individuals were arrested in 19 alleged cases of human trafficking; see US Department of State, *Trafficking in Persons Report 2010 - Afghanistan*, 14 June 2010, <http://www.unhcr.org/refworld/docid/4c1884102.html>. See also 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>. According to ILO statistics, at least 65 cases of human trafficking for purposes of sexual abuse have been recorded in Afghanistan since 2006; see AIHRC, *Report on the Situation of Economic and Social Rights in Afghanistan - IV*, December 2009, p. 47, <http://www.unhcr.org/refworld/docid/4b3b2df72.html>.

¹⁹⁴ In some cases, women victims are arrested and imprisoned or otherwise punished for prostitution and fleeing forced marriages in the context of trafficking; see US Department of State, *Trafficking in Persons Report 2010 - Afghanistan*, 14 June 2010, <http://www.unhcr.org/refworld/docid/4c1884102.html>.

¹⁹⁵ US Department of State, *Trafficking in Persons Report 2010 - Afghanistan*, 14 June 2010, <http://www.unhcr.org/refworld/docid/4c1884102.html>.

¹⁹⁶ 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.unhcr.org/refworld/docid/443679fa4.html>.

¹⁹⁷ Article 427 of the Penal Code of Afghanistan, 7 October 1976, [http://www.cicr.ch/ihl-nat.nsf/6fa4d35e5e3025394125673e00508143/845809a497304d8fc12571140033ac69/\\$FILE/Penal%20Code%20-%20Afghanistan%20-%20EN.pdf](http://www.cicr.ch/ihl-nat.nsf/6fa4d35e5e3025394125673e00508143/845809a497304d8fc12571140033ac69/$FILE/Penal%20Code%20-%20Afghanistan%20-%20EN.pdf). Sexual relations with a person under the age of consent are also covered by Article 427.

¹⁹⁸ See, for example, International Lesbian, Gay, Bisexual, Trans and Intersex Association, *State-sponsored Homophobia – A world survey of laws prohibiting same sex activity between consenting adults*, May 2010, http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2010.pdf. The *Hudood* establish the conditions under which Islamic Law can be applied for certain crimes. *Hudood* (singular: “*hadd*” meaning limit) punishments carry mandatory sentences, unlike the *ta’zir* punishments. When the particular conditions cannot be fulfilled then the *ta’zir* punishments defined by the Penal Code are applied. The *Hudood* punishments cover, *inter alia*, *zina*, murder, theft and robbery.

¹⁹⁹ US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>. For further information on the practice of “bacha baazi” (boy-play), please refer to Section A(7) Children with Specific Profiles.

²⁰⁰ See, for example, International Lesbian, Gay, Bisexual, Trans and Intersex Association, *State-sponsored Homophobia – A world survey of laws prohibiting same sex activity between consenting adults*, May 2010, http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2010.pdf.

²⁰¹ US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>. According to an unclassified study from a military research unit in southern Afghanistan, homosexual behavior is unusually common, although not acknowledged, among some men. Such behaviour allegedly stems from several factors, including the “severe segregation” of women in the society and the “prohibitive” cost of marriage; see Fox News, *Afghan Men Struggle With Sexual Identity, Study Finds*, 28 January 2010, <http://www.foxnews.com/politics/2010/01/28/afghan-men-struggle-sexual-identity-study-finds/>. See also Los Angeles Times, *Kandahar’s Lightly Veiled Homosexual Habits*, 3 April 2002, <http://www.latimes.com/news/nationworld/world/la-000023881apr03.story>.

²⁰² US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>.

In light of the strong societal taboos, as well as the criminalization of “homosexual conduct”, UNHCR considers that LGBTI individuals may be at risk on account of their membership of a particular social group, i.e. their sexual orientation and/or gender identity, since they do not, or are perceived not to conform to prevailing legal, religious and social norms.²⁰³ It should be borne in mind that LGBTI individuals cannot be expected to change or conceal their identity in order to avoid persecution.²⁰⁴ Furthermore, the existence of significant criminal sanctions for “homosexual conduct” is a bar to State protection, including where persecutory acts are perpetrated by non-State actors such as family or community members.²⁰⁵

10. Members of (Minority) Ethnic Groups

It is widely documented that ethnic-based tension and violence have arisen at various points in the history of Afghanistan.²⁰⁶ Since the fall of the Taliban regime in late 2001, however, ethnically-motivated tension and violence have diminished markedly in comparison to earlier periods. Notwithstanding the foregoing and despite constitutional guarantees of “equality among all ethnic groups and tribes”,²⁰⁷ certain concerns remain.²⁰⁸ These include, *inter alia*, ethnic discrimination and clashes, particularly in relation to land use/ownership rights.²⁰⁹

Afghanistan is a complex mix of ethnic groups²¹⁰ with inter-relationships not easily characterized. For different historical, social, economic and security-related reasons, some members of ethnic groups now reside outside areas where they traditionally represented a majority.²¹¹ This has resulted in a

²⁰³ For further guidance see UNHCR, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, <http://www.unhcr.org/refworld/docid/48abd5660.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.unhcr.org/refworld/docid/3d36f23f4.html>. The UK Asylum and Immigration Tribunal held that, in the context of Afghanistan, if an individual, or LGBTI lobby, were 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.unhcr.org/refworld/docid/4964c06b2.html>.

²⁰⁴ See UNHCR, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, paras. 25 & ff., <http://www.unhcr.org/refworld/docid/48abd5660.html>. The right to freedom of opinion and expression encompasses “the expression of identity or personhood through speech, deportment, 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.unhcr.org/refworld/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.unhcr.org/refworld/docid/4c3456752.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.unhcr.org/refworld/docid/3fd9eca84.html>.

²⁰⁵ Even in the absence of enforcement of the legal provisions criminalizing “homosexual conduct”, the pervading or generalized climate of homophobia, as evidenced by societal attitudes, etc., may be sufficient indication of the risks faced by LGBTI individuals in Afghanistan. See UNHCR, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, paras. 21-22, <http://www.unhcr.org/refworld/docid/48abd5660.html>.

²⁰⁶ See, for example, Maley, William, *On the Position of the Hazara Minority in Afghanistan*, December 2010, copy on file with UNHCR. See also Maley, William, *The Afghan Wars*, 2002, New York: Palgrave Macmillan; Giustozzi, Antonio, *Empires of Mud: Wars and Warlords of Afghanistan*, 2009, Hurst/Columbia University Press; and Giustozzi, Antonio, *Decoding the New Taliban: Insights from the Afghan Field*, (ed.), 2009, Hurst/Columbia University Press.

²⁰⁷ Article 6 of the Constitution of Afghanistan, 3 January 2004, <http://www.unhcr.org/refworld/docid/404d8a594.html>.

²⁰⁸ According to the 2010 “people under threat” index, Afghanistan is listed as the fourth most dangerous country for the following ethnic groups in the world: Hazara, Pashtuns, Tajiks, Uzbeks, Turkmen and Baluchis; see Minority Rights Groups International, *State of the World's Minorities and Indigenous Peoples 2010*, 1 July 2010, <http://www.minorityrights.org/download.php?id=840>.

²⁰⁹ See, for example, 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.unhcr.org/refworld/docid/4c1732de2.html>. During 2009, the authorities estimated approximately 9,900 affected by tribal, ethnic, or land disputes; see US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>.

²¹⁰ No population census has been conducted in the country since the 1970s. Based on previous, albeit outdated statistics, sources estimate that the current ethnic background is: Pashtun (42 percent), Tajik (27 percent), Hazara (9 percent), Uzbek (9 percent), Aimak (4 percent), Turkmen (3 percent), Baloch (2 percent), and other ethnicities, some related to the aforementioned groups (4 percent); see US Central Intelligence Agency, *CIA Factbook: Afghanistan*, last updated 18 October 2010, <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html>.

²¹¹ Maley, William, *The Afghan Wars*, 2002, New York, Palgrave Macmillan, pp. 8-9: “The population of Afghanistan has never been counted in a complete census, but the results of a partial census in 1979, adjusted to take account of other relevant data, suggested a population of approximately 13.05 million, including around 800,000 nomads (Eighmy, 1990: 10). This population was in no sense homogeneous, and indeed it is something of a misnomer to talk of “Afghan society”, for the term suggests a degree of coherent structure which was never really present. Rather, Afghanistan has encompassed a kaleidoscopic collection of ‘micro-societies’ (often identified by the label qawm, or ‘network’), with porous and flexible boundaries. One scholar even went so far as to dub Afghanistan a ‘Nation of Minorities’ (Jawad, 1992).

complex ethnic mosaic in some parts of the country, notably the northern and central regions, and in the major cities in the west, north and centre of Afghanistan. Consequently, an ethnic group cannot be classified as a minority by simply referring to national statistics. A person who belongs to a nationally dominant ethnic group – such as Pashtuns and Tajiks – may still face certain challenges relating, at least in part, to his or her ethnic association, in areas where other ethnic groups predominate. Conversely, a member of an ethnic group constituting a minority at the national level is not likely to be at risk in areas where the ethnic group represents the local majority. The issue of ethnicity may feature more prominently where tensions over access to natural resources (such as grazing land and water) and political/tribal disputes occur, or during periods of armed conflict.²¹²

Land disputes, particularly where ethnic differences arise or claims involve the illegal occupation of land by persons in positions of authority, are sometimes resolved by resorting to violence or threats. This may be the case where land occupiers are local commanders with strong links to the local or central administration. Where restitution is pursued and in the absence of political, tribal or family protection, the rightful owners may be at risk of ill-treatment, arrest and detention by local militia leaders or security officials.²¹³ Generally, persons residing in areas where they are an ethnic minority are at heightened risk when attempting to reclaim land and property.

As an example, one of the groups affected are the Pashtuns, who have been uprooted in large numbers by ethnic violence in the north and the west of the country following the collapse of the Taliban regime.²¹⁴ Pashtuns throughout northern Afghanistan, where they constitute an ethnic minority, have since been subject to discrimination, arbitrary arrests, violence and reprisal killings by non-Pashtun militias and groups because of their (perceived) association with the former Taliban regime, whose leadership consisted mostly of Pashtuns from southern Afghanistan.²¹⁵ Political power in the north reportedly still rests with local powerbrokers associated with the (Tajik-dominated) Northern Alliance, who are reluctant to allow the sustainable reintegration of Pashtun returnees or provide for their protection. As such, formerly displaced Pashtuns may be unable to recover their land and property upon return to their area of origin.²¹⁶

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."

