



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

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

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

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

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## List of Abbreviations

AAN	Afghanistan Analysts Network
AGEs	Anti-Government Elements
AIHRC	Afghanistan Independent Human Rights Commission
AJSC	Afghan Journalists Safety Committee
ALP	Afghan Local Police
ANA	Afghan National Army
ANBP (or ABP)	Afghan National Border Police (or Afghan Border Police)
ANCOP	Afghan National Civil Order Police
ANDSF (or ANSF)	Afghan National Defence and Security Forces (or Afghan National Security Forces)
ANP	Afghan National Police
APPRO	Afghanistan Public Policy Research Organization
AREU	Afghanistan Research and Evaluation Unit
CPJ	Committee to Protect Journalists
EASO	European Asylum Support Office
ERW	Explosive Remnants of War
EVAW Law	Law on Elimination of Violence against Women
FIDH	<i>Fédération Internationale des ligues des droits de l'Homme</i> / International Federation for Human Rights
HPC	High Peace Council
HRW	Human Rights Watch
ICC	International Criminal Court
IDP	Internally Displaced Person
IEC	Independent Election Commission
IED	Improvised Explosive Device
IFJ	International Federation of Journalists
IGC	International Crisis Group
IHL	International Humanitarian Law
ILO	International Labour Organization
IRIN	Integrated Regional Information Networks
ISAF	International Security Assistance Force
ISIS	Islamic State in Iraq and Syria
IWPR	Institute for War and Peace Reporting
KIS	Kabul Informal Settlements

NATO	North Atlantic Treaty Organization
NDS	National Directorate of Security
NGO	Non-Governmental Organization
NUG	National Unity Government
OAU	Organization of African Unity (succeeded by the AU)
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the United Nations High Commissioner for Human Rights
RFE/RL	Radio Free Europe / Radio Liberty
RSM	Resolute Support Mission
SIGAR	Special Inspector General for Afghanistan Reconstruction
START	National Consortium for the Study of Terrorism and Responses to Terrorism
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
USCIRF	US Commission on International Religious Freedom
USIP	United States Institute of Peace

## I. Executive Summary

These Guidelines supersede the April 2016 *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*.<sup>1</sup> They are issued against a background of continuing concerns about the security situation and widespread human rights abuses. They contain information on particular profiles of persons for whom international protection needs may arise in the current context in Afghanistan.

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

All claims lodged by asylum-seekers need to be considered on their own merits according to fair and efficient status determination procedures and up-to-date and relevant country of origin information. This applies whether the claims are analysed on the basis of the refugee criteria contained in the 1951 Convention Relating to the Status of Refugees (“1951 Convention”)<sup>3</sup> and its 1967 Protocol,<sup>4</sup> UNHCR’s mandate, regional refugee instruments, or on the basis of broader international protection criteria, including complementary forms of protection.

### 1. Refugee Status under the 1951 Convention

People fleeing Afghanistan may be at risk of persecution for reasons that are related to the ongoing armed conflict in Afghanistan, or on the basis of serious human rights violations that are not directly related to the conflict, or a combination of the two. UNHCR considers that individuals falling into one or more of the following risk profiles may be in need of international refugee protection, depending on the individual circumstances of the case:

- (1) Individuals associated with, or perceived as supportive of, the Government and the international community, including the international military forces;
- (2) Journalists and other media professionals;
- (3) Men of fighting age, and children in the context of underage and forced recruitment;
- (4) Civilians suspected of supporting anti-government elements (AGEs);
- (5) Members of minority religious groups, and persons perceived as contravening Sharia law;
- (6) Individuals perceived as contravening AGEs’ interpretation of Islamic principles, norms and values;
- (7) Women with certain profiles or in specific circumstances;
- (8) Women and men who are perceived as contravening social mores;
- (9) Individuals with disabilities, including in particular mental disabilities, and persons suffering from mental illnesses;
- (10) Children with certain profiles or in specific circumstances;
- (11) Survivors of trafficking or bonded labour and persons at risk of being trafficked or of bonded labour;
- (12) Individuals of diverse sexual orientations and/or gender identities;
- (13) Members of (minority) ethnic groups;
- (14) Individuals involved in blood feuds;
- (15) Business people, other people of means and their family members.

This list is not necessarily exhaustive and is based on information available to UNHCR at the time of writing. A claim should not automatically be considered as without merit simply because it does not

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<sup>1</sup> UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 19 April 2016, HCR/EG/AFG/16/02, <http://www.refworld.org/docid/570f96564.html>.

<sup>2</sup> These Guidelines are based on information available to UNHCR as of 31 May 2018, unless otherwise stated.

<sup>3</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, Vol. 189, p. 137, <http://www.refworld.org/docid/3be01b964.html>.

<sup>4</sup> UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations Treaty Series, Vol. 606, p. 267, <http://www.refworld.org/docid/3ae6b3ae4.html>.

fall within any of the profiles identified here. Depending on the specific circumstances of the case, family members or other members of the households of individuals found to be at risk of persecution may also be in need of international protection on the basis of their association with individuals at risk.

Afghanistan continues to be affected by a non-international armed conflict.<sup>5</sup> Individuals fleeing harm or the threat of harm in the context of this conflict may meet the criteria for refugee status as contained in Article 1(A)(2) of the 1951 Convention. For this to be the case, there must be a reasonable possibility that the individual would experience serious harm amounting to persecution for reasons related to the grounds set out in Article 1(A)(2).

Human rights violations and exposure to violence may amount to persecution within Article 1(A)(2) of the 1951 Convention, either independently or cumulatively. In the context of the conflict in Afghanistan, relevant factors in assessing the human rights violations or other serious harm that would be reasonably possible for an individual include: (i) the control over civilian populations by anti-government elements (AGEs), including through the imposition of parallel justice structures and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, restrictions on freedom of movement, and the use of extortion and illegal taxation; (ii) forced recruitment; (iii) the impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty and the destruction of livelihoods; (iv) high levels of organized crime and the ability of local strongmen, warlords and corrupt government officials to operate with impunity; (v) systematic constraints on access to education and basic health care as a result of insecurity; and (vi) systematic constraints on participation in public life, including in particular for women.<sup>6</sup>

For an individual who flees harm or the threat of harm in the context of the armed conflict in Afghanistan to meet the criteria for refugee status as contained in Article 1(A)(2) of the 1951 Convention, the risk of persecution must also be for reason of a 1951 Convention ground. In the context of Afghanistan, examples of circumstances where civilians are subjected to violence for a 1951 Convention ground include situations where violence is targeted at areas where civilians of specific ethnic, political or religious profiles predominantly reside, or at locations where civilians of such profiles predominantly gather (including markets, mosques, schools, or large social gatherings such as weddings). To qualify for refugee status there is no requirement that an individual be known personally to the agent(s) of persecution or be sought out personally by those agents. Similarly, entire communities may have a well-founded fear of persecution for one or more of the 1951 Convention grounds; there is no requirement that an individual suffer a form or degree of harm that differs from that suffered by other individuals with the same profile.<sup>7</sup>

## **2. *Broader UNHCR Mandate Criteria, Regional Instruments and Complementary Forms of Protection***

The 1951 Convention forms the cornerstone of the international refugee protection regime. The criteria for refugee status in the 1951 Convention should be interpreted in such a manner that individuals or groups of persons who meet these criteria are duly recognized and protected under that instrument. Only when an asylum-seeker is found not to meet the refugee criteria in the 1951 Convention should broader international protection criteria as contained in UNHCR's mandate and regional instruments be examined, including subsidiary protection.<sup>8</sup>

Individuals who flee situations of violence where there is no nexus with a 1951 Convention ground would not ordinarily come within the scope of the 1951 Convention. Such individuals may nevertheless

<sup>5</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 56; UNSG, *Special Report on the Strategic Review of the United Nations Assistance Mission in Afghanistan*, 10 August 2017, A/72/312–S/2017/696, <http://www.refworld.org/docid/599301c49.html>, para. 9.

<sup>6</sup> See also, UNHCR, *Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions*, 2 December 2016, HCR/GIP/16/12, <http://www.refworld.org/docid/583595ff4.html>. See also Section II.B of these Guidelines.

<sup>7</sup> UNHCR, *Guidelines on International Protection No. 12*, 2 December 2016, HCR/GIP/16/12, <http://www.refworld.org/docid/583595ff4.html>, paras 22–23.

<sup>8</sup> See UNHCR Executive Committee, *Conclusion on the Provision on International Protection Including through Complementary Forms of Protection*, No. 103 (LVI) – 2005, 7 October 2005, <http://www.refworld.org/docid/43576e292.html>.



come within the terms of UNHCR's broader mandate criteria, or the criteria set out in regional instruments.

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

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

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

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

Afghans and others originating from Afghanistan who seek international protection in countries that are States Parties to the Convention Governing the Specific Aspects of Refugee Problems in Africa ("1969 OAU Convention")<sup>11</sup>, and who have been found not to meet the criteria of the 1951 Refugee Convention, may qualify for refugee status under Article I(2) of the 1969 OAU Convention. In particular, UNHCR considers that individuals originating from areas of Afghanistan that are affected by active combat as part of the ongoing struggle for control between pro-government forces and AGEs, or between different AGEs, as well as areas of Afghanistan that are under the effective control of AGEs, may be in need of international protection under the terms of Article I(2) of the 1969 OAU Convention

<sup>9</sup> UNHCR, *Providing International Protection Including Through Complementary Forms of Protection*, 2 June 2005, EC/55/SC/CRP.16, <http://www.refworld.org/docid/47fdb49d.html>; UN General Assembly, *Note on International Protection*, 7 September 1994, A/AC.96/830, <http://www.refworld.org/docid/3f0a935f2.html>.

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

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

on the grounds that they were compelled to leave their place of habitual residence owing to threats to their lives, freedom or security as a result of events seriously disturbing public order.<sup>12</sup>

Afghan asylum-seekers who seek international protection in any of the countries that have incorporated the Cartagena Declaration on Refugees (“Cartagena Declaration”)<sup>13</sup> into their national legislation may qualify for refugee status under the terms of the Cartagena Declaration. In particular, UNHCR considers that individuals originating from areas in Afghanistan affected by active combat between pro-government forces and AGEs, or between different AGEs, or from areas under the effective control of AGEs, and who have been found not to meet the criteria of the 1951 Refugee Convention, may be in need of international protection under the terms of the Cartagena Declaration on the grounds that their lives, safety or freedom were threatened by circumstances that have seriously disturbed public order.

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

Given the fluid nature of the conflict in Afghanistan, applications by Afghans for international protection under UNHCR’s mandate or under the definitions contained in regional instruments should each be assessed carefully in light of the evidence presented by the applicant and other current and reliable information about the situation in Afghanistan, giving due weight to the future-oriented nature of assessments of protection needs.

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<sup>12</sup> On the meaning of the phrase “events seriously disturbing public order” in the 1969 OAU Convention, see Marina Sharpe, *The 1969 OAU Refugee Convention and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in the Context of Individual Refugee Status Determination*, January 2013, <http://www.refworld.org/docid/50fd3edb2.html>; Alice Edwards, “Refugee Status Determination in Africa”, 14 *African Journal of International and Comparative Law* 204-233 (2006); UNHCR, *Extending the Limits or Narrowing the Scope? Deconstructing the OAU Refugee Definition Thirty Years On*, April 2005, ISSN 1020-7473, <http://www.refworld.org/docid/4ff168782.html>.

<sup>13</sup> *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>. Although the Cartagena Declaration is included in a non-binding regional instrument, the Cartagena refugee definition has attained a particular standing in the region, not least through its incorporation into 15 national laws and State practice. For guidance on the interpretation of the refugee definition in the Cartagena Declaration, see: UNHCR, *Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions*, 2 December 2016, HCR/GIP/16/12, <http://www.refworld.org/docid/583595ff4.html>, paras 61-85.

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

<sup>15</sup> Article 170 of Afghanistan’s revised Penal Code, which entered into force on 15 February 2018, lists the crimes which can incur the death penalty. Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR). In addition, in accordance with Article 2 of the Penal Code, those found guilty of *hudood* crimes are to be punished in accordance with the principles of Hanafi jurisprudence of Sharia law; *hudood* punishments include execution and stoning to death. See also, Hossein Gholami, *Basics of Afghan Law and Criminal Justice*, undated, <http://www.auswaertiges-amt.de/cae/servlet/contentblob/343976/publicationFile/3727/Polizei-Legal-Manual.pdf>; Cornell Law School, *Death Penalty Database*, <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Afghanistan>.

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

### 3. Internal Flight or Relocation Alternative (IFA/IRA)

In light of the available evidence of serious and widespread human rights abuses by AGEs in areas under their effective control, with the inability of the State to provide protection against such abuses in these areas, **UNHCR considers that an IFA/IRA is not available in areas of the country that are under the effective control of AGEs**, with the possible exception of individuals with previously-established links with the AGE-leadership in the proposed area of relocation.

**UNHCR considers that an IFA/IRA is also not available in areas of the country affected by active combat between pro-government forces and AGEs, or between different AGEs.**

For detailed guidance for the assessment of the availability of an IFA/IRA in parts of Afghanistan that are neither under the control of AGEs nor affected by active combat, please see Sections III.C.1 (relevance analysis) and III.C.2 (reasonableness analysis) of these guidelines.

In the specific case of Kabul as a proposed area of IFA/IRA, UNHCR provides the following guidance (see Section III.C.3). To assess the **relevance** of Kabul as a proposed IFA/IRA, and in particular the risk that the applicant would face a real risk of serious harm, including a serious risk to life, safety, liberty or health, or one of serious discrimination, decision-makers must pay due regard to the negative trends in relation to the security situation for civilians in Kabul. Of particular relevance is the February 2018 annual report on the protection of civilians, where UNAMA noted that in 2017 it “continued to document the highest levels of civilian casualties in Kabul province, mainly from indiscriminate attacks in Kabul city. Of the 1,831 civilian casualties (479 deaths and 1,352 injured) documented in Kabul province, 88 per cent resulted from suicide and complex attacks carried out by Anti-Government Elements in Kabul city.”<sup>17</sup> UNAMA reported that the number of civilian casualties in Kabul city caused by suicide and complex attacks in 2017 represented 70 per cent of all civilian casualties in Afghanistan in 2017 caused by such attacks.<sup>18</sup>

UNHCR notes that civilians who partake in day-to-day economic and social activities in Kabul are exposed to a risk of falling victim to the generalized violence that affects the city.<sup>19</sup> Such activities include travelling to and from a place of work, travelling to hospitals and clinics, or travelling to school; livelihood activities that take place in the city’s streets, such as street vending; as well as going to markets, mosques and other places where people gather.