²¹² For instance, a long-running history of ethnic clashes exists between the Hazaras and Kuchis, Pashtun-ethnic nomads, over grazing rights; see, for example, IRIN, *Afghanistan: Kuchi minority complain of marginalization*, 23 November 2010, <http://www.unhcr.org/refworld/docid/4cf4f83a14.html>; UN Security Council, *Report of the Secretary-General pursuant to paragraph 40 of resolution 1917 (2010)*, S/2010/318, 16 June 2010, para. 50, <http://www.unhcr.org/refworld/docid/4c35675f2.html>; and IRIN, *Afghanistan: UNAMA supporting efforts to end dispute over grazing land*, 13 May 2009, <http://www.unhcr.org/refworld/docid/4a0bdbcac.html>. See also Mark Latimer, *Peoples Under Threat 2009, Online Briefing*, p. 2, July 2009, <http://www.minorityrights.org/download.php?id=645>.

²¹³ See, for example, Finnish Immigration Service, *Fact-finding mission to Afghanistan, 24 Sept - 2 Oct. 2009*, 11 February 2010, <http://www.immigration.fi/netcomm/content.asp?path=8,2709,2718>. Land disputes are generally dealt with at the village level but returning families reportedly have limited access to justice. In 2003, the Government established a special land court to examine the property rights of returnees. In the absence of the rule of law, many of the court's judgments are not enforced. District primary courts can also hear land dispute cases, although it is reported that local powerbrokers often influence the proceedings; see International Crisis Group, *Afghanistan: What Now for Refugees?*, 31 August 2009, <http://www.unhcr.org/refworld/docid/4a9b95512.html>.

²¹⁴ Brookings-Bern Project on Internal Displacement, *Beyond the Blanket: Towards More Effective Protection for Internally Displaced Persons in Southern Afghanistan*, May 2010, <http://www.unhcr.org/refworld/docid/4c3d8cab2.html>; Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Afghanistan: Pashtuns*, 2008, <http://www.unhcr.org/refworld/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.unhcr.org/refworld/docid/3cb2ad007.html>.

²¹⁵ Pashtuns are Afghanistan's largest ethnic group, but a minority in the north of the country. The Pashtuns' presence in the north is mainly the result of a deliberate policy of settlement carried out in earlier centuries. Since the demise of the Taliban, reports have continued to reach UNHCR of Pashtun villagers and civilians facing harassment, intimidation and discriminatory treatment, and acts of violence, banditry and persecution at the hands of local militia commanders and other members of the factions controlling the north. See also Afghanistan Research and Evaluation Unit, *Afghanistan Livelihood Trajectories: Evidence from Faryab*, September 2010, <http://www.unhcr.org/refworld/docid/4ca33e562.html>; and Brookings-Bern Project on Internal Displacement, *Beyond the Blanket: Towards More Effective Protection for Internally Displaced Persons in Southern Afghanistan*, May 2010, <http://www.unhcr.org/refworld/docid/4c3d8cab2.html>. It has been reported that ethnic tensions between Pashtun and non-Pashtun groups, particularly in the Moqur and Qadis districts, Badghis province, resulted in conflict and occasional killings. In February 2009 members of a Pashtun group reportedly killed a prominent non-Pashtun, and several of his family members. Several Pashtuns were killed in retaliation, including Mowin Gholan, a Pashtun leader, in September 2009; see US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>.

²¹⁶ Brookings-Bern Project on Internal Displacement, *Beyond the Blanket: Towards More Effective Protection for Internally Displaced Persons in Southern Afghanistan*, May 2010, <http://www.unhcr.org/refworld/docid/4c3d8cab2.html>; and Internal Displacement Monitoring Centre, *Internal Displacement: Global Overview of Trends and Developments in 2009 - Afghanistan*, 17 May 2010, <http://www.unhcr.org/refworld/docid/4bf252560.html>. It is reported that in Kunduz, Pashtuns have called for assistance from foreign

Ethnic-based discrimination in the context of access to services, education²¹⁷ and employment is also reported in Afghanistan,²¹⁸ and, in extreme cases, could be tantamount to persecution. Such discrimination can be directed against any ethnic group depending on the context of the case.

Marginalized during the Taliban rule,²¹⁹ the Hazara community continues to face some degree of discrimination,²²⁰ despite significant efforts by the Government to address historical ethnic tensions.²²¹ Notwithstanding the comparatively stable security situations in provinces and districts where the Hazara constitute a majority or a substantial minority,²²² such as Jaghatu, Jaghori and Malistan districts in Ghazni province, the security situation in the remainder of the province, including on access routes to and from these districts, has been worsening.²²³ Although not able to launch widespread operations in Jaghori, there are some reports of Taliban attacks in the district.²²⁴ Jaghori district is increasingly isolated given that some access routes to and from the district, including large stretches of the strategic Kabul-Kandahar road, are reportedly under Taliban control. There are regular reports of ambushes, robberies, kidnappings and killings by the Taliban and criminal groups along these roads.²²⁵ The Taliban have also intimidated, threatened and killed individuals, including Hazaras, suspected of working for, or being supportive of, the Government and the international military forces.²²⁶ It has also been reported that in the Kajran District of Daykundi

Taliban fighters in their negotiations regarding land-ownership disputes with returnees of other ethnicities; see Finnish Immigration Service, *Fact-finding mission to Afghanistan*, 24 Sept - 2 Oct. 2009, 11 February 2010, <http://www.immigration.fi/netcomm/content.asp?path=8,2709,2718>.

²¹⁷ Estimated at three million (i.e. over 10 percent of the Afghan population), the Kuchi community is reportedly one of the poorest and most marginalized communities in Afghanistan. The Kuchis' illiteracy rate is the highest in the country and circa 14,000 Kuchis live in 16 slums in Kabul; see IRIN, *Afghanistan: Kuchi minority complain of marginalization*, 23 November 2010, <http://www.unhcr.org/refworld/docid/4cf4f83a14.html>. See also IRIN, *Afghanistan: Mixed report on Kuchi education*, 17 February 2010, <http://www.unhcr.org/refworld/docid/4b7e65182.html>. Among the reasons cited by Kuchis for not using health services are: inaccessibility, nonexistent or poor quality medicine and medical equipment, and discrimination in hospitals and health clinics; see AIHRC, *Report on the Situation of Economic and Social Rights in Afghanistan - IV*, December 2009, pp. 25-27, <http://www.unhcr.org/refworld/docid/4b3b2df72.html>.

²¹⁸ There have also been complaints from various ethnic groups regarding unequal access to local Government jobs in provinces where they constitute a minority; see, for example, US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>.

²¹⁹ See, for example, Rashid, Ahmed, *Taliban: Militant Islam, Oil and Fundamentalism in Central Asia*, 2001, Yale University Press, at 55-81; and Amnesty International Report, *Afghanistan: The Human Rights of Minorities*, 1 November 1999, <http://www.unhcr.org/refworld/docid/45b253cc2.html>.

²²⁰ See, for example, Freedom House, *Freedom in the World 2010 - Afghanistan*, 3 May 2010, <http://www.unhcr.org/refworld/docid/4c0ceb0d28.html>; and US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>.

²²¹ A positive development is that Afghanistan's Shiite minority, mostly from the Hazara tribes of central Afghanistan (Bamiyan and Dai Kundi provinces) can now celebrate their holidays openly, which they couldn't do before the fall of the Taliban; see US Congressional Research Service, *Afghanistan: Politics, Elections, and Government Performance*, 14 September 2010, p. 24, <http://www.unhcr.org/refworld/docid/4cc7e2352.html>. See also US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>.

²²² Once the largest Afghan ethnic group, the Hazaras represent about nine percent of the country's population and live principally in Hazarajat, the central mountainous core of Afghanistan, or the Badakhshan mountains; see Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Afghanistan: Hazaras*, 2008, <http://www.unhcr.org/refworld/docid/49749d693d.html>.

²²³ See, for example, ANSO, *ANSO Quarterly Data Report: Q.3.2010, 1 January 2010-30 September 2010*, 30 September 2010, p. 12, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/JALR-8A9DLQ>.

²²⁴ For example, in 2007, members of the former police chief Bashi Habibullah's family were killed in a Taliban raid in Angori. Taliban militiamen from neighbouring districts have also carried out attacks against bordering police posts in Hutqul, while "night letters" were issued by the Taliban to villagers in the district; see the Finnish Immigration Service, *The Current Situation in the Jaghori District of Ghazni*, 10 December 2009, as cited in *RRT Case No. 1002233*, [2010] RRTA 588, Australia: Refugee Review Tribunal, 19 July 2010, <http://www.unhcr.org/refworld/docid/4c84d16a2.html>. See also Professor Maley, *On the Position of the Hazara Minority in Afghanistan*, 20 May 2010, www.ajustralia.com/downloads/Maley-Hazaras-Opinion-1.doc.

²²⁵ According to a Ghazni parliamentary representative, some 150 cars were stolen in 2008; see the Finnish Immigration Service, *The Current Situation in the Jaghori District of Ghazni*, 10 December 2009, as cited in *RRT Case No. 1002233*, [2010] RRTA 588, Australia: Refugee Review Tribunal, 19 July 2010, <http://www.unhcr.org/refworld/docid/4c84d16a2.html>. According to information available to UNHCR, unconfirmed reports indicate that taxation of supplies going to Hazara areas by the Taliban still takes place.

²²⁶ The authorities confirmed that in June 2010, at least nine Hazara men have been killed in an ambush in a remote area of central Afghanistan that is largely controlled by the Taliban. The Taliban subsequently claimed responsibility for the attack. According to Afghan security officials, the attack occurred in a mountainous part of south-eastern Uruguan Province that is not under Government control, and it was reportedly motivated by the perception that Hazaras act as spies and informants to the international military forces in the area; see The New York Times, *Taliban Kill 9 Members of Minority in Ambush*, 25 June 2010, <http://www.nytimes.com/2010/06/26/world/asia/26kabul.html>. See also Reuters, *Police find 11 beheaded bodies in Afghan south*, 25 June 2010, <http://www.reuters.com/article/idUSTRE65O2ML20100625>; Sydney Morning Herald, *Sending Hazaras back to Afghanistan 'extremely dangerous'*, 6 July 2010, <http://www.smh.com.au/national/sending-hazaras-back-to-afghanistan-extremely-dangerous-20100705-zxp6.html>; and The Australian, *Pakistani officials ridicule Rudd's visa rethink*, 13 April 2010, <http://www.theaustralian.com.au/news/nation/pakistani-officials-ridicule-rudds-visa-rethink/story-e6frg6nf-1225852940687>.

province, armed anti-Government groups engage in propaganda against Hazaras and Shia Muslims allegedly on the ground of religious differences.²²⁷

Historically, certain scenarios have also given rise to, or exacerbated, ethnic-based tensions in Afghanistan. These include disputes between ethnic groups or tribes which relate to land, water and grazing rights.²²⁸ In May 2010, for example, ethnic clashes over grazing rights broke out between the Hazaras and the Kuchis, mainly ethnic Pashtun nomads, in Wardak Province resulting in four fatalities, destruction of houses and displacement.²²⁹ In August 2010, a land dispute between Hazaras and Kuchis in Kabul resulted in the displacement of over 250 Kuchi families.²³⁰ Furthermore, the various divisions within an ethnic group may, in some instances, lead to intra-ethnic tension or conflict.²³¹

Although available evidence suggests that some members of (minority) ethnic groups, including Hazaras, may engage in irregular migration for social, economic and historical reasons, this does not exclude that others are forced to move for protection-related reasons. UNHCR therefore considers that members of ethnic groups, including, but not limited to those affected by ethnic violence or land use and ownership disputes, particularly in areas where they do not constitute an ethnic majority, may be at risk on account of their ethnicity/race and/or (imputed) political opinion, depending on the individual circumstances of the case.²³² However, the mere fact that a person belongs to an ethnic group constituting a minority in a certain area does not automatically trigger concerns related to risks on the ground of ethnicity alone. Other factors including, *inter alia*, the relative social, political, economic and military power of the person and/or his and her ethnic group in the area where fear is alleged may be relevant. Consideration should also be given to whether the person exhibits other risk factors outlined in these Guidelines, which may exacerbate the risk of persecution. In the ever-evolving context of Afghanistan, the potential for increased levels of ethnic-based violence will need to be borne in mind.

11. Blood Feuds

The well-established practice of blood feuds is rooted in traditional Afghan culture. Blood feuds are conflicts between opposing families, tribes and armed factions, and are often initiated in reaction to perceived violations to the honour of women, property rights, and land or water issues.²³³ According

²²⁷ According to information available to UNHCR.

²²⁸ See for example, IRIN, *Afghanistan: Kuchi minority complain of marginalization*, 23 November 2010, <http://www.unhcr.org/refworld/docid/4cf4f83a14.html>; and from the Kabul-based research institute, Co-operation for Peace and Unity (CPAU), *Fractured Relationships: Understanding Conflict between Nomadic and Settled Communities in Wardak's Pastureland*, October 2010, http://www.cpau.org.af/Research/Docs_our_publications/CPAU%20Report%20-%20Fractured%20Relationships.pdf. See also UNEP, *Recommended Strategy for Conflict Resolution of Competing High Pasture Claims of Settled and Nomadic Communities in Afghanistan*, 2009, http://postconflict.unep.ch/publications/afg_tech/theme_01/afg_rangeland_summary_EN.pdf; CPAU, *Conflict Analysis: Chak and Sayedbad Districts, Wardak Province*, April 2009, http://www.cpau.org.af/Research/Docs_our_publications/Wardak%20Conflict%20Analysis%20Apr%2009%20Final.pdf; and CPAU, *Conflict Analysis: Jaghori and Malistan Districts, Ghazni Province*, April 2009, http://www.cpau.org.af/Research/Docs_our_publications/Ghazni%20Conflict%20Analysis%20Apr%2009%20Final.pdf.

²²⁹ On 18 May 2010, a Government delegation visited the area. An agreement with the parties, formalized by a presidential decree, called for a ceasefire, ordered the Kuchis to leave the contested areas and arranged compensations both for the villagers and the Kuchis who suffered damage; see UN Security Council, *Report of the Secretary-General pursuant to paragraph 40 of resolution 1917 (2010)*, S/2010/318, 16 June 2010, para. 50, <http://www.unhcr.org/refworld/docid/4c35675f2.html>; and Pajhwok Afghan News, *Political motives behind Afghan ethnic violence*, 25 May 2010, accessed through Newsedge.com. In 2009, ethnic tensions between the Kuchis and Hazaras, fueled by conflicts over grazing rights, were also reported in Ghazni province especially in the high passes in Jaghato, Nawur, and Kwaja Omari; see US Department of State, *2009 Country Reports on Human Rights Practices - Afghanistan*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e531a82.html>.

²³⁰ According to UNHCR information, on 13 August 2010, a land dispute between Hazara and Kuchi groups in District 13 area of Kabul City resulted in the violent displacement of approximately 250 Kuchi families who are now temporarily sheltered in a building in District 6. See also Xinhua, *Gun battle in Afghan capital kills 10: witnesses*, 13 August 2010, accessed through Newsedge.com.

²³¹ See, for example, the Afghanistan-based NGO, the Liaison Office (TLO), *Land Based Conflict Report, the case of Paktia*, December 2008, <http://www.tlo-afghanistan.org/publications/working-paper-series/tlo-land-based-conflict-report-case-paktia>; and TLO, *Stability Through Dialogue: Kuchi Conflict Mitigation, workshop report (1 - 3 November 2008)*, 2008, <http://www.tlo-afghanistan.org/sites/default/files/workshop-reports/TLO-GTZ-Stability-Through-Dialogue-Kuchi-Conflict-Mitigation-Workshop-Report.pdf>.

²³² See, for example, *RRT Case No. 1000358* [2010] RRTA 328, 30 April 2010, <http://www.austlii.edu.au/au/cases/cth/RRTA/2010/328.txt>, where the Australian Refugee Review Tribunal accepted, based on the available country information, that the appellant, who wanted to reclaim from a local politician land of which his family had been unlawfully dispossessed, was likely to be refused State protection because of his ethnicity (in this case, Hazara), which would amount to persecution under the 1951 Convention.

²³³ Pursuant to the norms of the Pashtunwali code, the causes of blood feuds are the violation of “zar, zan, zamin” – gold, women and land.

to the practice, individuals associated with the family or tribe of the individual seen as the wrongdoer are targeted by the victim's tribe or family members. Revenge is sought through killing, physically injuring or publicly shaming the perpetrator or individuals related by family or tribe.

Blood feuds can be long-running conflicts, lasting for generations, with a cycle of retaliatory violence between parties.²³⁴ Solving a dispute through a formal justice mechanism does not normally put an end to a blood feud. Particularly among Pashtuns, blood feuds can be settled through a formal decision of a *jirga* – generally an all-male community-based dispute resolution mechanism.²³⁵ A peaceful compromise, such as a *bad dadab* marriage, may sometimes prevent a dispute from spiralling into a blood feud.²³⁶

In light of the foregoing, UNHCR considers that persons involved in, or targeted because of, a blood feud may, depending on the circumstances of the individual case, be at risk on account of membership of a particular social group.²³⁷ Claims by persons with the aforementioned profiles may, however, give rise to the need to examine possible exclusion from refugee status.

B. Eligibility Under Broader International Protection Criteria, Including Complementary Forms of Protection

This section of the Guidelines provides guidance for the determination of eligibility for international protection of Afghan asylum-seekers fleeing areas of conflict in Afghanistan, but who do not meet the refugee criteria contained in Article 1(a) of the 1951 Convention.²³⁸

Persons who are outside their country of origin because of a serious threat to their life, liberty or security as a result of generalized violence or events seriously disturbing public order may also be recognized as refugees under the broader international protection criteria, where applicable. Such broader criteria are reflected in regional refugee instruments²³⁹ and form part of UNHCR's extended

²³⁴ See, for example, The Times, *Karzai forced to investigate family blood feud after cousin is murdered*, 23 December 2009, <http://www.unhcr.org/refworld/docid/4b3c8bb42.html>; and The Telegraph, *Afghan blood feud ends after 30 years*, 1 June 2008, <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/2061531/Afghan-blood-feud-ends-after-30-years.html>.

²³⁵ See, for example, Tribal Analysis Center, *Jirga System in Tribal Life*, April 2007, p.5, <http://www.tribalanalysiscenter.com/PDF-TAC/Jirga%20System%20in%20Tribal%20Life.pdf>.

²³⁶ An ancient Pashtun tradition, *bad* (or *baad*) marriages is a practice in which a girl is given in marriage to an opposing family in order to resolve a dispute or as a form of compensation; see AIHRC, *Report on the Situation of Economic and Social Rights in Afghanistan - IV*, December 2009, <http://www.unhcr.org/refworld/docid/4b3b2df72.html>. Although in decline, *bad* marriages are still reportedly used in dispute resolution; see, for example, Afghanistan Research and Evaluation Unit, *Community-Based Dispute Resolution Processes in Nangarhar Province*, December 2009, <http://www.unhcr.org/refworld/docid/4b3870cf2.html>; and Afghanistan Research and Evaluation Unit, *Community-Based Dispute Resolution Processes in Bamiyan Province*, December 2009, <http://www.unhcr.org/refworld/docid/4b38706e2.html>. For further information on harmful traditional practices, including *bad* marriages, please refer to Section IIIA(6) Women with Specific Profiles.

²³⁷ 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.unhcr.org/refworld/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.unhcr.org/refworld/docid/3d36f23f4.html>. See also *Refugee Appeal No. 76355*, 5 November 2009, <http://www.unhcr.org/refworld/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.

²³⁸ It is important to note that persons fleeing their country of origin in situations of armed conflict may have a well-founded fear of persecution based on one or more of the 1951 Convention grounds. When examining the link to a 1951 Convention ground in the claims of persons who are fleeing a situation of armed conflict, there is no requirement that the individual be known to, and sought personally by the agent(s) of persecution. Whole communities may risk or suffer persecution for 1951 Convention reasons, and there is no requirement that an individual suffer a form or degree of harm which is different than that suffered by other individuals with the same profile. Furthermore, many ordinary civilians may be at risk of harm from bombs, shelling, suicide attacks, and improvised explosive devices. These methods of violence may be used against targets or in areas where civilians of specific ethnic or political profiles predominantly reside or gather, and for this reason, may be linked to a 1951 Convention ground. 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, para. 164, <http://www.unhcr.org/refworld/docid/3ae6b3314.html>. The 1951 Convention forms the cornerstone of international protection for refugees and should, therefore, be rigorously and properly applied. 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 extended/broader refugee criteria and/or complementary/subsidiary regimes be examined. 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.unhcr.org/refworld/docid/43576e292.html>.