To assess the **reasonableness** of Kabul as a proposed IFA/IRA, it must be established that the applicant will have access in Kabul to:

- (i) shelter;
- (ii) essential services, such as potable water and sanitation, health care and education;
- (iii) livelihood opportunities, or proven and sustainable support to enable access to an adequate standard of living.

Relevant information to be taken into account by decision-makers in this regard includes the grave concerns expressed by humanitarian and development actors about the limits of Kabul’s absorption capacity. Since the fall of the former Taliban regime in 2001, Kabul City Region has seen the largest population increase in Afghanistan. Official population estimates indicate that by early 2016 Kabul City

<sup>17</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 4.

<sup>18</sup> *Ibid.*, p. 29.

<sup>19</sup> The European Asylum Support Office (EASO) has assessed that “indiscriminate violence is taking place in the province of Kabul, including the capital city.” EASO, *Country Guidance: Afghanistan*, June 2018, <https://www.easo.europa.eu/sites/default/files/easo-country-guidance-afghanistan-2018.pdf>, p. 83. EASO’s conclusion is based on: EASO, *Afghanistan: Security Situation: Update*, May 2018, <http://www.refworld.org/docid/5b3be4ad4.html>, Section 2.1 (pp. 25-34); EASO, *Afghanistan Security Situation*, December 2017, <http://www.refworld.org/docid/5ac603924.html>, Section 2.1 (pp. 69-74) and Section 2.15 (pp. 153-157). See also, Administrative Court of Appeal of Lyon, 13 March 2018, *Nos 17LY02181 – 17LY02184*, <http://www.asylumlawdatabase.eu/en/case-law/france-administrative-court-appeal-lyon-13-march-2018-nos-17ly02181-%E2%80%93-17ly02184#content>, where the Court found that an internal armed conflict prevails throughout the territory of Afghanistan, and that the situation in the Kabul region and Kabul city constitutes indiscriminate violence resulting from this internal armed conflict. See also, Administrative Court of Nantes, 8 June 2018, *Nos 17NT03167 and 17NT03174*, <http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/CAA%20Nantes%20-%208%20juin%202018%20-%2017NT03167-74%20-%20Dubin%20Belgique%20Ricochet%20afghanistan%20%281%29.pdf>, where the Court came to the same conclusion in respect of the situation in Kabul city.

Region had 5 million residents, 60 per cent of which were in Kabul city.<sup>20</sup> In addition, as noted in Section II.F, in 2016 more than one million Afghans returned from Iran and Pakistan, followed by an additional 620,000 returnees in 2017. The Protection Cluster in Afghanistan noted already in April 2017, following the 2016 returns but prior to most of the 2017 returns, “The enormous surge in returns [from Pakistan and Iran] resulted in extreme stress on the already overstretched absorption capacity in Afghanistan’s main provincial and district centres, as many Afghans joined the legions of IDPs unable to return to their areas of origin due to the worsening conflict. [...] With limited job opportunities, no social protection nets and poor shelter conditions, displaced people not only face increased protection risks in their daily life, but are also forced into secondary displacement and negative coping strategies, like child labour, early marriage, reducing quantity and quality of food etc.”<sup>21</sup>

According to the Afghan Living Conditions Survey 2016-2017, 72.4 per cent of the urban population in Afghanistan live in slums, informal settlements or inadequate housing households.<sup>22</sup> The International Growth Centre noted in January 2018, “Kabul has been undergoing rapid urbanisation for the last three decades. Population growth in the city is outpacing the city’s capacity to provide necessary infrastructure, services and jobs to citizens, resulting in the emergence of widespread informal settlements that house an estimated 70% of the city’s population.”<sup>23</sup>

Against a background of general concerns about rising poverty levels in Afghanistan, with the proportion of the population living below the national poverty line reportedly having increased from 34 per cent in 2007-2008 to 55 per cent in 2016-2017,<sup>24</sup> the Asia Foundation’s 2017 Survey of the Afghan People found that perceptions of a worsening financial situation was most common in the Central/Kabul region, at 43.9 per cent.<sup>25</sup> In January 2017 it was reported that 55 per cent of households in Kabul informal settlements were severely food insecure.<sup>26</sup>

OCHA’s 2018 Humanitarian Needs Overview ranks Kabul among the 10 provinces (out of a total of 34 provinces) that are “the most conflict-affected”.<sup>27</sup> In addition, the Humanitarian Needs Overview notes that “needs are particularly pronounced in large urban centres, including Kabul and Jalalabad City, where both IDP and returnee populations have congregated in search of income and livelihoods opportunities as well as access to basic and essential services. Humanitarian needs in these two provinces comprise 42 percent of all those relating to internal displacement and cross-border influxes.”<sup>28</sup>

Against the background of the considerations relating to the relevance and reasonableness analysis for Kabul as a proposed area of IFA/IRA, and taking into account the overall situation of conflict and human rights violations, as well as the adverse impact this has on the broader socio-economic context, **UNHCR considers that an IFA/IRA is generally not available in Kabul.**

<sup>20</sup> UN Habitat and Government of the Islamic Republic of Afghanistan, *Atlas of Afghan City Regions 2016*, 15 July 2016, <https://unhabitat.org/atlas-of-afghan-city-regions-2016/#>, p. xvii.

<sup>21</sup> Protection Cluster Afghanistan, *Afghanistan*, April 2017, [http://www.globalprotectioncluster.org/assets/files/field\\_protection\\_clusters/Afghanistan/files/factsheets/201704-protection-cluster-factsheet\\_en.pdf](http://www.globalprotectioncluster.org/assets/files/field_protection_clusters/Afghanistan/files/factsheets/201704-protection-cluster-factsheet_en.pdf), p. 2.

<sup>22</sup> The estimate is based on the criteria to determine slum households used in the Millennium Sustainable Development Goal indicator 11.1.1 for sustainable cities and communities. “The definition of slum- and inadequate housing includes components of durability of housing, overcrowding, access to drinking water and sanitation, and security of tenure.” Central Statistics Organization, *Afghanistan Living Condition Survey 2016-2017: Highlights Report*, 2018, [http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight\(1\).pdf](http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight(1).pdf), pp. 2, 10.

<sup>23</sup> International Growth Centre, *Policy Options for Kabul’s Informal Settlements*, January 2018, <https://www.theigc.org/wp-content/uploads/2018/01/Policy-options-for-Kabuls-informal-settlements-19.01.188.pdf>, p. 2. The International Growth Centre is directed by the London School of Economics (LSE) and the University of Oxford.

<sup>24</sup> Central Statistics Organization, *Afghanistan Living Condition Survey 2016-2017: Highlights Report*, 2018, [http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight\(1\).pdf](http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight(1).pdf), pp. 6-7.

<sup>25</sup> The Asia Foundation, *Afghanistan in 2017: A Survey of the Afghan People*, November 2017, [https://asiafoundation.org/wp-content/uploads/2017/11/2017\\_AfghanSurvey\\_report.pdf](https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf), p. 67; see also pp. 7, 29, 30, 32.

<sup>26</sup> REACH, *Informal Settlement Food Security Assessment: Afghanistan*, January 2017, [http://fsccluster.org/sites/default/files/documents/reach\\_afg\\_report\\_informal\\_settlement\\_food\\_security\\_assessment\\_january\\_2017.pdf](http://fsccluster.org/sites/default/files/documents/reach_afg_report_informal_settlement_food_security_assessment_january_2017.pdf), pp. 3-4.

<sup>27</sup> OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 18.

<sup>28</sup> *Ibid.* For further information on access to shelter, essential services and livelihood opportunities in Kabul, see European Asylum Support Office (EASO), *Country of Origin Information Report Afghanistan: Key Socio-Economic Indicators, State Protection, and Mobility in Kabul City, Mazar-e Sharif, and Herat City*, August 2017, <http://www.refworld.org/docid/59a527ca4.html> and sources quoted therein.

#### ***4. Exclusion Considerations***

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

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



## II. Overview of the Situation in Afghanistan

### A. Main Developments in Afghanistan

A non-international armed conflict continues to affect Afghanistan, posing the Afghan National Defence and Security Forces (ANDSF) supported by the international military forces against a number of anti-government elements (AGEs).<sup>29</sup> According to the UN Secretary-General, Afghanistan continues to face formidable security, political and economic challenges.<sup>30</sup> The overall security situation has reportedly continued to deteriorate,<sup>31</sup> in what has been described as an “eroding stalemate”.<sup>32</sup>

#### 1. Developments Relating to the Conflict in Afghanistan

The ANDSF have reportedly proved generally adept in defending provincial capitals and major urban centres, but have ceded significant ground to the Taliban in rural areas. However, the ANDSF were reported to be affected by unsustainably high attrition rates and a declining morale.<sup>33</sup>

As of 31 January 2018, the Taliban was reported to control or contest 43.7 per cent of all districts in Afghanistan.<sup>34</sup> The Taliban have intensified their attacks in Kabul and other major urban areas, and have demonstrated a growing focus on attacking Afghan security forces, causing high numbers of casualties.<sup>35</sup> Throughout 2017 the Taliban launched multiple large-scale operations aimed at capturing district administration centres, and were able to overrun and temporarily hold several such centres.<sup>36</sup> At the same time the Taliban reportedly consolidated their control over mostly rural territory, enabling them to undertake more frequent attacks in the north of Afghanistan in particular.<sup>37</sup>

<sup>29</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 56; UNSG, *Special Report on the Strategic Review of the United Nations Assistance Mission in Afghanistan*, 10 August 2017, A/72/312–S/2017/696, <http://www.refworld.org/docid/599301c49.html>, para. 9.

<sup>30</sup> UN Secretary-General (UNSG), *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768–S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, pp. 1–10.

<sup>31</sup> Human Rights Watch (HRW), “No Safe Place” *Insurgent Attacks on Civilians in Afghanistan*, 8 May 2018, [https://www.hrw.org/sites/default/files/report\\_pdf/afghanistan0518\\_web\\_1.pdf](https://www.hrw.org/sites/default/files/report_pdf/afghanistan0518_web_1.pdf), pp. 8–11; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768–S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, para. 17. “The Security Council reiterates its concern over the continuing threats to the security and stability of Afghanistan posed by the Taliban, including the Haqqani network, as well as by Al-Qaida, ISIL (Da’esh) affiliates and other terrorist groups, violent and extremist groups, illegal armed groups, criminals, and those involved in the production, trafficking or trade of illicit drugs.” UNSC, *Statement by the President of the Security Council*, 19 January 2018, S/PRST/2018/2, [http://www.securitycouncilreport.org/atf/cf/%7B65BFCE9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_prst\\_2018\\_2.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCE9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_prst_2018_2.pdf), pp. 1–2. See also, HRW, *World Report 2018: Afghanistan*, 18 January 2018, <http://www.refworld.org/docid/5a61eeac4.html>; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 September 2017, A/72/392–S/2017/783, <http://www.refworld.org/docid/59c3a9f64.html>, para. 20; UNSG, *Special Report on the Strategic Review of the United Nations Assistance Mission in Afghanistan*, 10 August 2017, A/72/312–S/2017/696, <http://www.refworld.org/docid/599301c49.html>, para. 14; Pajhwok Afghan News, *Rebel Groups in Afghanistan: A Run Through*, 11 April 2017, <http://peace.pajhwok.com/en/armed-group/rebel-groups-afghanistan-run-through>.

<sup>32</sup> Security Council Report, *March 2018 Monthly Forecast*, 28 February 2018, [http://www.securitycouncilreport.org/monthly-forecast/2018-03/afghanistan\\_24.php](http://www.securitycouncilreport.org/monthly-forecast/2018-03/afghanistan_24.php). “The overall security situation has deteriorated over the past few years, as the Taliban have been able to influence and, to some extent, control ever larger parts of the country. [...] The situation has been described as an eroding stalemate in which the Taliban have increased the territory they are able to contest and, in some areas, have begun to consolidate their hold.” UNSG, *Special Report on the Strategic Review of the United Nations Assistance Mission in Afghanistan*, 10 August 2017, A/72/312–S/2017/696, <http://www.refworld.org/docid/599301c49.html>, para. 14.

<sup>33</sup> The RSM and the ANDSF have reportedly developed a four-year plan to build the capacity of the ANDSF, including with a view to initiating decisive counteroffensives in 2018 and 2019. UNSG, *Special Report on the Strategic Review of the United Nations Assistance Mission in Afghanistan*, 10 August 2017, A/72/312–S/2017/696, <http://www.refworld.org/docid/599301c49.html>, para. 15.

<sup>34</sup> Special Inspector General for Afghanistan Reconstruction (SIGAR), *Quarterly Report to the United States Congress*, 30 April 2018, <https://www.sigar.mil/pdf/quarterlyreports/2018-04-30qr.pdf>, p. 86.

<sup>35</sup> HRW, “No Safe Place”, *Insurgent Attacks on Civilians in Afghanistan*, 8 May 2018, <https://www.hrw.org/report/2018/05/08/no-safe-place/insurgent-attacks-civilians-afghanistan>, pp. 1, 14–26. “For some years already, insurgents have used increasingly sophisticated equipment and, in some places, engaged Afghan forces in direct – as opposed to asymmetric – confrontation.” ICG, *A Dangerous Escalation in Afghanistan*, 31 January 2018, <https://www.crisisgroup.org/asia/south-asia/afghanistan/dangerous-escalation-afghanistan>.

<sup>36</sup> UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768–S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, para. 16; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651–S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>, paras 18–19; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 September 2017, A/72/392–S/2017/783, <http://www.refworld.org/docid/59c3a9f64.html>, para. 17; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 June 2017, A/71/932–S/2017/508, <http://www.refworld.org/docid/5a2563924.html>, para. 15.