²³⁹ See for example, *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.unhcr.org/refworld/docid/3ae6b36ec.html> and Organization of African Unity, *Convention*

mandate responsibilities.²⁴⁰ In other regions the 1951 Convention refugee definition has not been extended, but rather complemented through the establishment of specifically tailored international protection mechanisms.²⁴¹

In the last twelve months, conflict-related violence has reached such high levels in certain parts of Afghanistan that a situation of generalized violence²⁴² can be said to exist.²⁴³ The armed conflict has particularly intensified in the southern region and has even expanded into areas previously considered stable.²⁴⁴ The severity of conflict-related violence and the correlative risk to Afghan civilians has been assessed by UNHCR on the basis of several cumulative indicators: (i) civilian casualties as a result of indiscriminate acts of violence, including bombings, air strikes, suicide attacks, IED explosions and landmines; (ii) conflict-related security incidents; and (iii) conflict-induced population displacements and voluntary returns.

I. Civilian Casualties

In the first half of 2010, the total number of civilian casualties in Afghanistan as a direct result of the armed conflict increased by 31 percent compared to the same period in 2009. Armed anti-Government groups were reportedly responsible for 72 percent of the civilian casualties, mainly through suicide attacks and IED explosions.²⁴⁵ While both the ISAF²⁴⁶ and Taliban²⁴⁷ made pledges to reduce civilian casualties, civilian deaths continue to rise. It should be noted that civilian casualties as a result of ISAF military operations have been reduced significantly, but still occur, particularly during air strikes and night raids.²⁴⁸

Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45, <http://www.unhcr.org/refworld/docid/3ae6b36018.html>.

²⁴⁰ UNHCR's mandate encompasses the refugee criteria under the 1951 Convention, as well as broader refugee criteria developed through successive UN General Assembly resolutions in conjunction with regional refugee instruments and international human rights law.

²⁴¹ In the European Union, for example, "subsidiary protection" shall be granted to persons who have been found not to meet the criteria for refugee status under the 1951 Conventions, but are at risk of serious harm by reason of indiscriminate violence in situations of international or internal armed conflict. See European Union: Council of the 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*, 2004/83/EC, 19 May 2004, <http://www.unhcr.org/refworld/docid/4157e75e4.html> (Article 15).

²⁴² Generalized violence is characterized by continuous, general and sustained levels of violence in a country or region. Where the level of violence is sporadic or isolated, the situation cannot be described as one of generalized violence. See for example *A.L.N. v. Switzerland*, CAT/C/20/D/090/1997, 19 May 1998 (UN Committee Against Torture), para 5.7, <http://www.unhcr.org/refworld/docid/3f588ee1e.html> and Article 1(2) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609, 8 June 1977, <http://www.unhcr.org/refworld/docid/3ae6b37f40.html>

²⁴³ UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, <http://www.unhcr.org/refworld/docid/4c6120382.html>; 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.unhcr.org/refworld/docid/4bb44c5c2.html>

²⁴⁴ UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, <http://www.unhcr.org/refworld/docid/4c6120382.html>; and 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.unhcr.org/refworld/docid/4bb44c5c2.html>

²⁴⁵ UNAMA documented 3,268 civilian casualties, i.e. 1,271 deaths and 1,997 injuries, during the first six months of 2010. 386 civilian casualties were attributed to pro-Government forces, representing a 30 percent decrease from the same period in 2009; see UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, <http://www.unhcr.org/refworld/docid/4c6120382.html>. See also Afghanistan Rights Monitor, *ARM Mid-Year Report Civilian Casualties of Conflict January-June 2010*, 12 July 2010, <http://arm.org.af/file.php?id=2>.

²⁴⁶ Measures taken by international forces to reduce civilian casualties, in particular a tactical directive issued in July 2009 to limit the use of force in populated areas, contributed to a 28 percent reduction in the total number of recorded civilian deaths attributed to pro-Government forces in 2009 as compared with 2008

²⁴⁷ Notwithstanding a Taliban code of conduct, also issued in July 2009, to prevent civilian casualties, civilian deaths attributed to armed anti-Government groups rose by 41 percent as compared with 2008.

²⁴⁸ According to UNAMA, in the first half of 2010, 386 civilian casualties were attributed to pro-Government forces, representing a 30 percent decrease from the same period in 2009; see UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, pp. 13-26, <http://www.unhcr.org/refworld/docid/4c6120382.html>. See also 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.unhcr.org/refworld/docid/4bb44c5c2.html>; Afghanistan Rights Monitor, *ARM Mid-Year Report Civilian Casualties of Conflict January-June 2010*, 12 July 2010, <http://arm.org.af/file.php?id=2>; Three civilians were killed in an air strike in Helmand on 4 October; see AlertNet, *Factbox-Security developments in Afghanistan, Oct 4*, 4 October 2010, <http://www.alertnet.org/thenews/newsdesk/SGE693013.htm>; ISAF troops accidentally killed two civilians when responding to insurgent fire on a military base in Logar province, south of Kabul; see AlertNet, *Factbox Security developments in Afghanistan, Oct 3*, 3 October 2010, <http://www.alertnet.org/thenews/newsdesk/SGE692007.htm>; Afghanistan Rights Monitor, *Airstrikes in Farah Killed 117 Civilians*, 13 May 2009, http://arm.org.af/index.php?page=en_Latest+News+05.

In the southern region, civilian deaths increased by 43 percent and in the south-eastern by 24 percent in the first six months of 2010.²⁴⁹ The previously more stable north-eastern region experienced a sharp rise in the activities of armed anti-Government groups, which resulted in an intensification of the conflict and caused an increase of 136 percent in civilian deaths compared to the same period in 2009.²⁵⁰

The increased use of IEDs²⁵¹ by armed anti-government groups has resulted in large numbers of civilian casualties. IED explosions accounted for 29 percent of civilian deaths country-wide²⁵² and 65 percent of the civilians killed in the southern region during the first half of 2010.²⁵³

In the first half of 2010, suicide attacks caused 183 civilian deaths, more than half of which occurred in the southern region; this represents a 20 percent increase compared to the same period in 2009.²⁵⁴

Although during the first half of 2010 armed anti-Government groups predominantly targeted military objectives, IEDs and suicide attacks tactics were also used in civilian areas, including along roads used by civilians, around government buildings, outside hotels, in busy markets and in commercial areas.²⁵⁵

Notwithstanding sustained efforts to clear mines and UXOs in the last decade and a steady decrease in the number of Afghan victims, mines and explosive remnants cause, on average, 42 casualties per month, a large majority of who are children. In addition to causing loss of life and serious injury, mine contamination has prevented livelihood activities, including by blocking access to agricultural land, water, health and education.²⁵⁶

A further analysis by UNHCR of reported incidents of civilian casualties during the period from 1 July 2010 to 8 October 2010 reveals that the provinces most affected by indiscriminate conflict-

²⁴⁹ Based on information available to UNHCR and corroborated by sources such as the Afghanistan NGO Safety Office's Weekly and Quarterly reports, http://www.afgnso.org/index_files/Page447.htm.

²⁵⁰ UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, pp. 13-26, <http://www.unhcr.org/refworld/docid/4c6120382.html>. See also UN General Assembly, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/64/911-S/2010/463, 14 September 2010, para. 15, <http://www.unhcr.org/refworld/docid/4ca187f62.html>. According to General Petraeus, the ISAF Commander General, additional military efforts are needed in southern Baghlan and Kunduz; see NATO, *ISAF Commander General David Petraeus interviewed on Afghanistan*, 31 August 2010, http://www.nato.int/cps/en/natolive/opinions_65854.htm.

²⁵¹ From June to mid-September 2010, the incidents involving IEDs rose by 82 percent compared to the same period in 2008; see UN General Assembly, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/64/911-S/2010/463, 14 September 2010, para. 15, <http://www.unhcr.org/refworld/docid/4ca187f62.html>.

²⁵² 374 persons, a 44 percent increase over the same period in 2009

²⁵³ UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, <http://www.unhcr.org/refworld/docid/4c6120382.html>.

²⁵⁴ UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, <http://www.unhcr.org/refworld/docid/4c6120382.html>.

²⁵⁵ On 5 October 2010, some 25 civilians were wounded and nine killed when insurgents ambushed a police convoy in Kandahar. This was the latest in a string of violent attacks in the volatile province. A few days before, two policemen were killed and 11 more wounded after three explosions struck near a troop convoy travelling out of Kandahar City; see Reuters, *Afghan ambush kills 9 and wounds 25 in restive south*, 5 October 2010, <http://www.reuters.com/article/idUSSGE6940KJ20101005>; and CNN, *Blasts in Kandahar kill 10*, 6 October 2010, <http://edition.cnn.com/2010/WORLD/asiapcf/10/05/afghanistan.explosions/index.html?hpt=T2>. On 30 September 2010, a suicide bomber in a car blew himself up beside a convoy of ISAF troops in the southern province of Kandahar, killing three civilians and wounding nine others; see AlertNet, *Factbox-Security developments in Afghanistan, Sept 30*, 30 September 2010, <http://www.alertnet.org/thenews/newsdesk/SGE68T07S.htm>. On 25 September 2010, a roadside bomb killed two civilians and wounded three others in Logar province; see AlertNet, *Factbox-Security developments in Afghanistan, Sept 25*, 25 September 2010, <http://www.alertnet.org/thenews/newsdesk/SGE68N0B9.htm>. On 21 September 2010, a roadside bomb killed five construction workers and injured three others in central Parwan province; see Reuters, *Factbox: Security developments in Afghanistan*, 21 September 2010, <http://www.reuters.com/article/idUSTRE68K1UM20100921>. In January 2010, a series of coordinated attacks against ministries and other targets by presumed Taliban militants in Kabul killed at least 10 people and injured 32. Seven of those responsible were among the dead; see The Guardian, *Taliban militants attack Afghan capital*, 18 February 2010, <http://www.guardian.co.uk/world/2010/jan/18/taliban-militants-attack-kabul-centre>; and BBC News, *Afghan capital Kabul hit by Taliban attack*, 18 January 2010, http://news.bbc.co.uk/2/hi/south_asia/8464763.stm. On 26 February a complex attack comprised of a series of suicide attacks, targeted foreign residences and guesthouses in Kabul City that resulted in the deaths of at least 17 people, including 13 civilians; many of them foreigners. Forty-four civilians were reportedly injured, the majority of whom were Afghans. On 18 May, a suicide vehicle-borne IED detonated close to Darula Anman area in Kabul City targeting an international military convoy. As a result of the explosion, seven civilians were killed and 49 others were injured, including women and children; see UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, <http://www.unhcr.org/refworld/docid/4c6120382.html>.