<sup>37</sup> AAN, *Battle for Faryab: Fighting Intensifies on One of Afghanistan’s Major Frontlines*, 12 March 2018, <https://www.afghanistan-analysts.org/battle-for-faryab-fighting-intensifies-on-one-of-afghanistans-major-frontlines/>; UNSG, *The Situation in Afghanistan and its*

The UN Secretary-General (UNSG) reported in February 2018 that little progress has been made towards peace negotiations.<sup>38</sup> The effectiveness of the High Peace Council (HPC) in its reconciliation efforts with the Taliban has reportedly been limited, amidst sustained security threats and targeted attacks by AGEs.<sup>39</sup> On 6 December 2017, the HPC announced that the Afghan Government was willing to allow the Taliban to open a political office in Kabul in order to start peace negotiations.<sup>40</sup> On 28 February 2018, President Ghani reportedly invited the Taliban to join direct, formal peace talks, without preconditions and recognizing the role of the Taliban in Afghan politics.<sup>41</sup> However, on 25 April 2018 the Taliban reportedly launched its annual spring offensive called “Operation al-Khandaq” in an apparent rejection of the peace process.<sup>42</sup> While a number of women are members of the HPC, women remain reportedly excluded from the peace talks, despite repeated calls for participation from women’s rights activists.<sup>43</sup>

On 7 June 2018 President Ghani announced a unilateral and temporary ceasefire with the Taliban from 12-19 June 2018, coinciding with the end of Ramadan.<sup>44</sup> While the Taliban responded by announcing a three-day ceasefire with the ANDSF,<sup>45</sup> the Taliban reportedly launched an attack in south-eastern Ghazni province on 12 June.<sup>46</sup> Notwithstanding the attack, on 16 June 2018 President Ghani extended the unilateral ceasefire by 10 days, while stating that the Afghan Government was ready for

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*Implications for International Peace and Security*, 27 February 2018, A/72/768–S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, para. 16; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651–S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>, paras 18-19; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 September 2017, A/72/392–S/2017/783, <http://www.refworld.org/docid/59c3a9f64.html>, para. 16. In 2017, the ICRC was forced to close its operations in northern parts of Afghanistan due to a series of targeted attacks on staff and health facilities. ICRC, *Afghanistan: ICRC Reduces its Presence in the Country*, 9 October 2017, <https://www.icrc.org/en/document/afghanistan-icrc-reduces-its-presence-country>.

<sup>38</sup> UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768–S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, para. 3. See also, AAN, *Words, No Deeds: 2017, Another Lost Year for Peace (Talks) in Afghanistan*, 24 January 2018, <https://www.afghanistan-analysts.org/words-no-deeds-2017-another-lost-year-for-peace-talks-in-afghanistan/>; Pajhwok Afghan News, *So Far No Direct Talks with Taliban: Khapalwak*, 16 January 2018, <https://www.pajhwok.com/en/2018/01/16/so-far-no-direct-talks-taliban-khapalwak>.

<sup>39</sup> In January 2018, the Taliban blew up an ambulance full of explosive in a crowded area of Kabul, reporting killing an estimated 95 people and wounding 158 others. The Taliban reportedly targeted the High Peace Council’s check point in the busy area where the High Peace Council offices are situated. Frances 24, *War and Peace Strategies Leave Afghanistan in a Deadly Muddle*, 1 February 2018, <http://www.france24.com/en/20180131-afghanistan-war-peace-strategy-muddle-taliban-violence>. See also, Arab News, *Time for Afghanistan to Change its Counter-Terrorism Strategy*, 4 February 2018, <http://www.arabnews.com/node/1239411>; RFE/RL, “Four U.S. Citizens Killed,” *Two Hurt in Kabul Hotel Attack*, 25 January 2018, <https://www.rferl.org/a/afghanistan-kabul-hotel-terror-attack-us-casualties/28996076.html>; New York Times, *Peace Efforts May Be Another Casualty of Bombing in Afghanistan*, 1 July 2017, <https://www.nytimes.com/2017/06/01/world/asia/peace-talks-with-taliban-may-be-another-casualty-of-bombing-in-afghanistan.html>.

<sup>40</sup> Pajhwok Afghan News, “Plan-II” if Government’s Peace Offer Fails: Khpalwak, 14 April 2018, <https://www.pajhwok.com/en/2018/04/14/%E2%80%98plan-ii%E2%80%99-if-government%E2%80%99s-peace-offer-fails-khpalkwak>; Salaam Times, *Ghani Unveils Plan for Peace Talks with Taliban*, 28 February 2018, [http://afghanistan.asia-news.com/en\\_GB/articles/cnmi\\_st/features/2018/02/28/feature-01](http://afghanistan.asia-news.com/en_GB/articles/cnmi_st/features/2018/02/28/feature-01); AAN, *Words, No Deeds: 2017, Another Lost Year For Peace (Talks) in Afghanistan*, 24 January 2018, <https://www.afghanistan-analysts.org/words-no-deeds-2017-another-lost-year-for-peace-talks-in-afghanistan/>; Pajhwok Afghan News, *Taliban Can Open Office Everywhere in Afghanistan: HPC*, 12 December 2017, <https://www.pajhwok.com/en/2017/12/12/taliban-can-open-office-everywhere-afghanistan-hpc>.

<sup>41</sup> New York Times, *An Unprecedented Peace Offer to the Taliban*, 11 March 2018, <https://www.nytimes.com/2018/03/11/opinion/peace-taliban.html>.

<sup>42</sup> Salaam Times, *Religious Scholars From 3 Nations Meet in Jakarta, Urge Taliban to Seek Peace*, 11 May 2018, [http://afghanistan.asia-news.com/en\\_GB/articles/cnmi\\_st/newsbriefs/2018/05/11/newsbrief-03](http://afghanistan.asia-news.com/en_GB/articles/cnmi_st/newsbriefs/2018/05/11/newsbrief-03); Salaam Times, *Afghan Forces Redouble Resolve as Blasts, Gun Battles Rock Kabul*, 9 May 2018, [http://afghanistan.asia-news.com/en\\_GB/articles/cnmi\\_st/features/2018/05/09/feature-01](http://afghanistan.asia-news.com/en_GB/articles/cnmi_st/features/2018/05/09/feature-01).

<sup>43</sup> Council on Foreign Relations, *Afghanistan-Taliban Peace Talks Must Include Women Negotiators*, 22 March 2018, <https://www.cfr.org/blog/afghanistan-taliban-peace-talks-must-include-women-negotiators>; Women’s Regional Network (Afghanistan, Pakistan, India), *Afghanistan’s High Peace Council: Women Make the Difference*, 17 January 2018, <https://www.womensregionalnetwork.org/single-post/2018/01/16/Afghanistans-High-Peace-Council-Women-Make-the-Difference>; UNAMA, *Afghan Women’s Political Participation Essential for Peace, Say Panjshir Leaders*, 14 November 2017, <https://unama.unmissions.org/afghan-women%E2%80%99s-political-participation-essential-peace-say-panjshir-leaders>.

<sup>44</sup> Tolo News, *Afghan Govt Announces Ceasefire with Taliban*, 7 June 2018, <https://www.tolonews.com/afghanistan/afghan-govt-announces-ceasefire-taliban>; Al Jazeera, *Afghan President Announces Temporary Ceasefire with Taliban*, 7 June 2018, <https://www.aljazeera.com/news/2018/06/afghan-president-announces-temporary-ceasefire-taliban-180607073341954.html>.

<sup>45</sup> Islamic Emirate of Afghanistan, *Directives of the Leader for the Mujahideen during Eid Days*, 9 June 2018, <https://alemarah-english.com/?p=30187>. See also, BBC, *Afghan Taliban Agree Three-Day Ceasefire - Their First*, 9 June 2018, <https://www.bbc.com/news/world-asia-44423032>; Reuters, *Afghan Taliban Raise Hopes With Surprise Eid Ceasefire*, 9 June 2018, <https://www.reuters.com/article/us-afghanistan-ceasefire/afghan-taliban-offer-surprise-eid-holiday-ceasefire-idUSKCN1J5050?l=0>.

<sup>46</sup> Khaama Press, *Taliban Launch Coordinated Attack on Moqor District on First Day of Ceasefire*, 12 June 2018, <https://www.khaama.com/taliban-launch-coordinated-attack-on-moqor-district-on-first-day-of-ceasefire-05354/>; Press TV, *Afghan Taliban Attack Police HQs Despite Govt. Truce*, 12 June 2018, <https://www.presstv.com/Detail/2018/06/12/564747/Afghanistan-Taliban-attack-truce>.

comprehensive negotiations with the Taliban.<sup>47</sup> However, the Taliban refused to extend its ceasefire;<sup>48</sup> on 20 June it reportedly killed 30 members of the Afghan security forces.<sup>49</sup>

On 15 July 2018, reports of the willingness of the United States to engage in direct negotiations with the Taliban emerged, with negotiations reportedly underway.<sup>50</sup> Simultaneously, President Ghani reiterated his commitment to peace talks with the Taliban.<sup>51</sup>

Islamic State<sup>52</sup> has reportedly remained resilient despite intensified international and Afghan military operations; its continued engagement in clashes against both the Afghan Government and the Taliban reportedly “suggesting that the group has expanded its geographical reach and begun to consolidate its presence outside the eastern part of the country”.<sup>53</sup> Islamic State reportedly conducted attacks against military and foreign military targets and the civilian population, including in particular religious sites, leaders and worshippers, Shi’ites, journalists and media organizations, as well as attacks suggesting targeting of the international community.<sup>54</sup> The sectarian nature of these attacks has been said to mark “an ominous development in Afghanistan’s armed conflict”.<sup>55</sup>

<sup>47</sup> Reuters, *Afghan President Extends Ceasefire with Taliban by 10 Days*, 17 June 2018, <https://www.reuters.com/article/us-afghanistan-taliban-palace/afghan-president-extends-ceasefire-with-taliban-by-10-days-idUSKBN1JD0R6>; UN News, *Afghanistan Extends Ceasefire with Taliban*; UN Urges Both Sides to Work Towards Lasting Peace, 16 June 2018, <https://news.un.org/en/story/2018/06/1012322>. On 30 June 2018 President Ghani formally announced the end of the ceasefire with Taliban. CNN, *Afghan Government Calls off Ceasefire with Taliban*, 30 June 2018, <https://edition.cnn.com/2018/06/30/asia/afghanistan-taliban-ceasefire-ends-intl/index.html>; Deutsche Welle, *Afghanistan President Ashraf Ghani Ends Ceasefire with Taliban*, 20 June 2018, <https://www.dw.com/en/afghanistan-president-ashraf-ghani-ends-ceasefire-with-taliban/a-44467901>.

<sup>48</sup> Islamic Emirate of Afghanistan, *Statement of Islamic Emirate Regarding End of Three Day Eid Ceasefire*, 17 June 2018, <https://alemarah-english.com/?p=30455>. See also, Guardian, *Taliban Refuse to Extend Truce with Afghan Forces*, 17 June 2018, <https://www.theguardian.com/world/2018/jun/17/taliban-refuse-to-extend-truce-with-afghan-forces>.

<sup>49</sup> Reuters, *Afghan Taliban Kill 30 Soldiers in First Major Attack since Eid Ceasefire*, 20 June 2018, <https://www.reuters.com/article/us-afghanistan-taliban-attack/taliban-kill-30-afghan-soldiers-and-take-base-in-first-major-attack-since-ceasefire-idUSKBN1JG0KA>; Al Jazeera, *Taliban Kill Dozens of Soldiers Despite Government Ceasefire*, 20 June 2018, <https://www.aljazeera.com/news/2018/06/taliban-kill-dozens-soldiers-government-ceasefire-180620064216062.html>.

<sup>50</sup> BBC, *Taliban Sources Confirm Qatar Meeting with Senior US Diplomat*, 30 July 2018, <https://www.bbc.com/news/world-asia-45006643>; New York Times, *White House Orders Direct Taliban Talks to Jump-Start Afghan Negotiations*, 15 July 2018, <https://www.nytimes.com/2018/07/15/world/asia/afghanistan-taliban-direct-negotiations.html>.

<sup>51</sup> RFE/RL, *Afghan President: Taliban Could Join Peace Talks, Despite Rejection*, 16 July 2018, <https://www.rferl.org/a/afghan-president-suggests-taliban-could-join-peace-talks-despite-rejection/29368046.html>.

<sup>52</sup> In different sources and at different times the militant group has been variously referred to as Islamic State in Iraq and the Levant-Khorasan Province (ISIL-KP), or ISKP (Islamic State Khorasan Province), or *Daesh* (a loose acronym of *al-Dawla al-Islamiya al-Iraq al-Sham*, the Arabic for Islamic State of Iraq and the Levant), or simply ISIS (Islamic State in Iraq and Syria), or ISIL (Islamic State in Iraq and the Levant), or Islamic State. This document generally uses Islamic State. It should be noted that UNAMA in recent reports uses the term *Daesh*/ISIL-KP, and in addition recognizes a category of “self-identified Daesh/ISIL-KP fighters” to refer to situations where AGEs identify or claim to be ‘Daesh’ but where there is no factual information supporting a formal link to Daesh/ISIL-KP in Nangarhar province or the broader Islamic State organization. UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 4. See also, AAN, *Battle for Faryab: Fighting Intensifies on One of Afghanistan’s Major Frontlines*, 12 March 2018, <https://www.afghanistan-analysts.org/battle-for-faryab-fighting-intensifies-on-one-of-afghanistans-major-frontlines/>; UNSG, *Special Report on the Strategic Review of the United Nations Assistance Mission in Afghanistan*, 10 August 2017, A/72/312–S/2017/696, <http://www.refworld.org/docid/599301c49.html>, para. 17.

<sup>53</sup> UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768–S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, para. 17. See also, UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 September 2017, A/72/392–S/2017/783, <http://www.refworld.org/docid/59c3a9f64.html>, paras 19-20; AAN, *With an Active Cell in Kabul, ISKP Tries to Bring Sectarianism to the Afghan War*, 19 October 2016, <https://www.afghanistan-analysts.org/with-an-active-cell-in-kabul-iskp-tries-to-bring-sectarianism-to-the-afghan-war/>.

<sup>54</sup> UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768–S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, para. 17; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651–S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>, para. 20; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 September 2017, A/72/392–S/2017/783, <http://www.refworld.org/docid/59c3a9f64.html>, para. 20; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 June 2017, A/71/932–S/2017/508, <http://www.refworld.org/docid/5a2563924.html>, paras 16-17. See also, ABC News, *Suicide Bombers Strike in Afghan Capital, 6 Wounded*, 9 May 2018, <https://abcnews.go.com/International/wireStory/official-taliban-capture-2nd-district-compound-days-55032977>.

<sup>55</sup> HRW, “No Safe Place”, *Insurgent Attacks on Civilians in Afghanistan*, 8 May 2018, <https://www.hrw.org/report/2018/05/08/no-safe-place/insurgent-attacks-civilians-afghanistan>, pp. 1-2, 7, 27-35. See also, UNAMA, *Protection of Civilians in Armed Conflict: Attacks Against Places of Worship, Religious Leaders and Worshippers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>; AAN, *With an Active Cell in Kabul, ISKP Tries to Bring Sectarianism to the Afghan War*, 19 October 2016, <https://www.afghanistan-analysts.org/with-an-active-cell-in-kabul-iskp-tries-to-bring-sectarianism-to-the-afghan-war/>.



Pro-government armed groups<sup>56</sup> are also reported to undermine the government's authority in their areas of influence and are associated with human rights violations.<sup>57</sup>

In September 2016, the Afghan government signed a peace deal with Hezb-e Islami-ye Gulbuddin (HIG), which reportedly included a commitment by HIG to cease its military activities and fully respect the laws of Afghanistan.<sup>58</sup>

On 1 January 2015, the International Security Assistance Force (ISAF) ended its combat mission and ANDSF assumed full responsibility for the security situation in the country.<sup>59</sup> A significantly reduced international military presence remained under the NATO Resolute Support Mission (RSM), a non-combat mission with a focus on training, advising and assisting the ANDSF.<sup>60</sup> In addition, the United States maintained a separate and complementary counterterrorism mission in the country.<sup>61</sup>

## 2. Political and Economic Developments

The National Unity Government (NUG) reportedly continues to be hampered by ethnic divisions, tensions related to political patronage and internal disagreements over key strategic issues.<sup>62</sup> Concerns over the deteriorating security situation are reported to undermine the population's trust in the Government.<sup>63</sup>

Following the repeated postponement of parliamentary elections that had originally been scheduled for 2015, the Government announced in April 2018 that parliamentary and district council elections will

<sup>56</sup> UNAMA defines pro-government armed groups as "an organized armed non-State actor engaged in conflict and distinct from Government Forces, rebels and criminal groups. Pro-Government armed groups do not include the Afghan Local Police, which fall under the command and control of the Ministry of Interior. These armed groups have no legal basis under the laws of Afghanistan, though in some cases, armed groups receive direct/indirect support of the host Government or other States. This term includes, but is not limited to, the following groups: 'national uprising movements', local militias (ethnically, clan or otherwise based), and civil defence forces and paramilitary groups (when such groups are clearly not under State control)." UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 51.

<sup>57</sup> AAN, *Battle for Faryab: Fighting Intensifies on One of Afghanistan's Major Frontlines*, 12 March 2018, <https://www.afghanistan-analysts.org/battle-for-faryab-fighting-intensifies-on-one-of-afghanistans-major-frontlines/>; UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 52.

<sup>58</sup> According to analysts, HIG representatives have made public allegations that the Afghan government is not upholding its side of the agreement. AAN, *Charismatic, Absolutist, Divisive: Hekmatyar and the Impact of His Return*, 3 May 2017, <https://www.afghanistan-analysts.org/charismatic-absolutist-divisive-hekmatyar-and-the-impact-of-his-return/>. In January 2018, in the third and largest release of prisoners since signing the peace agreement with HIG, 78 prisoners affiliated with the group were released. UNSC, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, para. 10. See also, AAN, *A Matter of Registration: Factional Tensions in Hezb-e Islami*, 25 November 2017, <https://www.afghanistan-analysts.org/a-matter-of-registration-factional-tensions-in-hezb-e-islami/>; Al Jazeera, *UN Lifts Sanctions Against Gulbuddin Hekmatyar*, 4 February 2017, <https://www.aljazeera.com/news/2017/02/lifts-sanctions-gulbuddin-hekmatyar-170204125508334.html>; Al Jazeera, *Afghanistan: Hezb-i-Islami Armed Group Signs Peace Deal*, 22 September 2016, <https://www.aljazeera.com/news/2016/09/gulbuddin-hekmatyar-group-signs-afghan-peace-deal-160922093420326.html>.

<sup>59</sup> NATO, *ISAF Flag Returns to NATO Headquarters from Kabul, As NATO Commitment to Afghanistan Endures*, 15 January 2015, [http://www.nato.int/cps/en/natohq/news\\_116550.htm](http://www.nato.int/cps/en/natohq/news_116550.htm).

<sup>60</sup> In July 2016 it was agreed to maintain RSM's presence beyond 2016 and, in November 2017, allied and partner troop contributors confirmed that RSM troops would be increased from approximately 13,000 to 16,000. NATO, *NATO and Afghanistan*, 10 November 2017, [https://www.nato.int/cps/ic/natohq/topics\\_8189.htm](https://www.nato.int/cps/ic/natohq/topics_8189.htm); NATO, *A New Chapter in NATO-Afghanistan Relations*, July 2016, [https://www.nato.int/nato\\_static\\_fl2014/assets/pdf/pdf\\_2016\\_07/20160701\\_1607-backgrounder-afghanistan-en.pdf](https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2016_07/20160701_1607-backgrounder-afghanistan-en.pdf).

<sup>61</sup> US Department of Defence, *Enhancing Security and Stability in Afghanistan*, December 2017, <https://www.defense.gov/Portals/1/Documents/pubs/1225-Report-Dec-2017.pdf>, pp. 4-6.

<sup>62</sup> UNSC, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, paras 3, 5-8; Al Jazeera, *Ashraf Ghani: 'Philosopher King' or Ethnonationalist?*, 5 February 2018, <https://www.aljazeera.com/indepth/opinion/ashraf-ghani-philosopher-king-ethnonationalist-180201144845423.html>; AAN, *The 'Ankara Coalition': Opposition From Within the Government*, 25 July 2017, <https://www.afghanistan-analysts.org/the-ankara-coalition-opposition-from-within-the-government/>; The Independent, *Afghanistan's President Under Renewed Pressure to Enact Reforms After Ethnic Leaders Form New Coalition*, 2 July 2017, <https://www.independent.co.uk/news/world/politics/afghanistan-president-ghani-pressure-political-reforms-a7819536.html>; ICG, *Afghanistan: The Future of the National Unity Government*, 10 April 2017, <https://www.crisisgroup.org/asia/south-asia/afghanistan/285-afghanistan-future-national-unity-government>.

<sup>63</sup> UNSC, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, paras 9-10; United Nations Meetings Coverage and Press Releases, *Afghanistan's Government Must Work to Improve Trust in Security Sector Amid Rising Tensions, Terrorist Attacks, Special Representative Tells Security Council*, 21 June 2017, <https://www.un.org/press/en/2017/sc12882.doc.htm>.

be held on 20 October 2018,<sup>64</sup> with presidential elections scheduled for 2019.<sup>65</sup> In September 2016 a new electoral law was passed, and a new Independent Election Commission (IEC) inaugurated in November 2016.<sup>66</sup> According to this law, the IEC are required to establish polling centres across geographical locations in a balanced manner,<sup>67</sup> including in areas controlled by AGEs.<sup>68</sup> UNAMA expressed concerns regarding the growing insecurity and escalating election-related violence targeting civilians and civilian sites at this early stage in the election process, a trend that reportedly mirrors the pattern of violence surrounding the presidential election period in 2014.<sup>69</sup>

Afghan government statistics indicate that the economic situation has deteriorated since 2013-2014, against a background of high levels of insecurity and an unsustainably high population growth.<sup>70</sup> While overall economic growth is estimated to have increased slightly in 2017 compared to 2016, growth in the agricultural sector, which employs over 60 percent of the Afghan workforce, has reportedly been constrained by poor weather conditions.<sup>71</sup> The proportion of the population living below the national poverty line has reportedly increased from 38.3 per cent in 2011-2012 to 55 per cent in 2016-2017.<sup>72</sup> The economy is reportedly largely comprised of informal and illicit activity, including the opium trade, which in turn is reported to generate further instability.<sup>73</sup> According to the Afghan Living Conditions

<sup>64</sup> “Parliamentary elections should have been held in 2015, but they were repeatedly delayed due to security fears and unresolved disputes about election reforms.” RFE/RL, *Afghanistan Launches Voter Registration for Parliamentary Elections*, 15 April 2018, <https://www.rferl.org/a/afghanistan-election-parliamentary/29168278.html>. See also, AAN, *Afghanistan Election Conundrum (6): Another New Date for Elections*, 12 April 2018, <https://www.afghanistan-analysts.org/afghanistan-election-conundrum-6-another-new-date-for-elections/>; Reuters, *Afghanistan Pledges October Date for Parliamentary Election*, 1 April 2018, <https://www.reuters.com/article/us-afghanistan-election/afghanistan-pledges-october-date-for-parliamentary-election-idUSKCN1H810L>; UNSC, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, paras 12-13; ICG, *A Dangerous Escalation in Afghanistan*, 31 January 2018, <https://www.crisisgroup.org/asia/south-asia/afghanistan/dangerous-escalation-afghanistan>; Freedom House, *Freedom in the World in 2018: Afghanistan*, 2018, <https://freedomhouse.org/report/freedom-world/2018/afghanistan>.

<sup>65</sup> ICG, *A Dangerous Escalation in Afghanistan*, 31 January 2018, <https://www.crisisgroup.org/asia/south-asia/afghanistan/dangerous-escalation-afghanistan>.

<sup>66</sup> *Afghanistan, Election Law*, 25 September 2016, <http://www.refworld.org/docid/5adf31924.html>. AAN, *Afghanistan's Incomplete New Electoral Law: Changes and Controversies*, 22 January 2017, <https://www.afghanistan-analysts.org/afghanistans-incomplete-new-electoral-law-changes-and-controversies/>.

<sup>67</sup> *Afghanistan, Election Law*, 25 September 2016, <http://www.refworld.org/docid/5adf31924.html>, Article 7. UNAMA has expressed concerns about the fact that “[a]pproximately 60% of the more than 7,000 sites designated by the Independent Electoral Commission as voter registration and polling sites are schools, with activities taking place inside school buildings during classroom hours.” UNAMA, *Protection of Civilians in Armed Conflict: Election-Related Attacks and Abuses During the Initial Voter Registration Period*, 10 May 2018, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_-\\_special\\_report\\_-\\_election-related\\_attacks\\_and\\_abuses\\_may\\_2018\\_english.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_-_special_report_-_election-related_attacks_and_abuses_may_2018_english.pdf), p. 2. See also, AAN, *The Afghanistan Election Conundrum (7): A Deficient Polling Centre Assessment*, 16 April 2018, <https://www.afghanistan-analysts.org/the-afghanistan-election-conundrum7-a-deficient-polling-centre-assessment/>.

<sup>68</sup> “Officials said that even provincial capitals were struggling to open all voter registration centers. ‘There are 55 voter registration centers in Kunduz city and the villages that belong to the center, and 20 of them are closed because those villages are under Taliban control,’ said Gen. Abdul Hamid Hamidi, the police chief of Kunduz Province.” The New York Times, *‘So Many Bodies’: Bomber Kills Dozens Signing Up to Vote in Kabul*, 22 April 2018, <https://www.nytimes.com/2018/04/22/world/asia/suicide-bomber-afghanistan-elections.html>.

<sup>69</sup> UNAMA, *Protection of Civilians in Armed Conflict: Election-Related Attacks and Abuses During the Initial Voter Registration Period*, 10 May 2018, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_-\\_special\\_report\\_-\\_election-related\\_attacks\\_and\\_abuses\\_may\\_2018\\_english.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_-_special_report_-_election-related_attacks_and_abuses_may_2018_english.pdf).

<sup>70</sup> Central Statistics Organization, *Afghanistan Living Conditions Survey 2016-2017: Highlights Report*, 2018, [http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight\(1\).pdf](http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight(1).pdf), p. 1. “Economic growth remained limited owing to the ongoing conflict, regulatory uncertainty and widespread corruption. Overall, estimated growth increased slightly, from 2.2 per cent in 2016 to 2.6 per cent in 2017. [...] There was a notable decline in growth in the agricultural sector, which accounts for the largest share of the economy.” UNSC, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, para 32. See also, Reuters, *Afghanistan's Poverty Rate Rises as Economy Suffers*, 7 May 2018, <https://www.reuters.com/article/us-afghanistan-economy/afghanistans-poverty-rate-rises-as-economy-suffers-idUSKBN1I818X>; USIP, *Revenue Growth in Afghanistan Continues Strong But Future Uncertain*, 21 February 2017, <https://www.usip.org/publications/2017/02/revenue-growth-afghanistan-continues-strong-future-uncertain>.

<sup>71</sup> ILO, *Afghanistan: Employment and Environmental Sustainability Fact Sheet 2017*, [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_625888.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_625888.pdf), p. 2; World Bank, *The World Bank in Afghanistan: Overview*, 10 April 2018, <http://www.worldbank.org/en/country/afghanistan/overview>; World Bank, *Employment in Agriculture (% of Total Employment) (Modeled ILO Estimate)*, data retrieved in November 2017 from ILO, ILOSTAT database, <https://data.worldbank.org/indicator/SL.AGR.EMPL.ZS?locations=AF>; COFACE, *Afghanistan: Major Macro Economic Indicators*, January 2018, <http://www.coface.com/Economic-Studies-and-Country-Risks/Afghanistan>.

<sup>72</sup> Central Statistics Organization, *Afghanistan Living Conditions Survey 2016-2017: Highlights Report*, 2018, [http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight\(1\).pdf](http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight(1).pdf), pp. 6-7.

<sup>73</sup> World Bank, *The World Bank in Afghanistan: Overview*, 10 April 2018, <http://www.worldbank.org/en/country/afghanistan/overview>; UNSC, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, para. 49; COFACE, *Afghanistan: Major Macro Economic Indicators*, January 2018, <http://www.coface.com/Economic-Studies-and-Country-Risks/Afghanistan>. “Potential opium production was estimated at 9,000 tons in 2017,

Survey 2016-2017, the unemployment rate increased to 24 per cent, from 22 per cent in 2013-2014, noting that only 13 per cent of the Afghan population can be considered to have “decent employment” (i.e. people who are neither underemployed nor in jobs characterized by job insecurity or poor working conditions).<sup>74</sup> According to a nation-wide survey conducted in June 2017, 58.1 per cent of respondents reported that their employment opportunities had worsened in the preceding year. Similarly, 33.5 per cent of respondents reported that their household financial situation had worsened, while 20.3 per cent of respondents reported an improvement.<sup>75</sup> These developments must be considered against a reported background of endemic corruption, difficulties in establishing and maintaining governmental authority, continuing concerns about weaknesses in the rule of law and an underperforming judicial system, high crime levels,<sup>76</sup> widespread human rights violations, and a general climate of impunity.<sup>77</sup> There are also concerns that the ongoing violence and deteriorating economic situation are fuelling increases in mental health problems and drug use.<sup>78</sup>

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

The security situation in Afghanistan remains volatile, with civilians continuing to bear the brunt of the conflict.<sup>79</sup> A continued deterioration of the security situation and an intensification of the armed conflict

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an increase of 87% from its 2016 level (4,800 tons).” United Nations Office on Drugs and Crime (UNODC) and Afghanistan Ministry of Counter Narcotics, *Afghanistan Opium Survey 2017: Cultivation and Production*, November 2017, [https://www.unodc.org/documents/crop-monitoring/Afghanistan/Afghan\\_opium\\_survey\\_2017\\_cult\\_prod\\_web.pdf](https://www.unodc.org/documents/crop-monitoring/Afghanistan/Afghan_opium_survey_2017_cult_prod_web.pdf), p. 6.