²⁵⁶ See, for example, Integrated Regional Information Networks (IRIN), *Afghanistan: More war victims, fewer landmine casualties*, 29 October 2010, <http://www.unhcr.org/refworld/docid/4ccfd4592c.html>; Mine Action Coordination Centre of Afghanistan, *MAPA Annual Report*, 31 March 2010, http://www.macca.org.af/en/MAPA_Reports.html; and 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, para. 26, <http://www.unhcr.org/refworld/docid/4bb44c5c2.html>.

related violence are Helmand and Kandahar in the southern region and Kunduz in the north-eastern region.²⁵⁷

2. Security Incidents

In the first six months of 2010, the southern and south-eastern regions accounted for over 50 percent of all security incidents²⁵⁸ in the country. The security incidents also appear increasingly more geographically dispersed than in prior years.²⁵⁹ In the period from mid-June to mid-September 2010, the overall number of security incidents increased by 69 percent compared to the same period in 2009.²⁶⁰ The deterioration of the security situation has been attributed to a number of factors, including increased international troop levels and a corresponding increase in security operations by the Afghan National Security Forces, and increased activities of anti-Government groups.²⁶¹ In January 2010, ISAF began the deployment of 34,000 additional troops to Afghanistan to support national security forces in their stabilization efforts. Jointly-conducted large military operations by Government and international forces were initiated in Helmand and Kandahar provinces. The “surge” of international forces, coupled with Operation Moshtarak,²⁶² and Operation Hamkari,²⁶³ as well as the ensuing Taliban response, contributed to the intensification of the conflict and an increase in civilian deaths in those provinces.²⁶⁴

UNHCR is also mindful that over the coming months some 150,000 US/NATO troops, backed by tens of thousands of Afghan forces, will be seeking to make military gains against the Taliban, thereby increasing the likelihood of an intensification and broadening of the conflict.²⁶⁵

3. Conflict-Induced Displacements and Voluntary Returns

Increasing insecurity and violence in certain parts of Afghanistan, resulting from the fighting between anti-Government groups and pro-Government forces, continue to cause significant population displacements. The number of conflict-induced IDPs continues to rise and displacement is largely taking place in the southern and western regions of Afghanistan.²⁶⁶ At the end of October 2010, the total estimated figure of IDPs stood at 330,298. Of these, 131,984 were displaced due to the conflict

²⁵⁷ Based on an analysis of all Reuters, Factbox Security Developments in Afghanistan, from 1 July 2010 – 8 October 2010, <http://www.alertnet.org/>.

²⁵⁸ Security incidents include targeted attacks, such as assassinations, executions, as well as air strikes, ground engagement, IEDs, suicide attacks, etc.

²⁵⁹ Based on information available to UNHCR and corroborated by sources such as the Afghanistan NGO Safety Office's Weekly and Quarterly reports, http://www.afgnsso.org/index_files/Page447.htm.

²⁶⁰ UN General Assembly, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/64/911–S/2010/463, 14 September 2010, para. 15, <http://www.unhcr.org/refworld/docid/4ca187f62.html>.

²⁶¹ UN Security Council, *Report of the Secretary-General pursuant to paragraph 40 of resolution 1917 (2010)*, S/2010/318, 16 June 2010, <http://www.unhcr.org/refworld/docid/4c35675f2.html>.

²⁶² Operation Moshtarak, a joint operation of Afghan and international forces, aimed at regaining control over Marja and Nad Ali areas of Helmand province from the Taliban.

²⁶³ Operation Hamkari was aimed at enhancing the stability and security conditions in Kandahar City and surrounding areas.

²⁶⁴ UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, pp. 13-26, <http://www.unhcr.org/refworld/docid/4c6120382.html>. See also UN General Assembly, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/64/911–S/2010/463, 14 September 2010, paras. 15 & 17, <http://www.unhcr.org/refworld/docid/4ca187f62.html>. An extension of Operation Moshtarak, Operation New Dawn was launched on 12 June 2010 as joint ISAF / ANA operation, led by the United States Marines, to disrupt insurgents and deny them freedom of movement in the sparsely populated areas between Marjah and Nawa; see ISAF, ANA, *ISAF Complete First Task in Operation New Dawn*, 21 June 2010, <http://www.isaf.nato.int/article/isaf-releases/ana-isaf-complete-first-task-in-operation-new-dawn.html>. Dubbed Operation Dragon Strike, the latest phase of Operation Hamkari is seen as an effort to eliminate the Taliban from Kandahar and the surrounding areas of Zhari, Panjawi and Arghandab, long regarded as Taliban hotbeds; see ISAF, *NATO SCR and Afghan MOD give Weekly Operational Update*, 26 September 2010, <http://www.isaf.nato.int/article/isaf-releases/isaf-nato-scr-and-afghan-mod-spokesmen-give-weekly-operational-update.html>; and Saudi Gazette, *NATO and Afghan forces sweep through Kandahar*, 28 September 2010, <http://www.saudigazette.com.sa/index.cfm?method=home.region&contentID=2010092884253>. According to the ISAF spokesman, due to sustained military operations focusing on the six districts of Central Helmand, the Taliban no longer dominated the region, and had been captured, killed or pushed into the periphery of the major population centres. 70 to 80 percent of Argandhab was estimated to be cleared, while ISAF and Government military operations were ongoing in the areas of Najarai and Panjw'ai of Kandahar; see ISAF, *SCR Operational Update Oct. 10*, 10 October 2010, <http://www.isaf.nato.int/article/isaf-releases/isaf-scr-operational-update-oct.-10.html>.

²⁶⁵ See, for example, ANSO, *ANSO Quarterly Data Report: Q3.2010*, 1 January 2010-30 September 2010, pp. 5-6 and 15, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/JALR-8A9DLQ>; and IRIN, *Afghanistan: More fighting, greater humanitarian needs*, 13 July 2010, <http://www.unhcr.org/refworld/docid/4c4019c2c.html>. See also ANSO, *Quarterly Report, Q.2 2010*, 30 June 2010, illustrating increases in violent incidents and civilian casualties as a result of the increased counterinsurgency operations.

²⁶⁶ Integrated Regional Information Networks (IRIN), *Afghanistan: UNHCR worried about growing number of conflict IDPs*, 3 November 2010, <http://www.unhcr.org/refworld/docid/4cd3c9d2c.html>.

between June 2009 and October 2010.²⁶⁷ In February 2010, 27,700 persons were displaced as a result of military operations in Helmand province alone.²⁶⁸ For example, the second phase of operation Hamkari, which started in July 2010 in the Arghandab district of Kandahar province, has led to the displacement of 629 families (4,538 individuals) in Kandahar City. Furthermore, initial estimates indicate that approximately 750 families were newly displaced as a result of Operation Dragon Strike initiated on 24 September 2010. There have been smaller-scale displacements reported in Zabol, Badghis, Farah and Ghor provinces. Many IDPs remain unaccounted for due to their displacement in mainly conflict affected areas in the southern region of the country and the fact that there is little or no humanitarian access in these areas.²⁶⁹ Furthermore, many IDPs reside in informal settlements or in urban locations in other parts of the country such as Kabul rather than in monitored and assisted IDP settlements.²⁷⁰

While there has been an increase in conflict-induced displacement in Afghanistan, it should be noted that voluntary returns, particularly from Pakistan and Iran, are also increasing. Between March and October 2010, over 100,000 Afghans returned, double the number from the same period in 2009. The reasons for return are several, and include: (i) the perception that the security situation in some provinces has improved; (ii) economic factors and (iii) the increased insecurity and natural disasters in the former settlement areas in Pakistan.²⁷¹ While thousands of Afghans returned to their home areas, nearly one third currently reside in informal IDP settlements or urban areas in Afghanistan. Some of these settlements are located in the provinces of Nagarhar, Laghman and Kunar, which are experiencing fluctuating but still significant levels of civilian casualties and security incidents.²⁷² It should be noted that many returns are occurring in the context of deteriorating conditions for Afghans outside the country rather than significant improvements in the security and human rights conditions in Afghanistan.

4. Summary Regarding Generalized Violence

UNHCR recognizes that the uncertainty due to the fluid and volatile nature of the conflict in Afghanistan has in the past been problematic for decision makers when assessing claims falling outside of the refugee definition contained in the 1951 Convention. However, in light of: (i) the worsening security environment in certain parts of the country; (ii) the increasing number of civilian casualties; and (iii) the significant population displacements, UNHCR considers that the situation in certain parts of Afghanistan, as set out below, can be characterized as one of generalized violence at the time of writing. Additionally, the overall situation in Afghanistan has also been recognized by the International Committee of the Red Cross (ICRC) as an internal armed conflict in accordance with the definitions and scope set out in Article 1(1) of Protocol II to the Geneva Conventions.²⁷³

More specifically, based on information known and available to UNHCR at the time of writing, the situation in Helmand, Kandahar, Kunar, and in parts of Ghazni and Khost provinces has reached such a high: (i) number of civilian casualties; (ii) frequency of security incidents; and (iii) number of persons displaced due to the armed conflict, that the situation is recognized by UNHCR as one of

²⁶⁷ According to data on internal displacement managed jointly by UNHCR staff in the field and the Provincial Department of Refugees and Repatriation.

²⁶⁸ UN Security Council, *Report of the Secretary-General pursuant to paragraph 40 of resolution 1917 (2010)*, S/2010/318, 16 June 2010, <http://www.unhcr.org/refworld/docid/4c35675f2.html>.

²⁶⁹ See, for example, UN General Assembly, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/64/911–S/2010/463, 14 September 2010, para. 48, <http://www.unhcr.org/refworld/docid/4ca187f62.html>; and 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.unhcr.org/refworld/docid/4bb44c5c2.html>.