<sup>74</sup> “Of the total employed population, 20 percent are under-employed (in need of more work). Moreover, 80 percent of all jobs are classified as vulnerable employment, characterised by job insecurity and poor working conditions, and 67 percent of jobs in non-agricultural employment is informal employment. [...] Job opportunities for young people are particularly scarce, with the youth unemployment rate [persons between 15-24] standing as high as 31 percent. Again, unemployment levels of young females far surpass that of their male peers.” The proportion of youth not in “employment, education or training” is estimated at 42 per cent for both sexes combined, but is especially high for women. Central Statistics Organization, *Afghanistan Living Conditions Survey 2016-2017: Highlights Report*, 2018, [http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight\(1\).pdf](http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight(1).pdf), p. 5; see also, Central Statistics Organization, *Afghanistan Living Condition Survey 2013-2014: National Risk and Vulnerability Assessment*, 2016, <http://cso.gov.af/Content/files/ALCS%202013-14%20Main%20Report%20-%20English%20-%202020151221.pdf>, pp. 57-64. “Agriculture is the largest sector of employment in the country, and the non-farm sector is dominated by employment in family-based, small-scale trade activities. The formal labour market is small and the public sector is the main employer. The relatively low open unemployment is counterbalanced by the severity of underemployment. There are also strong sectorial differences in the education and gender composition of the labour force.” Central Statistics Organization, *Socio-Demographic and Economic Survey, Economically Active Population: Provinces of Kabul, Bamiyan, Daykundi, Ghor, Kapisa and Parwan*, 2011-2014, <http://afghanistan.unfpa.org/sites/default/files/pub-pdf/UNFPA%20SDES%20Mono%20Labour%2028%20May%20for%20web.pdf>, p. 17. “Vulnerable employment in Afghanistan accounts for 62.9 per cent of the labour force, with the majority of those workers having own-account status, most often within the agriculture sector.” ILO, *Afghanistan: Employment and Environmental Sustainability Fact Sheet 2017*, [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_625888.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_625888.pdf), p. 2.

<sup>75</sup> The survey included face-to-face interviews with 10,012 Afghans from 18 years and older, representing all major ethnic groups from all 34 provinces of the country. The Asia Foundation, *Afghanistan in 2017: A Survey of the Afghan People*, 14 November 2017, [https://asiafoundation.org/wp-content/uploads/2017/11/2017\\_AfghanSurvey\\_report.pdf](https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf), pp. 9, 67-69.

<sup>76</sup> Freedom House, *Freedom in the World in 2018: Afghanistan*, 2018, <https://freedomhouse.org/report/freedom-world/2018/afghanistan>; SIGAR, *Quarterly Report to the United States Congress*, 30 April 2018, <https://www.sigar.mil/pdf/quarterlyreports/2018-04-30qr.pdf>, pp. 11-12; UNSC, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, paras 32, 35, 37; Institute for War and Peace Reporting (IWPR), “Unbearable” Corruption in Afghan Province, 12 February 2018, <https://www.ecoi.net/en/document/1424557.html>; AAN, *The 2018 Afghan National Budget: Confronting Hard Realities by Accelerating Reforms*, 5 December 2017, <https://www.afghanistan-analysts.org/the-2018-afghan-national-budget-confronting-hard-realities-by-accelerating-reforms/>; Integrity Watch Afghanistan, *The Game of Numbers: Analysis of the National Budget 2018*, December 2017, [https://iwaweb.org/wp-content/uploads/2017/12/IWA\\_National-Budget\\_English\\_6.pdf](https://iwaweb.org/wp-content/uploads/2017/12/IWA_National-Budget_English_6.pdf), p. 6; UNODC and Afghanistan Ministry of Counter Narcotics, *Afghanistan Opium Survey 2017: Cultivation and Production*, November 2017, [https://www.unodc.org/documents/crop-monitoring/Afghanistan/Afghan\\_opium\\_survey\\_2017\\_cult\\_prod\\_web.pdf](https://www.unodc.org/documents/crop-monitoring/Afghanistan/Afghan_opium_survey_2017_cult_prod_web.pdf), p. 7; UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, p. 2, para. 7; p. 3, para. 11; p. 7, paras 29-30.

<sup>77</sup> See Section II.C.

<sup>78</sup> Global Research, *Afghanistan’s Traumatized Population: The Forgotten Downsides of the US-led Afghan War*, 8 February 2018, <https://www.globalresearch.ca/afghanistans-traumatized-population-the-forgotten-downsides-of-the-us-led-afghan-war/5628470>; HRW, *World Report 2018: Afghanistan*, 18 January 2018, <http://www.refworld.org/docid/5a61eeac4.html>; AP News, *After Years of War, Afghans Wary to Talk of Mental Health*, 18 August 2016, <https://apnews.com/14df828eb00b4adfa48123751f089186>.

<sup>79</sup> UNSG, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ad73b254.html>, paras 14-18, 55; ICG, *The Cost of Escalating Violence in Afghanistan*, 7 February 2018, <http://www.refworld.org/docid/5a9d1f864.html>; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651-S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>, para. 16; UNSG, *Special Report on the Strategic Review of the United Nations Assistance Mission in Afghanistan*, 10 August 2017, A/72/312-S/2017/696, <http://www.refworld.org/docid/599301c49.html>, paras 9, 16. See also, ACAPS, *Humanitarian Overview: An Analysis of Key Crises in 2018*, [https://www.acaps.org/sites/acaps/files/slides/files/acaps\\_humanitarian\\_overview\\_analysis\\_of\\_key\\_crises\\_into\\_2018.pdf](https://www.acaps.org/sites/acaps/files/slides/files/acaps_humanitarian_overview_analysis_of_key_crises_into_2018.pdf), pp. 6-8.



in Afghanistan have been observed in the years following the withdrawal of the international military forces in 2014.<sup>80</sup> The Taliban is reported to continue its offensive to gain increased control over a larger number of districts,<sup>81</sup> while Islamic State are reported to be increasingly demonstrating their ability to expand their geographical reach, further destabilizing the security situation.<sup>82</sup>

The conflict continues to affect all parts of the country.<sup>83</sup> Since the Government's decision to defend population centres and strategic rural areas, fighting between AGEs and the Afghan government has intensified.<sup>84</sup> AGEs are reported to have engaged in an increasing number of attacks deliberately targeting civilians, particularly suicide improvised explosive devices (IED) and complex attacks.<sup>85</sup> AGEs continue to carry out large-scale attacks in Kabul and other cities,<sup>86</sup> and to consolidate their control across rural areas.<sup>87</sup> Concerns have been expressed about the ANDSFs' capability and effectiveness in ensuring security and stability across Afghanistan.<sup>88</sup>

<sup>80</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 1. See also, AAN, *Five Questions to Make Sense of the New Peak in Urban Attacks and a Violent Week in Kabul*, 5 February 2018, <https://www.afghanistan-analysts.org/five-questions-to-make-sense-of-the-new-peak-in-urban-attacks-and-a-violent-week-in-kabul/>.

<sup>81</sup> Gandhara, *Afghan Forces 'Retake Control' of Northern District from Taliban*, 31 May 2018, <https://gandhara.rferl.org/a/afghan-forces-retake-control-of-northern-district-from-taliban/29261474.html>; New York Times, *Militants Kill 15 in Afghan Attacks, as Taliban Expand Their Control*, 9 May 2018, <https://www.nytimes.com/2018/05/09/world/asia/afghanistan-attack-kabul.html>; AAN, *Battle for Faryab: Fighting Intensifies on One of Afghanistan's Major Frontlines*, 12 March 2018, <https://www.afghanistan-analysts.org/battle-for-faryab-fighting-intensifies-on-one-of-afghanistans-major-frontlines/>; UNSG, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 27 February 2018, A/72/768–S/2018/165, <http://www.refworld.org/docid/5ad73b254.html>, para. 16; ICG, *A Dangerous Escalation in Afghanistan*, 31 January 2018, <https://www.crisisgroup.org/asia/south-asia/afghanistan/dangerous-escalation-afghanistan>. "Afghan government control or influence has declined and insurgent control or influence has increased overall since SIGAR began reporting control data in January 2016." SIGAR, *Quarterly Report to the United States Congress*, 30 January 2018, <https://www.sigar.mil/pdf/quarterlyreports/2018-01-30qr.pdf>, p. 59; see also, *ibid.*, p. 87. See also, BBC News, *Taliban Threaten 70% of Afghanistan*, BBC Finds, 31 January 2018, <http://www.bbc.com/news/world-asia-42863116>; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651–S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>, paras 18–19; UNSG, *Special Report on the Strategic Review of the United Nations Assistance Mission in Afghanistan*, 10 August 2017, A/72/312–S/2017/696, <http://www.refworld.org/docid/599301c49.html>, paras 14–15; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 June 2017, A/71/932–S/2017/508, <http://www.refworld.org/docid/5a2563924.html>, para. 15.

<sup>82</sup> Jamestown Foundation, *Islamic State a Deadly Force in Kabul*, 6 April 2018, <http://www.refworld.org/docid/5ad710f64.html>; UNSG, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, 27 February 2018, A/72/768–S/2018/165, <http://www.refworld.org/docid/5ad73b254.html>, para. 17; BBC News, *Taliban Threaten 70% of Afghanistan*, BBC Finds, 31 January 2018, <http://www.bbc.com/news/world-asia-42863116>; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651–S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>, para. 20; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 June 2017, A/71/932–S/2017/508, <http://www.refworld.org/docid/5a2563924.html>, paras 16–17.

<sup>83</sup> UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 September 2017, A/72/392–S/2017/783, <http://www.refworld.org/docid/59c3a9f64.html>, para. 15.

<sup>84</sup> AAN, *Battle for Faryab: Fighting Intensifies on One of Afghanistan's Major Frontlines*, 12 March 2018, <https://www.afghanistan-analysts.org/battle-for-faryab-fighting-intensifies-on-one-of-afghanistans-major-frontlines/>; HRW, *World Report 2018: Afghanistan*, 18 January 2018, <http://www.refworld.org/docid/5a61eeac4.html>; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 September 2017, A/72/392–S/2017/783, <http://www.refworld.org/docid/59c3a9f64.html>, para. 16.

<sup>85</sup> UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html>, p. 4; UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 2.

<sup>86</sup> UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768–S/2018/165, <http://www.refworld.org/docid/5ad73b254.html>, paras 3, 15; AAN, *Five Questions to Make Sense of the New Peak in Urban Attacks and a Violent Week in Kabul*, 5 February 2018, <https://www.afghanistan-analysts.org/five-questions-to-make-sense-of-the-new-peak-in-urban-attacks-and-a-violent-week-in-kabul/>; Frances 24, *War and Peace Strategies Leave Afghanistan in a Deadly Muddle*, 1 February 2018, <http://www.france24.com/en/20180131-afghanistan-war-peace-strategy-muddle-taliban-violence>; ICG, *A Dangerous Escalation in Afghanistan*, 31 January 2018, <https://www.crisisgroup.org/asia/south-asia/afghanistan/dangerous-escalation-afghanistan>; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 September 2017, A/72/392–S/2017/783, <http://www.refworld.org/docid/59c3a9f64.html>, para. 20.

<sup>87</sup> New York Times, *Militants Kill 15 in Afghan Attacks, as Taliban Expand Their Control*, 9 May 2018, <https://www.nytimes.com/2018/05/09/world/asia/afghanistan-attack-kabul.html>.

<sup>88</sup> The Economist, *Afghanistan's Fragile Government Picks a Dangerous Fight*, 1 March 2018 <https://www.economist.com/asia/2018/03/01/afghanistans-fragile-government-picks-a-dangerous-fight>; Washington Post, *Afghans, Fearing More Insurgent Violence, Feel Abandoned by Struggling Government*, 11 February 2018 [https://www.washingtonpost.com/world/asia\\_pacific/afghans-fearing-more-insurgent-violence-feel-abandoned-by-struggling-government/2018/02/09/29196310-0b50-11e8-998c-96deb18cca19\\_story.html](https://www.washingtonpost.com/world/asia_pacific/afghans-fearing-more-insurgent-violence-feel-abandoned-by-struggling-government/2018/02/09/29196310-0b50-11e8-998c-96deb18cca19_story.html); ICG, *The Cost of Escalating Violence in Afghanistan*, 7 February 2018, <http://www.refworld.org/docid/5a9d1f864.html>; Tolo News, *Psychologists Claim Attacks Creating Fear among the Public*, 29 January 2018 <https://www.tolonews.com/afghanistan/psychologists-claim-attacks-creating-fear-among-public>; The Diplomat, *Decoding Afghan Security Forces' Failures*, 23 June 2017, <https://thediplomat.com/2017/06/decoding-afghan-security-forces-failures/>; United Nations Meetings Coverage and Press Releases, *Afghanistan's Government Must Work to Improve Trust in Security Sector Amid Rising Tensions, Terrorist Attacks*, Special Representative Tells Security Council, 21 June 2017, <https://www.un.org/press/en/2017/sc12882.doc.htm>.

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

- (i) The control over civilian populations by AGEs, including through the imposition of parallel justice structures and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, restrictions on freedom of movement, and the use of extortion and illegal taxation (see Section II.C);
- (ii) Forced recruitment (see Section III.A.3);
- (iii) The impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty and the destruction of livelihoods (see Section II.D);
- (iv) High levels of organized crime and the ability of local strongmen, warlords and corrupt government officials to operate with impunity (see Section II.C);
- (v) Systematic constraints on access to education and basic health care as a result of insecurity (see Section II.C); and
- (vi) Systematic constraints on participation in public life, including in particular for women (see Sections III.A.1.i and III.A.7).