²⁷⁰ Integrated Regional Information Networks (IRIN), *Afghanistan: UNHCR worried about growing number of conflict IDPs*, 3 November 2010, <http://www.unhcr.org/refworld/docid/4cd3c9d2c.html>.

²⁷¹ UNHCR, *Voluntary returns to Afghanistan exceed 100,000 this year*, 27 August 2010, <http://www.unhcr.org/4c77a0d59.html>. See also IRIN, *Afghanistan: Increased number of returnees from Pakistan*, 4 November 2010, <http://www.unhcr.org/refworld/docid/4cd91d56c.html>.

²⁷² See ANSO, *The ANSO Report 1-15 November 2010*, Issue 61, <http://www.afganso.org/2010/The%20ANSO%20Report%20%281-15%20November%202010%29.pdf>.

²⁷³ ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 1125 UNTS 609, 8 June 1977, Article 1(2), <http://www.unhcr.org/refworld/docid/3ae6b37f40.html>. According to the ICRC, the “international” character of the armed conflict in Afghanistan ended with the establishment of the transitional Government in June 2002. See ICRC, *International humanitarian law and terrorism: questions and answers*, 5 May 2004, <http://www.icrc.org/Web/eng/siteeng0.nsf/iwpList488/0F32B7E3BB38DD26C1256E8A0055F83E>

generalized violence. Therefore, Afghan asylum-seekers, formerly residing in Helmand, Kandahar, Kunar, and in parts of Ghazni and Khost provinces²⁷⁴ may be in need of international protection under complementary forms of protection on the basis of a fear of serious and indiscriminate harm arising from the situation of generalized violence.²⁷⁵

Furthermore, in light of the: (i) sustained large-scale military operations in the southern region in Helmand and Kandahar provinces; (ii) the ensuing struggle for territorial control by parties to the conflict; and (iii) outbreaks of violence in previously unaffected areas, UNHCR considers that no internal flight or relocation alternative (IFA/IRA) is available in either of these two provinces. With regard to Afghans formerly residing in any other conflict-affected province, the availability of an IFA/IRA outside of Helmand and Kandahar should be assessed individually on the basis of the IFA/IRA framework detailed in Section C below.

Given the complexity and fluidity of the situation, asylum applications by Afghans claiming to flee generalized violence in other parts of Afghanistan should each be assessed carefully, in light of the evidence presented by the applicant and other current and reliable information on the place of former residence. This latter determination will obviously need to include assessing whether a situation of generalized violence exists in the place of former residence at the time of adjudication. It should be noted that other provinces, including Uruzgan, Zabul, Paktika, Nangarhar, Badghis, Paktya, Wardak and Kunduz, are also experiencing fluctuations in reports of security incidents. The level of violence, casualties and forced displacements can be significant depending on the activities of armed groups and conflicts with ISAF and Afghan forces.

C. Internal Flight or Relocation Alternative

A detailed analytical framework for assessing the availability of an internal flight or relocation alternative (IFA/IRA) 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*.²⁷⁶

1. Individuals at Risk of Targeted Persecution

In order for an IFA/IRA to be a relevant consideration in any given case, the area must be found to be accessible and without factors that could constitute a well-founded fear of being persecuted.

Given the wide geographic reach of some armed anti-Government groups, a viable IFA/IRA may not be available to individuals at risk of being targeted by such groups. It is particularly important to note that the operational capacity of the Taliban (including the Haqqani network), the Hezb-e-Eslami (Gulbuddin) and other armed groups in the southern, south-eastern and eastern regions is not only evidenced by high-profile attacks, such as (complex) suicide bombings, but also through more permanent infiltration in some neighbourhoods and the regular distribution of threatening "night-letters".

Furthermore, some non-State agents of persecution, such as organized crime networks, local commanders of irregular or paramilitary outfits and militias, as well as the Taliban and the Hezb-e-

²⁷⁴ It should be noted that whilst certain districts of Ghazni and Khost are not characterized by generalized violence, such districts may nevertheless not be safely accessible due to the security situation in neighbouring districts and/or provinces.

²⁷⁵ See also *HM and Others (Article 15(c)) Iraq* CG [2010] UKUT 331 (IAC), 20 September 2010, <http://www.unhcr.org/refworld/docid/4ca367242.html>, where the UK Upper Tribunal held that "in situations of armed conflict in which civilians are affected by the fighting, the approach to assessment of the level of risk of indiscriminate violence must be an inclusive one, subject only to the need for there to be a sufficient causal nexus between the violence and the conflict." To this effect, threats to life, as well as significant physical injuries, serious mental traumas and serious threats to bodily integrity should be taken into consideration.

²⁷⁶ The assessment of the availability of an IFA/IRA requires two main sets of analysis, namely its (i) relevance and its (ii) reasonableness. 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; see 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.unhcr.org/refworld/docid/3f2791a44.html>.

Eslami (Gulbuddin), have links or are closely associated with influential actors in the local and central administration.²⁷⁷ As a result, they largely operate with impunity and their reach may extend beyond the area under their immediate (*de facto*) control.

For categories of individuals who fear harm as a result of harmful traditional practices and religious norms of a persecutory nature – such as women and children with specific profiles and LGBTI individuals – and for whom an internal relocation to another part of the country may be relevant, the endorsement of such norms by large segments of society and powerful conservative elements in the public administration needs to be taken into account.

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. To this effect, the following elements need to be taken into account: (i) the availability of traditional support mechanisms, such as relatives and friends able to host the displaced individuals; (ii) the availability of basic infrastructure and access to essential services, such as sanitation, health care and education; (iii) ability to sustain themselves, including livelihood opportunities;²⁷⁸ (iv) the criminality rate and resultant insecurity, particularly in urban areas; as well as (v) the scale of displacement in the area of prospective relocation.

The traditional extended family and community structures of Afghan society continue to constitute the main protection and coping mechanism, particularly in rural areas where infrastructure is not as developed. Afghans rely on these structures and links for their safety and economic survival, including access to accommodation and an adequate level of subsistence. Since the protection provided by families and tribes is limited to areas where family or community links exist, Afghans, particularly unaccompanied women and children, and women single head of households with no male protection, will not be able to lead a life without undue hardship in areas with no social support networks, including in urban centres.²⁷⁹ In certain circumstances, relocation to an area with a predominantly different ethnic/religious make-up may also not be possible due to latent or overt tensions between ethnic/religious groups.

In urban centres, the IDP population and growing economic migration are putting increased pressure on labour markets and resources such as construction materials, land and potable water.²⁸⁰ Widespread unemployment and underemployment limit the ability of a large number of people to meet their basic needs. The limited availability of humanitarian assistance has generally not improved this situation in a meaningful way.²⁸¹ In addition to causing loss of life and serious injuries, mine

²⁷⁷ See, for example, Afghanistan Research and Evaluation Unit, *Corrupting the State or State-Crafted Corruption? Exploring the Nexus between Corruption and Subnational Governance*, June 2010, <http://www.unhcr.org/refworld/docid/4c21cd102.html>; and IRIN, *Afghanistan: Running on drugs, corruption and aid*, 10 May 2010, <http://www.unhcr.org/refworld/docid/4be90b62c.html>.

²⁷⁸ Afghans originating from rural areas, with few marketable professional skills beyond agriculture and animal husbandry, may have more difficulty reintegrating elsewhere. They have few 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.

²⁷⁹ See, for example, Internal Displacement Monitoring Centre, *Internal Displacement: Global Overview of Trends and Developments in 2009 - Afghanistan*, 17 May 2010, <http://www.unhcr.org/refworld/docid/4bf252560.html>; and IRIN, *Afghanistan: Family-related determinants of poverty*, 8 April 2010, <http://www.unhcr.org/refworld/docid/4bc80c5fc.html>. As documented in studies on urban vulnerability, the household and the extended family remain the basic social network in Afghanistan and there are indications that existing traditional systems of sharing and redistribution are less effective in the extended urban family. Brookings-Bern Project on Internal Displacement, *Beyond the Blanket: Towards More Effective Protection for Internally Displaced Persons in Southern Afghanistan*, May 2010, pp. 66-68, <http://www.unhcr.org/refworld/docid/4c3d8cab2.html>; and Stefan Schutte, *Urban Vulnerability in Afghanistan: Case Studies From Three Cities*; Working Paper Series, Afghanistan Research and Evaluation Unit, May 2004, at p. 3, http://www.areu.org.af/?option=com_docman&Itemid=&task=doc_download&g.

²⁸⁰ The level of urban migration to Kabul and the main provincial capitals is very high. In Kabul alone, the population has grown from about 1.5 million in 2001 to nearly five million, with the vast majority squatting in informal settlements, public buildings, or on public land; see Brookings-Bern Project on Internal Displacement, *Beyond the Blanket: Towards More Effective Protection for Internally Displaced Persons in Southern Afghanistan*, May 2010, p. 14, <http://www.unhcr.org/refworld/docid/4c3d8cab2.html>. See also 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.unhcr.org/refworld/docid/4c1732dc2.html>.

²⁸¹ According to estimates, as of December 2009, 180-1,200 IDP families lived in 17 locations in and around Kabul City. Most IDPs claimed they had not received any assistance from the Government or aid agencies, and faced food, health, water and cold-related problems; see IRIN, *Afghanistan: Kapisa Province IDPs flock to Kabul*, 12 January 2010, <http://www.unhcr.org/refworld/docid/4b4f20ecc.html>.

contamination²⁸² has prevented livelihood activities, including by restricting access to agricultural land, water, health care and education.²⁸³

In light of the foregoing, UNHCR generally considers IFA/IRA as a reasonable alternative where protection is available from the individual's own extended family, community or tribe in the area of intended relocation.²⁸⁴ Single males and nuclear family units may, in certain circumstances, subsist without family and community support in urban and semi-urban areas with established infrastructure and under effective Government control. A case-by-case analysis will, nevertheless, be necessary given the breakdown in the traditional social fabric of the country caused by decades of war, massive refugee flows, and growing internal migration to urban areas.