### **1. Civilian Casualties**

UNAMA began tracking civilian casualties (comprising civilians who are either killed or injured as a result of conflict and other forms of violence) in 2009. The number of civilian casualties has increased every year between 2009 and 2017, apart from a four per cent decrease in 2012 compared to 2011 and a nine per cent decrease in 2017 compared to 2016. Despite the small decrease in 2017, the year saw a high level of civilian casualties, with a total of 10,453 (3,438 deaths and 7,015 injured).<sup>89</sup> High levels of civilian casualties continued in the first half of 2018, with UNAMA documenting 5,122 civilian casualties between 1 January and 30 June 2018, including 1,692 deaths (the highest number since tracking began in 2009) and 3,430 civilians who were injured.<sup>90</sup>

In 2017, UNAMA documented the highest number of civilian casualties from combined IED tactics (suicide IEDs and non-suicide IEDs) since 2009.<sup>91</sup> The use of combined IED tactics by AGEs, particularly “indiscriminate and unlawful use of IEDs such as suicide bombs and pressure-plate devices in civilian populated areas”, accounted for 4,151 civilian casualties, 40 per cent of all civilian casualties in 2017.<sup>92</sup> The use of IEDs by AGEs remained the leading cause of civilian casualties in the first six months of 2018, when the combined use of suicide and non-suicide IEDs caused nearly half (45 per cent) of all civilian casualties.<sup>93</sup>

Continuing a trend first documented by UNAMA in 2017, the majority of IED casualties in the first half of 2018 were caused by suicide and complex attacks, which caused “record high civilian casualties”

<sup>89</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 1.

<sup>90</sup> UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html>, p. 1. See also, Pajhwok Afghan News, *April Casualties: Over 2,000 People Killed and Wounded in Afghanistan*, 3 May 2018, <https://www.pajhwok.com/en/2018/05/03/april-casualties-over-2000-people-killed-and-wounded-afghanistan>; ICG, *The Cost of Escalating Violence in Afghanistan*, 7 February 2018, <http://www.refworld.org/docid/5a9d1f864.html>.

<sup>91</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 1-2.

<sup>92</sup> *Ibid.*

<sup>93</sup> UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html>, p. 1.

(427 deaths and 986 injured).<sup>94</sup> This followed an increase of 17 per cent in 2017 of civilian casualties caused by suicide and complex attacks compared to 2016; 70 per cent of all civilian casualties caused by such attacks in 2017 reportedly occurred in Kabul city.<sup>95</sup>

Ground engagements were the second leading cause of civilian casualties in the first six months of 2018 (360 deaths and 1,134 injured), followed by targeted and deliberate killings, aerial operations, and explosive remnants of war.<sup>96</sup> Similarly, ground engagements were the second leading cause of civilian casualties in 2017, with 3,484 civilian casualties (823 deaths and 2,661 injured), or 33 per cent of all civilian casualties; the majority of civilian casualties reportedly occurred in fighting between pro-government forces and AGEs.<sup>97</sup> Ground fighting continued to be the leading cause of harm to women and children.<sup>98</sup>

From 1 January to 30 June 2018, UNAMA attributed 67 per cent of all civilian casualties to AGEs: 3,413 civilian casualties (1,127 deaths and 2,286 injured), with 42 per cent attributed to Taliban, 18 per cent to Islamic State, and seven per cent to unidentified AGEs.<sup>99</sup> In 2017, UNAMA attributed 65 per cent of all civilian casualties to AGEs: 6,768 civilian casualties (2,303 deaths and 4,465 injured), a three per cent overall decrease compared to 2016.<sup>100</sup> The Taliban was held responsible for 42 per cent of the total number of casualties in 2017, Islamic State for 10 per cent (the number of civilian casualties attributed to Islamic State increased by 11 per cent compared to 2016),<sup>101</sup> and “undetermined and other [AGEs]” for 13 per cent of casualties.<sup>102</sup>

In the first half of 2018, UNAMA documented “a disturbing increase” in the number of civilian casualties from suicide and complex attacks by AGEs, with more than half attributed to Islamic State.<sup>103</sup> In the first half of 2018 suicide and complex attacks by AGEs caused 1,413 civilian casualties (427 deaths and 986 injured), an increase of 22 per cent in civilian casualties compared to the same period in 2017.<sup>104</sup> Civilian casualties from attacks by AGEs deliberately targeting civilians also increased by

<sup>94</sup> *Ibid.* “According to UNAMA’s definition, a complex attack includes the following elements: two or more attackers, two or more types of weapons, and one of the weapons is a suicide IED – i.e. body-borne suicide IED or vehicle-borne suicide IED.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 1.

<sup>95</sup> “In 2017, civilian casualties from suicide and complex attacks comprised 22 per cent of all civilian casualties, and the second leading cause of any single tactic or incident type, after ground engagements. UNAMA documents 57 suicide and complex attacks that caused 2,295 civilian casualties (605 deaths and 1,690 injured). [...] This represents [...] the highest number of civilian casualties from such attacks in a single year since UNAMA began documenting civilian casualties in 2009.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 28; see also *ibid.*, pp. 1, 28–30. See also, PRI, *Violence in Kabul Is so Extreme, Citizens Are Carrying Around ‘In Case I Die’ Notes*, 31 January 2018 <https://www.pri.org/stories/2018-01-31/violence-kabul-so-extreme-citizens-are-carrying-around-case-i-die-notes>.

<sup>96</sup> UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html>, p. 1.

<sup>97</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 2–3, 20.

<sup>98</sup> “The armed conflict caused 544 women casualties (157 deaths and 387 injured) during the first six months of 2018, with almost half from ground engagements. Women increasingly lost their lives as a result of suicide and complex attacks, and also continued to suffer from targeted killings and aerial operations. While overall women casualties decreased by 15 per cent compared to the same period in 2017, women casualties remain of grave concern.” UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html>, pp. 2–3. “In 2017, women casualties continued at levels comparable to 2016: contrary to the overall decrease in civilian casualties, total women casualties increased by less than one per cent, and women deaths increased by five per cent. Ground engagements remained the leading cause of harm to women, despite UNAMA documenting a decrease of 11 per cent in women casualties from ground fighting. The next leading cause, suicide and complex attacks, caused more than double the number of women casualties in 2017 than in 2016.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 3. “Ground engagements continued to severely impact women and children, who together comprised 59 per cent of all ground engagement civilian casualties, and 70 per cent of those caused by the use of indirect fire from weapons such as mortars, rockets, and grenades. Ground engagements caused 51 per cent of all women civilian casualties and 45 per cent of all child casualties.” *Ibid.*, p. 20.

<sup>99</sup> UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html>, p. 4.

<sup>100</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 26.

<sup>101</sup> *Ibid.*, pp. 5, 27. See also, UNAMA, *Protection of Civilians in Armed Conflict: Attacks Against Places of Worship, Religious Leaders and Worshipers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>, p. 1.

<sup>102</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 4–5.

<sup>103</sup> UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html>, p. 2.

<sup>104</sup> UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html>, p. 4.

28 per cent compared with the first half of 2017, “mainly due to sharp increases in civilian casualties from attacks against civilian government administration and election-related incidents.”<sup>105</sup> AGEs also continued conducting attacks in other public places, including places of worship, voting registration centres, crowded markets, mosques, civilian government offices, social gatherings such as weddings and funerals, gatherings of tribal elders, religious leaders and worshippers, in violation of international humanitarian law.<sup>106</sup> In 2017, 37 attacks against places and people of worship resulted in 499 civilian casualties (202 deaths and 297 injured), which marked a 32 per cent increase in overall civilian casualties from such attacks compared to 2016 (double the number of deaths, and three times as many attacks).<sup>107</sup> UNAMA has also expressed concern regarding election-related violence in 2018, with AGEs targeting civilians and civilian sites.<sup>108</sup>

In the first six month of 2018, UNAMA attributed 1,047 civilian casualties (20 per cent of all civilian casualties) to pro-government forces, approximately the same as during the corresponding period in 2017.<sup>109</sup> In 2017, pro-government forces were responsible for 2,108 civilian casualties, or 20 per cent of the total number (745 deaths and 1,363 injured); this represented a 23 per cent decrease compared to 2016. More than half of the civilian casualties caused by pro-government forces occurred during ground fighting with AGEs.<sup>110</sup>

<sup>105</sup> *Ibid.*, pp. 4-5.

<sup>106</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 27. “In 2017, civilian casualties decreased in 22 of Afghanistan’s 34 provinces. In the remaining 12 provinces, increased suicide and IED attacks in civilian-populated areas by Anti-Government Elements were the main cause for the increase in casualties, though a few also increased from ground fighting.” *Ibid.*, p. 4. “UNAMA, *Protection of Civilians in Armed Conflict: Attacks Against Places of Worship, Religious Leaders and Worshippers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>, pp. 1-2. See also, UNAMA, *Statement by the Secretary-General’s Special Representative on Attacks Against Those Working for Peace*, 5 June 2018, <https://unama.unmissions.org/statement-secretary-general%E2%80%99s-special-representative-attacks-against-those-working-peace>. “On some occasions, the Taliban have sought to justify attacks against civilians by claiming that anyone working for the government of Afghanistan, including civil servants, is a valid military target.” HRW, *No Safe Place: Insurgent Attacks on Civilians in Afghanistan*, May 2018, <http://www.refworld.org/docid/5afaae8d4.html>, p. 14. See also, Al Jazeera, *Afghanistan: 63 Dead in Attacks on Voter Registration Centres*, 22 April 2018, <https://www.aljazeera.com/news/2018/04/afghanistan-deaths-attack-id-voter-registration-centre-kabul-180422063114761.html>; RFE/RL, *Three Tribal Elders, Nine Police Killed in Afghanistan*, 20 February 2018, <https://www.rferl.org/a/afghanistan-jalalabad-blast-elders-killed/29050660.html>; RFE/RL, *Five Killed in Afghan Market Attack*, 16 January 2018, <https://www.rferl.org/a/afghanistan-faryab-bomb-attack-market-5-dead/28978972.html>; New York Times, *Suicide Bomber Kills at Least 17 at Funeral in Afghanistan*, 31 December 2017, <https://www.nytimes.com/2017/12/31/world/asia/afghanistan-suicide-bomber-funeral.html>; The Guardian, *Why Deadly Kabul Bombing Is Crisis for All of Afghanistan*, 1 July 2017, <https://www.theguardian.com/world/2017/jun/01/kabul-bombing-crisis-afghanistan-civilian-society-government->

<sup>107</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 27. “Since 1 January 2016, attacks directed against mosques, shrines and other places of worship caused 737 civilian casualties (242 killed, 495 injured), the vast majority Shi’a Muslim worshippers killed or injured by suicide attacks conducted by Anti-Government Elements, particularly ISKP. [...] Between 1 January 2009 and 31 December 2015, UNAMA documented five incidents against Shi’a Muslims, although the perpetrators and motives behind most incidents were not clearly determined and there were no clear public claims of responsibility. [...] Since 1 January 2016, UNAMA documented 12 incidents targeting Shi’a Muslim worshippers at places of worship, resulting in 689 civilian casualties (230 deaths and 459 injuries), raising grave concerns regarding the right to freedom of religion or belief and the protection of religious minorities. ISKP publicly claimed eight of the 12 attacks through the Islamic State-affiliated Al Amaq news agency. Four of the 12 incidents took place in 2016 and eight in the first 10 months of 2017.” UNAMA, *Protection of Civilians in Armed Conflict: Attacks Against Places of Worship, Religious Leaders and Worshippers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>, pp. 1-2.

<sup>108</sup> UNAMA, *As Afghans Search for Democracy, New Challenges and a Healthy Debate*, 31 May 2018, <https://unama.unmissions.org/afghans-search-democracy-new-challenges-and-healthy-debate>; UNAMA, *Protection of Civilians in Armed Conflict: Election-Related Attacks and Abuses During the Initial Voter Registration Period*, 10 May 2018, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_-\\_special\\_report\\_-\\_election-related\\_attacks\\_and\\_abuses\\_may\\_2018\\_english.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_-_special_report_-_election-related_attacks_and_abuses_may_2018_english.pdf).

<sup>109</sup> UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html>, p. 5.

<sup>110</sup> “The majority of civilian casualties attributed to Pro-Government Forces in 2017 came from Afghan national security forces. In 2016, UNAMA attributed 2,731 civilian casualties (905 deaths and 1,826 injured) to Pro-Government Forces. [...] UNAMA documented 631 civilian casualties (295 deaths and 336 injured) from aerial operations, a seven per cent increase compared to 2016, including an 18 per cent increase in deaths.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 4-5. Civilian casualties from ground engagements attributed to pro-government forces decreased in 2017, with a 37 per cent decrease in civilian casualties compared to 2016. UNAMA, *Protection of Civilians in Armed Conflict - Annual Report 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 20.



A change in US strategy in Afghanistan<sup>111</sup> resulted in a significant increase in air operations in 2017, inflicting heavy civilian casualties.<sup>112</sup> In 2017, aerial operations by both international military forces and the Afghan Air Force caused 631 civilian casualties (295 deaths and 336 injured), an 18 per cent increase in deaths compared to 2016.<sup>113</sup> This trend continued in the first half of 2018, with UNAMA documenting 353 civilian casualties (149 deaths and 204 injured) from aerial attacks, a 52 per cent increase from the same period in 2017.<sup>114</sup> Women and children continued to comprise more than half of all aerial attack civilian casualties; the number of child casualties from these attacks increased by 64 per cent compared to the first half of 2017.<sup>115</sup>

Casualties from mines, explosive remnants of war and victim-activated explosive devices averaged 170 per month in 2017, which was an increase from 2016's monthly average of 162 casualties. It is estimated that 3,227 minefields, 315 battlefields and 38 contaminated firing ranges remain, affecting 1,423 communities.<sup>116</sup>

Incidents of cross-border shelling increased significantly in 2017, continuing to impact areas in the eastern region of Afghanistan in particular. In 2017, 29 incidents of cross-border shelling were recorded, causing 71 civilian casualties (23 deaths and 48 injuries), three times the number of incidents and more than four times the number of civilian casualties compared to 2016.<sup>117</sup>

## 2. Security Incidents

In 2017 UNAMA recorded a total of 23,744 security incidents, the highest number recorded to date (albeit only marginally higher compared to the number of recorded incidents in 2016). The highest number of incidents in 2017 corresponded to armed clashes (14,998), followed by incidents relating to the use of IEDs, while air strikes continued at high levels (960 air strikes in 2017, or a 67.6 per cent increase compared to 2016). The highest number of incidents occurred in the eastern region, followed by the southern region, with the two regions accounting for 55 per cent of all security incidents.<sup>118</sup>

<sup>111</sup> ICG, *A Dangerous Escalation in Afghanistan*, 31 January 2018, <https://www.crisisgroup.org/asia/south-asia/afghanistan/dangerous-escalation-afghanistan>; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651-S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>, para. 17; US Department of Defence, *Enhancing Security and Stability in Afghanistan*, December 2017, <https://www.defense.gov/Portals/1/Documents/pubs/1225-Report-Dec-2017.pdf>, pp. 3-4.

<sup>112</sup> The UN recorded 950 air strikes in 2017, an increase of 67.6 per cent compared to 2016. UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, paras 14-16; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651-S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>, para. 17. See also, Military.com, *Additional 3K US Troops in Afghanistan Will Be on 'Combat Duty'*, <https://www.military.com/daily-news/2017/10/03/additional-3k-us-troops-afghanistan-will-be-combat-duty.html>. "September marked a record high month for weapons employed in Afghanistan since 2012, with 751 munitions being delivered against Taliban and ISIS –Khorasan targets; a 50 percent jump from August. This increase can be attributed to the President's strategy to more proactively target extremist groups that threaten the stability and security of the Afghan people." US Air Forces Central Command, *Combined Air Operations Center, Airpower Summary*, 30 September 2017, <http://www.afcent.af.mil/Portals/82/Documents/Airpower%20summary/Airpower%20Summary%20-%20September%202017.pdf?ver=2017-10-06-082818-797>, p. 1.

<sup>113</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 5-6. The UN recorded 950 air strikes in 2017, an increase of 67.6 per cent compared to 2016, inflicting heavy casualties on AGEs and civilians. UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, paras 14-16; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651-S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>, para. 17.

<sup>114</sup> UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html>, p. 5.

<sup>115</sup> *Ibid.*

<sup>116</sup> UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ad73b254.html>, paras 46-47.

<sup>117</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 19. See also, Khaama Press, *Cross-Border Shelling Continues in Kunar Province of Afghanistan*, 22 March 2018, <https://www.khaama.com/cross-border-shelling-continues-in-kunar-province-of-afghanistan-04699/>; Pajhwok Afghan News, *End Cross-Border Shelling, Kabul Asks Islamabad*, 2 December 2017, <https://www.pajhwok.com/en/2017/12/07/end-cross-border-shelling-kabul-asks-islamabad>.

<sup>118</sup> UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ad73b254.html>, para 14.



## C. Human Rights Situation

Despite the Afghan Government's stated commitment to upholding its national and international human rights obligations, its record in protecting human rights continues to be inconsistent. Significant sectors of the population, including women, children, ethnic minorities, detainees, and others, reportedly continue to experience numerous human rights abuses by various actors.<sup>119</sup>

### 1. Human Rights Abuses

Human rights violations against the civilian population are reported to occur in all parts of the country, regardless of who is in effective control of an area. In government-controlled areas, violations on the part of the State and its agents reportedly occur routinely.<sup>120</sup> In areas where pro-government armed groups exercise (partial) control, such groups are reported to commit human rights violations with impunity.<sup>121</sup> Equally, in areas controlled by AGEs there are reportedly widespread human rights violations, including through the imposition of parallel justice structures.<sup>122</sup> Additionally, human rights violations are reportedly also committed by both State and non-State agents outside the areas of their respective control.<sup>123</sup> Severe human rights violations are reported to be particularly widespread in contested areas in which fighting is ongoing.<sup>124</sup>

#### a) Human Rights Violations by State Actors

Various State actors and their agents have been accused of committing serious human rights violations. Members of the security forces have reportedly committed unlawful killings and sexually abused and exploited children.<sup>125</sup> Government officials, security forces, detention centre authorities, and police have reportedly used torture or cruel, inhuman or degrading treatment or punishment (see below).<sup>126</sup>

<sup>119</sup> See for example, UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 8-14; UNAMA, *Protection of Civilians in Armed Conflict: Attacks Against Places of Worship, Religious Leaders and Worshipers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>; UNAMA, *Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture*, April 2017, <http://www.refworld.org/docid/5909d15e4.html>.

<sup>120</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 48-51; Amnesty International, *Amnesty International Report 2017/18: Afghanistan*, 22 February 2018, <http://www.refworld.org/docid/5a99395da.html>; Freedom House, *Freedom in the World in 2018: Afghanistan*, 2018, <https://freedomhouse.org/report/freedom-world/2018/afghanistan>.

<sup>121</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 52-53.

<sup>122</sup> Global Centre for the Responsibility to Protect, *Populations at Risk: Afghanistan*, 15 March 2018, <http://www.globalr2p.org/regions/afghanistan>; UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 26-42; Amnesty International, *Amnesty International Report 2017/18: Afghanistan*, 22 February 2018, <http://www.refworld.org/docid/5a99395da.html>.

<sup>123</sup> Both pro-government forces and AGEs have been reported to commit abuses such as targeted killings; combat operations with civilian casualties; complex and suicide attacks; and threats, harassment, and intimidation, both within and outside areas under their control. UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 26-42, 43-54; BBC News, *Taliban Threaten 70% of Afghanistan, BBC Finds*, 31 January 2018, <http://www.bbc.com/news/world-asia-42863116>; New York Times, *How Much of Afghanistan Is Under Taliban Control after 16 Years of War With the U.S.?*, 23 August 2017, <https://www.nytimes.com/interactive/2017/08/23/world/asia/afghanistan-us-taliban-isis-control.html>; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, paras 16-17; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651-S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>, paras 18-19; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 September 2017, A/72/392-S/2017/783, <http://www.refworld.org/docid/59c3a9f64.html>, paras 17, 20; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 June 2017, A/71/932-S/2017/508, <http://www.refworld.org/docid/5a2563924.html>, paras 15-16.

<sup>124</sup> UNAMA, *Quarterly Report on the Protection of Civilians in Armed Conflict: 1 January to 31 March 2018*, 12 April 2018, <http://www.refworld.org/docid/5ad88e164.html>, pp. 1-4; UNAMA, *Afghanistan: Protection of Civilians in Armed Conflict: Annual Report 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 8-53.

<sup>125</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 13.

<sup>126</sup> International Criminal Court, *Public Redacted Version of "Request for Authorisation of an Investigation Pursuant to Article 15"*, 20 November 2017, ICC-02/17-7-Conf-Exp, <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-02/17-7-Red>, pp. 78-86; UNAMA, *Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture*, April 2017, <http://www.refworld.org/docid/5909d15e4.html>.

Impunity for human rights violations committed by each of these State actors is reported to have remained widespread.<sup>127</sup>

In successive reports, UNAMA has documented the widespread use of torture and ill-treatment of conflict-related detainees held by the National Directorate of Security (NDS), the Afghan National Police (ANP), the Afghan Local Police (ALP) and the Afghan National Army (ANA).<sup>128</sup> Detainees reportedly lack access to remedial mechanisms and meaningful access to defence counsel.<sup>129</sup> Abuse and torture of detainees were also reported to occur in unofficial detention facilities operated by security forces which are inaccessible to independent observers.<sup>130</sup> Public statistics on the number of conflict-related detainees held outside the regular prison system are not available.<sup>131</sup> In June 2017, the UN Committee Against Torture expressed its deep concern about the general culture of impunity, with perpetrators of war crimes and gross human rights violations, including torture, still holding or having been nominated for official positions, including in government.<sup>132</sup> The Committee expressed its concern that this in turn contributes to creating widespread acceptance and legitimization of torture in Afghan society.<sup>133</sup>

The prison system run by the Central Prisons Directorate reportedly suffers from severe overcrowding and poor hygienic conditions.<sup>134</sup> Arbitrary and illegal detention reportedly remain widespread.<sup>135</sup> Law enforcement agencies reportedly use torture in order to coerce confessions from detainees, particularly conflict-related detainees.<sup>136</sup> There are reports of female prisoners being subjected to sexual abuse and bullying.<sup>137</sup>

Concerns remain about human rights violations committed by ALP members against the civilian population.<sup>138</sup> There are also concerns about continuing failures to ensure accountability for ALP officers for past and ongoing human rights violations, and about reports of ALP personnel being under

<sup>127</sup> Freedom House, *Freedom in the World in 2018: Afghanistan*, 2018, <https://freedomhouse.org/report/freedom-world/2018/afghanistan>; International Criminal Court, *Public Redacted Version of "Request for Authorisation of an Investigation Pursuant to Article 15"*, 20 November 2017, ICC-02/17-7-Conf-Exp, <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-02/17-7-Red>, pp. 7-8; <http://www.refworld.org/docid/5711040d4.html>.

<sup>128</sup> UNAMA, *Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture*, April 2017, <http://www.refworld.org/docid/5909d15e4.html> (earlier reports were published in 2015, 2013 and 2011); UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, paras 9, 25.

<sup>129</sup> UNAMA, *Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture*, April 2017, <http://www.refworld.org/docid/5909d15e4.html>, pp. 45-46, 50-53, 59; UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, paras 11, 17.

<sup>130</sup> UNAMA, *Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture*, April 2017, <http://www.refworld.org/docid/5909d15e4.html>, p. 34. UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 15.

<sup>131</sup> SIGAR, *Quarterly Report to the United States Congress*, 30 April 2018, <https://www.sigar.mil/pdf/quarterlyreports/2018-04-30qr.pdf>, p. 141.

<sup>132</sup> UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, paras 7, 11, 15.

<sup>133</sup> *Ibid.*, para. 7.

<sup>134</sup> IWPR, *Afghanistan: Female Prisoners Jailed Far From Home*, 27 February 2018, <https://iwpr.net/global-voices/afghanistan-female-prisoners-jailed-far-from>; IWPR, *Afghan Prison Deemed Death Trap*, 13 December 2017, <https://iwpr.net/global-voices/afghan-prison-deemed-death-trap>; UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 29; SIGAR, *Quarterly Report to the United States Congress*, 30 April 2018, <https://www.sigar.mil/pdf/quarterlyreports/2018-04-30qr.pdf>, p. 141.

<sup>135</sup> UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, paras 13, 15, 17, 25; UNAMA, *Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture*, April 2017, <http://www.refworld.org/docid/5909d15e4.html>.

<sup>136</sup> "UNAMA is particularly concerned that the present report documents the highest percentage levels of torture and ill-treatment of conflict-related detainees in ANP custody since its current detention monitoring programme began in 2010." UNAMA, *Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture*, April 2017, <http://www.refworld.org/docid/5909d15e4.html>, p. 7, and see more generally pp. 6-7, 13; UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 27.

<sup>137</sup> The Diplomat, *The Women in Afghanistan's Moral Prisons*, 8 March 2017, <https://thediplomat.com/2017/03/the-women-in-afghanistans-moral-prisons/>; Daily Times, *Torture and Sexual Violence in Afghanistan*, 13 February 2017, <https://dailytimes.com.pk/29186/torture-and-sexual-violence-in-afghanistan/>; HRW, *Afghanistan: End 'Moral Crimes' Charges, 'Virginity' Tests*, 25 May 2016, <http://www.refworld.org/docid/574696bb4.html>.

<sup>138</sup> UNAMA, *Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture*, April 2017, <http://www.refworld.org/docid/5909d15e4.html>, pp. 9-10.

the control of local power brokers.<sup>139</sup> In 2017, UNAMA documented 114 civilian casualties involving ALP officers, including 27 deaths and 87 injuries (compared to 25 deaths and 40 injuries in 2016).<sup>140</sup> The most common violations attributed to ALP were reported to include targeted and deliberate killings of civilians, severe beatings, property destruction, threats, intimidation, and harassment.<sup>141</sup>

UNAMA continued to document incidents involving security forces that negatively impacted on access to education; the majority of these were related to the occupation of schools for use as a base for combat operations, sometimes temporarily. Use of schools in this manner essentially converts schools from protected civilian buildings into legitimate military targets and has a serious impact on children's safety, security and access to education.<sup>142</sup>

UNAMA also noted its concern about conflict-related incidents attributed to Afghan security forces in which hospitals, clinics, and health personnel were targeted.<sup>143</sup> At the end of 2017, search operations in health facilities, attributed to Afghan security forces, caused civilian casualties and led to arrests and harassment of health care staff, damage to medical equipment, and blockage of health supplies.<sup>144</sup>

State actors are reported to limit the right to freedom of expression, and reportedly use violence and intimidation against journalists and media organizations.<sup>145</sup>

#### *b) Human Rights Abuses by Pro-Government Armed Groups*

Pro-government armed groups are reportedly responsible for widespread human rights violations, including deliberate killings, assaults, extortion, intimidation and property theft.<sup>146</sup> In 2017, UNAMA

<sup>139</sup> Freedom House, *Freedom in the World in 2018: Afghanistan*, 2018, <https://freedomhouse.org/report/freedom-world/2018/afghanistan>; UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 49-50; VOA News, *Afghan Local Police: The Controversial Force That Fills a Security Gap*, 20 November 2017, <https://www.voanews.com/a/afghan-local-police-security/4126335.html>; AAN, *Update on the Afghan Local Police: Making Sure They Are Armed, Trained, Paid and Exist*, 5 July 2017, <https://www.afghanistan-analysts.org/update-on-the-afghan-local-police-making-sure-they-are-armed-trained-paid-and-exist/>.

<sup>140</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 49.

<sup>141</sup> *Ibid.*, pp. 49-50.

<sup>142</sup> "[A]pproximately 75 per cent, or 17 of the 23 election-related security incidents, occurred at schools or mosques used for election-related purposes. Two incidents at schools concerned the abduction of six civilians, one involved setting fire inside a school, one involved an IED detonated in a school, and one IED detonated at a mosque, while the remaining incidents at schools and mosques involved threats, intimidation and harassment." UNAMA, *Protection of Civilians in Armed Conflict: Election-Related Attacks and Abuses During the Initial Voter Registration Period*, 10 May 2018, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_-\\_special\\_report\\_-\\_election-related\\_attacks\\_and\\_abuses\\_may\\_2018\\_english.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_-_special_report_-_election-related_attacks_and_abuses_may_2018_english.pdf), p. 1. Freedom House, *Freedom in the World in 2018: Afghanistan*, 2018, <https://freedomhouse.org/report/freedom-world/2018/afghanistan>; HRW, *World Report 2018: Afghanistan*, 18 January 2018, <http://www.refworld.org/docid/5a61eeac4.html>; HRW, *"I Won't Be A Doctor, and One Day You'll Be Sick" - Girls' Access to Education in Afghanistan*, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, p. 17. "Verified attacks on schools and education personnel decreased to 77 incidents, compared with 132 in 2015. Intensive fighting between the Afghan National Defence and Security Forces and the Taliban led to schools being hit in crossfire." UNSG, *Children and Armed Conflict*, 24 August 2017, A/72/361-S/2017/821, <http://www.refworld.org/docid/59db4a194.html>, para. 28. UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights: Report of the United Nations High Commissioner for Human Rights*, 11 January 2017, A/HRC/34/41, <http://www.refworld.org/docid/5a562b9d4.html>, para. 28. See also, VOA News, *Afghan Schools Used as Military Bases by Government, Taliban*, 26 January 2017, <https://www.voanews.com/a/afghanistan-schools-used-as-military-by-government-taliban/3694992.html>; HRW, *"Education on the Front Lines" - Military Use of Schools in Afghanistan's Baghlan Province*, 17 August 2016, <http://www.refworld.org/docid/57b874d74.html>, pp. 1, 15, 18.