2. Individuals Fleeing Generalized Violence

When assessing the relevance of an IFA/IRA for those individuals fleeing from a situation of generalized violence in Afghanistan, it is of particular importance to consider: (i) the concrete prospects of safely accessing areas of Afghanistan not affected by the generalized violence, including by assessing the risks associated with the widespread use of IEDs and landmines throughout the territory, attacks and fighting taking place on busy roads, and activities of organised criminal gangs;²⁸⁵ and (ii) the volatility and fluidity of the conflict in terms of the difficulty of identifying potential safe zones. Furthermore, the area of prospective IFA/IRA has to be practically, safely and legally accessible.²⁸⁶ It should also be borne in mind that areas considered relatively stable may, nevertheless, be inaccessible in instances where access roads to and from such areas are considered insecure.²⁸⁷

If relocation from a situation of generalized violence is deemed relevant, in particular in urban areas, the reasonableness test should take into consideration the elements outlined above for individuals at risk of targeted persecution.

D. Exclusion from International Refugee Protection

In light of the serious human rights violations and transgressions 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

²⁸² Despite sustained efforts to clear landmines and explosive remnants of war, several areas remain contaminated. According to the Mine Action Coordination Centre for Afghanistan (MACCA), as of August 2010, there were 23 cluster munitions contaminated areas in the country, including eight sites located in insecure areas such as Registan in Kandahar and Zurmat in Paktia, which will be cleared when security conditions allow; see Mine Action Coordination Centre for Afghanistan (MACCA), *Fact Sheet on Cluster Munitions in Afghanistan*, 1 August 2010, <http://www.macca.org.af/file.php?id=48>. MACCA reported that from April to August 2010, 77 communities were cleared of mines and other explosive remnants of war; see MACCA, *Newsletter: August 2010*, August 2010, <http://www.macca.org.af/file.php?id=180>. As of mid-March 2010, more than 2,150 communities were directly affected by landmines and explosive remnants of war; 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, para. 38, <http://www.unhcr.org/refworld/docid/4bb44c5c2.html>.

²⁸³ 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, para. 26, <http://www.unhcr.org/refworld/docid/4bb44c5c2.html>. A cross-border agreement between Afghanistan and Tajikistan will permit mine clearance in remote parts of Badakhshan; see UN General Assembly, *The situation in Afghanistan and its implications for international peace and security: report of the Secretary-General*, A/64/911-S/2010/463, 14 September 2010, para. 48, <http://www.unhcr.org/refworld/docid/4ca187f62.html>.

²⁸⁴ Additional considerations need to be taken into account when assessing the availability of an IFA/IRA in cases of unaccompanied and separated 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, paras. 53-57, <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>. See also, by analogy, UNHCR, *Special measures applying to the return of unaccompanied and separated children to Afghanistan*, August 2010, <http://www.unhcr.org/refworld/docid/4c91dbb22.html>.

²⁸⁵ Many areas of Afghanistan are not safe or are not 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, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, <http://www.unhcr.org/refworld/docid/4c6120382.html>; and Voice of America, *8 Civilians Killed in Roadside Bombing in Afghanistan*, 28 June 2010, <http://www1.voanews.com/english/news/asia/8-Civilians-Killed-in-Roadside-Bombing-in-Afghanistan-97294849.html>.

²⁸⁶ 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, paras. 7, <http://www.unhcr.org/refworld/docid/3f2791a44.html>.

²⁸⁷ For instance, the Kabul-Kandahar highway, reconstructed in December 2003, can only be used at high risk due to criminal and insurgency activities; see UN Office of the High Commissioner for Human Rights, *Human Rights Dimension of Poverty in Afghanistan*, March 2010, <http://www.unhcr.org/refworld/docid/4bbc313d2.html>.

may be triggered if there are elements in the applicant's claim that suggest that he or she may have been associated with or involved in the commission of criminal acts that fall within the scope of Article 1F. Given the potential serious consequences of exclusion from international refugee protection, exclusion clauses need to be applied on the basis of a full assessment of the circumstances of the individual case.²⁸⁸

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 (i) the revolution of April 1978 that brought to power the PDPA and was followed by the brutal crackdown on the later uprisings; (ii) the Soviet invasion and occupation of December 1979 and counterinsurgency war; (iii) the Soviet withdrawal and the ensuing civil war; (iv) the repressive rule of the Taliban; and (v) the armed conflict following the U.S.-led intervention which ended Taliban rule in December 2001.²⁸⁹

Potential exclusion due to involvement in the commission of war crimes and serious violations of human rights, pursuant to Article 1F(a), is of particular relevance in the context of Afghanistan.²⁹⁰ 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.²⁹¹

Organized criminal networks, warlords, as well as armed anti-Government groups in Afghanistan have also reportedly engaged in various criminal activities, such as drug production and trafficking, illegal taxation, and trafficking in arms and humans, and smuggling in persons.²⁹² If these crimes are linked to the armed conflict in Afghanistan after the mid-1990s and involved violence, coercion or intimidation of civilians, they may constitute war crimes under applicable international humanitarian law. Where such acts do not amount to war crimes, it needs to be determined whether they constitute serious non-political crimes under Article 1F(b) of the 1951 Convention.

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 or participated in the commission of a criminal act, or on the basis of command/superior responsibility for persons in positions of authority. Defenses to criminal responsibility, if any, as well as considerations related to proportionality, apply. As such, membership in the Government security forces or armed anti-Government groups is not a sufficient basis in itself to exclude an individual from refugee status,

²⁸⁸ 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.unhcr.org/refworld/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.unhcr.org/refworld/docid/3f5857d24.html>.

²⁸⁹ For further information on human rights and international humanitarian law violations during the aforementioned periods, see, for example, Human Rights Watch, *The Human Cost: The Consequences of Insurgent Attacks in Afghanistan*, 16 April 2007, <http://www.unhcr.org/refworld/docid/463724452.html>; and Afghanistan Justice Project, *Casting Shadows: War Crimes and Crimes against Humanity: 1978-2001 Documentation and analysis of major patterns of abuse in the war in Afghanistan*, 2005, <http://www.unhcr.org/refworld/docid/46725c962.html>.

²⁹⁰ War crimes are serious violations of international humanitarian law (IHL) committed during an armed conflict. Criminal liability for violations of international humanitarian law applicable during non-international armed conflicts, i.e. Common Article 3 of the 1949 Geneva Conventions, Additional Protocol II and customary international law, was however not established until the mid-1990s. In 1995, the International Criminal Tribunal for the former Yugoslavia (ICTY) decided that violations of international humanitarian law applicable to non-international armed conflicts could be criminal 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, para. 134, <http://www.unhcr.org/refworld/docid/47fdfb520.html>. Hence, only those violations of IHL that occurred after 1995 would be considered "war crimes" within the scope of Article 1F(a).

²⁹¹ For an overview of various violations of international human rights and humanitarian law in Afghanistan, see, for example, Amnesty International, *Afghanistan - All Who Are Not Friends, Are Enemies: Taleban Abuses against Civilians*, 19 April 2007, <http://www.unhcr.org/refworld/docid/4631c3ad2.html>; Human Rights Watch, *The Human Cost: The Consequences of Insurgent Attacks in Afghanistan*, 16 April 2007, <http://www.unhcr.org/refworld/docid/463724452.html>; and Afghanistan Justice Project, *Casting Shadows: War Crimes and Crimes against Humanity: 1978-2001*, 2005, <http://www.unhcr.org/refworld/docid/46725c962.html>.

²⁹² 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.unhcr.org/refworld/docid/4ae1660d2.html>; and Congressional Research Service, *Taliban and the Drug Trade*, 5 October 2001, <http://fpc.state.gov/documents/organization/6210.pdf>.

particularly in light of the documented practices of forced recruitment, particularly of children. It is necessary to consider whether the individual concerned was personally involved in acts of violence or other excludable acts, or knowingly contributed in a substantial manner to such acts. A credible explanation regarding the individual's non-involvement with, or disassociation from, any excludable acts should, absent reliable evidence to the contrary, remove the individual from the scope of the exclusion clauses.

In 2008, the Government adopted the National Stability and Reconciliation Law,²⁹³ 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 2001.²⁹⁴ Given the heinous nature of the widely documented crimes committed by the various actors during Afghanistan's long history of armed conflicts, UNHCR considers that the application of exclusion clauses under Article 1F is still justified despite the existence of the amnesty for acts pre-dating December 2001.²⁹⁵

In the context of Afghanistan, careful consideration needs to be given in particular to the following profiles: (i) members of the security forces, including KhAD/WAD agents and high-ranking officials of the communist regimes; (ii) members and commanders of armed groups and militia forces during the communist regimes; (iii) members and commanders of the Taliban, Hezb-e-Islami Hikmatyar and other armed anti-Government groups; (iv) organized crime groups; (v) members of Afghan security forces, including the NDS; and (vi) pro-Government paramilitary groups and militias. Further information on serious human rights violations and transgressions of international humanitarian law by members of the first three above-mentioned groups is provided below.

1. Members of the Security Forces, Including KhAD/WAD Agents and High-Ranking Officials of the Communist Regimes

Members of military, police and security services, as well as high-ranking Government officials during the Taraki, Hafizullah Amin, Babrak Karmal, and Najibullah regimes,²⁹⁶ were involved in operations subjecting civilians to arrest, disappearances, torture, inhuman and degrading treatment and punishment, and extrajudicial executions.²⁹⁷ These included the mass killings after the 1978 *coup* and the reprisals against resistance to the decrees on land-reforms issued under Hafizullah Amin's

²⁹³ 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 had 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.unhcr.org/refworld/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>.

²⁹⁴ The adoption of the law has drawn 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.unhcr.org/refworld/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.unhcr.org/refworld/docid/4bb31a5e2.html>.

²⁹⁵ 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, para. 75, <http://www.unhcr.org/refworld/docid/3f5857d24.html>. Such amnesty 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.unhcr.org/refworld/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.

²⁹⁶ This period of recent Afghan history started with a military *coup* on 27 April 1978, which brought to power a Government dominated by the PDPA, continued during the Soviet occupation, which started on 27 December 1979 and lasted until the fall of the Najibullah Government on 15 April 1992.

²⁹⁷ 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.unhcr.org/refworld/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.

regime. In addition, incidents of deliberate targeting of civilians during military operations are well documented.²⁹⁸

In this context, careful consideration needs to be given to cases of former members of *Khadamate Ettelaate Dowlati* (KhAD), the State Information Service.²⁹⁹ Although the functions of 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.³⁰⁰ Information available to UNHCR does not link the support directorates to human rights violations in the same manner as the operational units. Thus, mere membership to KhAD/WAD would not automatically lead to exclusion. The individual exclusion assessment needs to take into consideration the individual's role, rank and functions within the organization.³⁰¹

2. *Members of Armed Groups and Militia Forces During and After the Communist Regimes*

The activities of members of armed groups and militia forces³⁰² 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 also 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 social mores. Other reported violations include extrajudicial executions of prisoners of war and attacks on civilian targets.³⁰³ The armed conflict between 1992 and 1995 was characterized by serious violations of international human rights and humanitarian law, including the shelling of urban centres.³⁰⁴

3. *Members of the Taliban, Hezb-e-Islami Hikmatyar and Other Armed Anti-Government Groups*

Elements from the former Taliban regime, combined with new recruits, started to mount armed operations in Afghanistan as early as 2002, in the East and South-east of Afghanistan. The group, which refers to itself as the Islamic Emirate of Afghanistan,³⁰⁵ has since expanded to pose a

²⁹⁸ 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>.

²⁹⁹ In 1986, 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.unhcr.org/refworld/docid/482947db2.html>.

³⁰⁰ These 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, paras. 15-17, <http://www.unhcr.org/refworld/docid/482947db2.html>.

³⁰¹ UNHCR, *Note on the Structure and Operation of the KhAD/WAD in Afghanistan 1978-1992*, May 2008, <http://www.unhcr.org/refworld/docid/482947db2.html>. 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.unhcr.org/refworld/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.unhcr.org/refworld/docid/49997af9d.html>.

³⁰² 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 (lead by Mohammad Nabi Mohammadi) and Harakat-e-Islami.

³⁰³ 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>.

³⁰⁴ See for instance Human Rights Watch, *Blood-Stained Hands: Past Atrocities in Kabul and Afghanistan's Legacy of Impunity*, 7 July 2005, <http://www.unhcr.org/refworld/docid/45c2c89f2.html>; Amnesty International, *Afghanistan: Executions, amputations and possible deliberate and arbitrary killings*, ASA 11/05/95, April 1995, <http://www.unhcr.org/refworld/docid/48298bca2.html>; and Amnesty International, *Afghanistan: The human rights crisis and the refugees*, ASA 11/002/1995, 1 February 1995, <http://www.unhcr.org/refworld/docid/3ae6a9a613.html>.

³⁰⁵ The Taliban are led by Mullah Mohammad Omar, with the counsel of a 33-member shura (the rahbari shura or leadership council) reportedly based in Quetta, Pakistan. However, despite a degree of ideological consistency, legitimacy of the leadership, and unity of strategic command characterizing the movement, several analysts point out the relatively loose organizational structure of the group, which allows tactical autonomy for field commanders; see Antonio Giustozzi, *Koran, Kalashnikov, and Laptop: The Neo-Taliban Insurgency in*

significant threat to the Government of Afghanistan and the international military forces operating in the country.³⁰⁶

The applicability of the exclusion clauses is relevant in relation to individual members and military commanders of the Taliban, during its time in power and following its ouster, in cases where there is sufficient evidence of their participation in serious violations of human rights and humanitarian law. The pattern of deliberate attacks on civilians by Taliban forces, summary executions, massacres, the deliberate and systematic destruction of livelihoods through a “scorched earth” policy and forcible relocation are widely reported.

The applicability of the exclusion clauses will also need to be considered in relation to individual members and military commanders of the *Hezb-e-Islami Hikmatyar*,³⁰⁷ *Tora-Bora Nizami Mahaz* (Tora-Bora Military Front),³⁰⁸ Al-Qaeda,³⁰⁹ *Jaish-i Khorassan al-Islami* (Army of Islamic Khorassan),³¹⁰ *Arbakai*,³¹¹ militias (with alleged links to the Government³¹² or to local commanders³¹³), as well as other criminal elements³¹⁴ currently involved in Afghanistan’s insurgency where their participation in serious violations of human rights and humanitarian law can be sufficiently established. Since early 2006, *Taliban*, *Hezb-i-Islami Hikmatyar* and other armed anti-

Afghanistan2002-2007, C Hurst & Co Publishers Ltd, 2007, p. 84. See also Ron Synovitz, *Taliban evolves into network of groups*, RFE / RL Afghanistan, 26 April 2008, <http://www.unhcr.org/refworld/docid/4815d19a16c.html>.

³⁰⁶ See, for example, UK Parliament, House of Commons Library, *The 'AfPak policy' and the Pashtuns*, 22 June 2010, <http://www.unhcr.org/refworld/docid/4c21c6062.html>; and *Jane's Terrorism Intelligence Centre Country Briefing: Afghanistan*, Jane's, 24 July 2008 (subscription service).

³⁰⁷ 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/>.

³⁰⁸ The *Tora-Bora Nizami Mahaz* is an offshoot of the *Hezb-e Eslami* (Khalis), has been set up by Anwarul Haq Mujahid, the son of late 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 R. Yusufzai, *New Taliban Group Named after Tora-Bora*, The News International, 26 February 2007, <http://www.afghanistannewscenter.com/news/2007/february/feb272007.html#20>.

³⁰⁹ There are reports that the leader of Al-Qaeda in Afghanistan is Uthman Abu al-Yazid, an Egyptian, who has been a close associate of Osama bin Laden since the eighties. Abu al-Yazid has declared that he would focus on helping the insurgency manage the overall war effort, by providing funds and technical training. See M. Scheuer, *Al-Qaeda's New Leader in Afghanistan: A Profile of Abu al-Yazid*, Terrorism Monitor, Jamestown Foundation, Volume 4, Issue 21, 3 July 2007, <http://www.jamestown.org/terrorism/news/article.php?articleid=2373518>.

³¹⁰ The *Jaish-i Khorassan al-Islami* (Army of Islamic Khorassan) claimed in June 2008 to be comprised of Afghan and foreign fighters, based in South Waziristan in Pakistan and in southern Afghanistan, with the objective of fighting US troops in Afghanistan. See J. Hashimzada, *New armed group vows to fight Afghan, foreign forces*, Pajhwok Network, 2 July 2008, <http://clearinghouse.infovlad.net/showthread.php?t=14896>.

³¹¹ The *Arbakai* are tribal militias, present in the south-eastern and eastern regions where traditional Pashtun tribal society is prevalent. *Arbakai* are charged with maintaining security and defending the interests of the tribe. They can best be described as an enforcing element of formal tribal decisions reached through a *jirga*. As such, they can sometimes be raised on a purely *ad hoc* basis. They tend to operate only in areas where tribes maintain a degree of autonomy both from the Government and the insurgency, and to maintain loyalty exclusively to their own tribe (based on UNHCR’s analysis and field observations). See also C. Schetter, *Beyond Warlordism: the Local Security Arrangement in Afghanistan*, Internationale Politik und Gesellschaft, Issue 2, June 2007, <http://www.afghanconflictmonitor.org/2007/10/beyond-warlordi.html>.

³¹² The Northern Alliance, the main *mujaheddin* organization responsible for bringing down the Taliban regime in 2001, was composed of the armed militias of three political parties: *Jonbesh-e Melli-ye Eslami* (National Islamic Movement, predominantly ethnic Uzbek and led by Abdulrahim Dostum, until February 2008 the Chief of Staff to the Commander of the Armed Forces), *Jamiyyat-e Eslami* (mostly ethnic Tajik and led by Burhanuddin Rabbani, former president of Afghanistan 1992-1996), and *Hezb-e Wahdat-e Eslami-ye Afghanistan* (Party of Islamic Unity of Afghanistan, mostly ethnic Hazara and led by Abdul Karim Khalili, currently second Vice-President), which were influential mostly in the northern and north-eastern regions and the central highlands of Afghanistan; see International Crisis Group, *Political Parties in Afghanistan*, 2 June 2005, <http://www.unhcr.org/refworld/docid/49997ae51f.html>. Most of these militias merged in 2002 into a transitional army called the Afghan Militia Forces, under command of the Ministry of Defense. Subsequently, the Karzai Government decided to formally disband these militias under the Disarmament, Demobilization and Reintegration (DDR) process; see Antonio Giustozzi, *Koran, Kalashnikov, and Laptop: The Neo-Taliban Insurgency in Afghanistan 2002-2007*, C Hurst & Co Publishers Ltd, 2007, pp. 166-169. The Government has recently approved a plan to establish local defence forces; see The New York Times, *Afghans to Form Local Forces to Fight Taliban*, 14 July 2010, <http://www.nytimes.com/2010/07/15/world/asia/15afghan.html>.

³¹³ With or without Government recognition or financing, Governors, former Governors and strongmen in the Centre, South and West of the country have established or maintained militia for self-defense and counterinsurgency operations. See Antonio Giustozzi, *Koran, Kalashnikov, and Laptop: The Neo-Taliban Insurgency in Afghanistan 2002-2007*, C Hurst & Co Publishers Ltd, 2007, pp. 170-173. It was reported that in 2008 there were approximately 1,800 illegal armed groups throughout the country. See Amnesty International, *Afghanistan: arms proliferation fuels further abuse*, Public Briefing, 3 April 2008, <http://www.amnestyusa.org/all-countries/afghanistan/document---afghanistan-arms-proliferation-fuels-further-abuse/page.do?id=1551013>.

³¹⁴ Several armed groups active in narco-trafficking, kidnapping, and trafficking of persons operate throughout Afghanistan. See, for example, UNODC, *Addiction, Crime and Insurgency: The transnational threat of Afghan opium*, October 2009, <http://www.unhcr.org/refworld/docid/4ae1660d2.html>; and Congressional Research Service, *Taliban and the Drug Trade*, 5 October 2001, <http://fpc.state.gov/documents/organization/6210.pdf>.

Government groups in Afghanistan have carried out an increasing number of armed attacks that either target civilians, or are launched without regard for the impact on civilian life.³¹⁵

³¹⁵ For more general information on human rights violations committed by the insurgency in the context of the armed conflict in Afghanistan during 2009, see, for example, UNAMA, *Afghanistan: Mid Year Report 2010 – Protection of Civilians in Armed Conflict*, August 2010, <http://www.unhcr.org/refworld/docid/4c6120382.html>; and UNAMA, *Annual Report on Protection of Civilians in Armed Conflict, 2009*, January 2010, <http://www.unhcr.org/refworld/docid/4b4ef6d52.html>.