<sup>143</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 15.

<sup>144</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 15; OCHA, *Humanitarian Bulletin Issue 68: Afghanistan*, 30 September 2017, <https://reliefweb.int/report/afghanistan/afghanistan-humanitarian-bulletin-issue-68-01-30-september-2017-endari>, p. 2; World Health Organization, *Attacks on Health Care on the Rise in Afghanistan*, 19 August 2017, <http://www.emro.who.int/afg/afghanistan-news/attacks-on-healthcare-on-the-rise-in-afghanistan.html>; ICRC, *Afghanistan: Hospitals Are under Attack, and Children Are Paying the Price*, 20 May 2017, <https://www.icrc.org/en/document/afghanistans-hospitals-are-under-attack-and-children-are-paying-price>.

<sup>145</sup> Freedom House, *Freedom in the World in 2018: Afghanistan*, 2018, <https://freedomhouse.org/report/freedom-world/2018/afghanistan>; AJSC, *Six-month Report, Jul-Dec 2017*, January 2018, <http://ajsc.af/wp-content/uploads/2017/07/FirstSixMonthsReport2017-English.pdf>, pp. 2, 4; Freedom House, *Freedom of the Press 2017: Afghanistan*, 1 November 2017, <http://www.refworld.org/docid/59fc6803a.html>; AJSC, *Six-Month Report, Jan-June 2017*, 24 July 2017, <http://ajsc.af/wp-content/uploads/2017/07/FirstSixMonthsReport2017-English.pdf>, p. 2.

<sup>146</sup> Human rights violations reportedly included threatening and/or harassment of civilians who failed to pay illegal taxation imposed by pro-government armed groups. UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 51-52. See also, RFE/RL, *Afghan Woman's Beating Exposes Consequences of Using Militia for Security*, 6 February 2018, <https://www.rferl.org/a/afghanistan-woman-beating-tarkhan-province/29023420.html>; The Guardian, *Afghanistan Funds Abusive Militias as US Military Ignores Situation, Officials Say*, 26 December 2016, <https://www.theguardian.com/world/2016/dec/26/afghanistan-us-military-militia-funding-human-rights>.

documented 92 civilian casualties (26 deaths and 66 injured) by such groups, compared to 185 casualties (52 deaths and 133 injured) documented in 2016.<sup>147</sup> The majority of these deaths and injuries in 2017 were reportedly the result of ground engagements, followed by the targeted killings of civilians.<sup>148</sup>

UNAMA notes that the existence of pro-government armed groups has no basis in law.<sup>149</sup> Among these groups are powerful strongmen and militias who are enlisted by the Afghan security forces to fight against AGEs, yet do not fall under the command and accountability structures of the ANSF.<sup>150</sup> Impunity for human rights violations committed by pro-government armed groups reportedly remains widespread.<sup>151</sup>

### c) *Human Rights Abuses by Anti-Government Elements*

AGEs were reported to carry out extrajudicial executions, torture and ill-treatment; and prevent civilians from exercising their rights to free movement, freedom of expression, freedom of religion, political participation, as well as access to education and health care and the right to an effective remedy. In 2017, UNAMA documented 6,768 civilian casualties (2,303 deaths and 4,465 injured) caused by AGEs, with 4,385 incidents (1,574 deaths and 2,811 injuries) publically claimed by or attributed to the Taliban and 1,000 incidents (399 deaths and 601 injuries) publically claimed by or attributed to Islamic State.<sup>152</sup>

AGEs are reported to take advantage of the absence of governmental justice mechanisms or services to enforce their own parallel “judicial” structures, primarily in, but not limited to, areas under their control.<sup>153</sup> UNAMA notes that “[a]ll parallel justice structure punishments by non-state armed groups are illegal under the laws of Afghanistan, constitute criminal acts, and may amount to war crimes.”<sup>154</sup> In 2017, UNAMA documented 23 incidents of parallel justice structure punishments causing 33 civilian casualties (21 deaths and 12 injured), a 34 per cent reduction compared to 2016.<sup>155</sup> Parallel justice structure punishments include public executions by stoning and shooting, beating and lashing, and

<sup>147</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 43, 51; UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2016*, February 2017, <http://www.refworld.org/docid/58bd20104.html>, p. 82. UNAMA noted that the drop in civilian casualties attributed to pro-Government armed groups in 2017 compared to 2016 mostly resulted from a sharp decline in civilian casualties by the groups during ground engagements. UNAMA, *ibid.*, February 2018, p. 51.

<sup>148</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 51.

<sup>149</sup> *Ibid.*, p. 52.

<sup>150</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 51-52; AAN, *More Militias? Part2: The Proposed Afghan Territorial Army in the Fight Against ISKP*, 23 September 2017, <https://www.afghanistan-analysts.org/more-militias-part-2-the-proposed-afghan-territorial-army-in-the-fight-against-iskp/>; VOA, *Afghanistan Unveils Plans for Controversial Militia Force*, 22 February 2018, <https://www.voanews.com/a/afghanistan-militia-force/4265987.html>.

<sup>151</sup> “Pro-Government armed groups continued to carry out human rights abuses with impunity. Throughout 2017, allegations of the persistent failure of the Government to hold pro-Government armed group members responsible for abuses perpetrated against civilians continued. [...] In many instances, such impunity is due to their relationship with political and security power-holders, allowing armed groups to take advantage of the fragile security environment, abuse the local population, and place civilians in the areas they operate at risk of harm.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 52.

<sup>152</sup> A further 1,346 incidents (346 deaths and 1,046 injuries) were attributed to AGEs, but where there was no public claim of responsibility or it was not possible to attribute the incident to a specific group. UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 26. “This marked a 12 per cent decrease in civilian casualties attributed to Taliban compared to 2016. However, under-reporting from Taliban-controlled areas is likely due to lack of access and the consequent inability for UNAMA to attribute some Taliban-perpetrated attacks resulting in civilian casualties to unidentified Anti-Government Elements.” *Ibid.*, p. 27.

<sup>153</sup> Freedom House, *Freedom in the World in 2018: Afghanistan*, 2018, <https://freedomhouse.org/report/freedom-world/2018/afghanistan>; UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 36; UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 39.

<sup>154</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 36.

<sup>155</sup> UNAMA notes that “these cases are likely underreported given limited access to areas controlled by AGEs.” *Ibid.*, p. 36.



amputation.<sup>156</sup> AGEs are also reportedly imposing illegal taxes in areas where they attempt to impose parallel systems of governance.<sup>157</sup>

AGEs reportedly place limitations on the right to freedom of expression. Civilians who speak out against AGEs or in favour of the Government, as well as civilians who are accused by AGEs of spying for the Government, reportedly face a risk of violence and summary trials in parallel and illegal judicial procedures operated by AGEs; the punishment for such alleged “crimes” is usually execution (see Section III.A.1.g).<sup>158</sup> The Taliban and Islamic State have reportedly used threats, intimidation and violent attacks against media companies and journalists that are perceived to engage in critical reporting.<sup>159</sup> Consequently, journalists reportedly self-censor due to fears for their safety (see Section III.A.2).<sup>160</sup>

AGEs also reportedly place limitations on the right to political participation. Since voter registration commenced on 14 April 2018,<sup>161</sup> AGEs have reportedly attacked voter registration sites and *tazkira* (national identity card) distribution centres, including by means of targeted killings, abductions, threats, intimidation and harassment of election-related personnel and security forces.<sup>162</sup> AGEs have reportedly warned Afghans not to register for the upcoming elections and have allegedly also fined citizens and/or confiscated the *tazkiras* (national identity cards) of those who have registered.<sup>163</sup> Between 14 April 2018 and 10 May 2018, there were 23 election-related security incidents verified by UNAMA, resulting in 271 casualties (86 deaths and 185 injured).<sup>164</sup>

AGEs are also reported to limit the right to freedom of movement through illegal checkpoints and the use of IEDs.<sup>165</sup> While there was a reduction in civilian casualties caused by non-suicide IEDs and targeted killings in 2017 compared to 2016, UNAMA documented an increase in civilian casualties

<sup>156</sup> *Ibid.*, p. 36; Freedom House, *Freedom in the World in 2018: Afghanistan*, 2018, <https://freedomhouse.org/report/freedom-world/2018/afghanistan>.

<sup>157</sup> Landinfo, *Afghanistan: Taliban's Organization and Structure*, 23 August 2017, [https://landinfo.no/asset/3589/1/3589\\_1.pdf](https://landinfo.no/asset/3589/1/3589_1.pdf); Brookings, *Afghanistan's Terrorism Resurgence: Al-Qaida, ISIS, and Beyond*, 27 April 2017, <https://www.brookings.edu/testimonies/afghanistans-terrorism-resurgence-al-qaida-isis-and-beyond/>.

<sup>158</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 39; see further the sources quoted in Section III.A.1.g.

<sup>159</sup> Reporters Without Borders, *RSF Condemns Deadly Attack on State Radio and TV in Jalalabad*, 18 May 2017, <http://www.refworld.org/docid/591d5a627.html>; AJSC, *Six-month Report, Jul-Dec 2017*, January 2018, <http://ajsc.af/wp-content/uploads/2018/01/Six-Month-Report-July-Dec-2017-AJSC-English.pdf>; Nai Supporting Open Media in Afghanistan, *Media Watch Annual Report 2017*, December 2017, <http://nai.org.af/files/documents/mw/annual/Annual%20report%20English%20version%202017.pdf>. See further the sources quoted in Section III.A.2.

<sup>160</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 39; Freedom House, *Freedom of the Press 2017: Afghanistan*, 1 November 2017, <http://www.refworld.org/docid/59fc6803a.html>. See further the sources quoted in Section III.A.2.

<sup>161</sup> Independent Election Commission of Afghanistan, *Commencement of Voter Registration First Phase at the Provincial Capitals*, 2018, <http://www.iec.org.af/media-section/press-releases/1039-vr-commencement-2018>.

<sup>162</sup> UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html>, pp. 3-4; UNAMA, *Protection of Civilians in Armed Conflict: Election-Related Attacks and Abuses During the Initial Voter Registration Period*, 10 May 2018, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_-\\_special\\_report\\_-\\_election-related\\_attacks\\_and\\_abuses\\_may\\_2018\\_english.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_-_special_report_-_election-related_attacks_and_abuses_may_2018_english.pdf); Reuters, *Kabul Blast Highlights Risk to Long-Delayed Afghan Vote*, 23 April 2018, <https://www.reuters.com/article/us-afghanistan-blast/kabul-blast-highlights-risk-to-long-delayed-afghan-vote-idUSKBN1HU1X3>. “Soon after the Taliban denied responsibility, the Islamic State said that it was behind the carnage, according to the group’s Amaq news agency. [...] Officials said that even provincial capitals were struggling to open all voter registration centers. ‘There are 55 voter registration centers in Kunduz city and the villages that belong to the center, and 20 of them are closed because those villages are under Taliban control,’ said Gen. Abdul Hamid Hamidi, the police chief of Kunduz Province.” New York Times, *‘So Many Bodies’: Bomber Kills Dozens Signing Up to Vote in Kabul*, 22 April 2018, <https://www.nytimes.com/2018/04/22/world/asia/suicide-bomber-afghanistan-elections.html>. See also, Al Jazeera, *Afghanistan: 63 Dead in Attacks on Voter Registration Centres*, 22 April 2018, <https://www.aljazeera.com/news/2018/04/afghanistan-deaths-attack-id-voter-registration-centre-kabul-180422063114761.html>.

<sup>163</sup> UNAMA, *Protection of Civilians in Armed Conflict: Election-Related Attacks and Abuses During the Initial Voter Registration Period*, 10 May 2018, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_-\\_special\\_report\\_-\\_election-related\\_attacks\\_and\\_abuses\\_may\\_2018\\_english.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_-_special_report_-_election-related_attacks_and_abuses_may_2018_english.pdf), p. 1; Tolo News, *Taliban Rejects Ghani’s Call For Them to Take Part in Elections*, 16 April 2018, <https://www.tolonews.com/afghanistan/taliban-rejects-ghani%E2%80%99s-call-them-take-part-elections>.

<sup>164</sup> 75 per cent of these incidents reportedly occurred at schools or mosques used for election purposes. UNAMA, *Protection of Civilians in Armed Conflict: Election-Related Attacks and Abuses During the Initial Voter Registration Period*, 10 May 2018, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_-\\_special\\_report\\_-\\_election-related\\_attacks\\_and\\_abuses\\_may\\_2018\\_english.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_-_special_report_-_election-related_attacks_and_abuses_may_2018_english.pdf).

<sup>165</sup> “In UNAMA, for database recording purposes, the category of targeted killings also includes some cases of killings where the victim was briefly in the perpetrator’s custody at the time of the killing but the custody did not amount to an abduction, i.e. the person identified to be killed is stopped by armed individuals, their identity is confirmed, and then the attackers kill the person, commonly at illegal checkpoints.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 64, footnote 307; see also *ibid.*, pp. 33-34.

from complex<sup>166</sup> and suicide attacks,<sup>167</sup> (605 deaths and 1,690 injured; a 17 percent increase from 2016); the number of civilian casualties from targeted and deliberate killings reportedly remained similar to that of 2016.<sup>168</sup> Civilian casualties caused by suicide and complex attacks attributed to the Taliban decreased by 22 per cent compared to 2016, while those resulting from such attacks claimed by Islamic State increased by 18 per cent.<sup>169</sup> IEDs planted in civilian agricultural areas, footpaths, public roads and other public areas hinder access to health care, education and livelihoods, and create an environment of fear and insecurity, with civilians living under the constant threat of death, maiming, serious injury and destruction of property.<sup>170</sup> Suicide and complex attacks reportedly continued to disproportionately affect civilians in Kabul city; for 2017 UNAMA reported a 17 per cent increase in civilian casualties in Kabul caused by complex and suicide attacks as compared to 2016.<sup>171</sup> In 2017, for the first time UNAMA reported suicide and complex attacks by Islamic State outside of Nangarhar or Kabul, in Herat province.<sup>172</sup>

Taliban public statements continue to emphasize their support for education and to declare that promotion of education inside the country is one of their main objectives.<sup>173</sup> However, there have been reports of both the Taliban and Islamic State using schools and madrassas as places for the indoctrination and recruitment of children for use in combat and in combat support functions.<sup>174</sup> The Taliban and Islamic State have also been reported to interfere in or attempt to control the curriculum for adherence to criteria approved by them.<sup>175</sup>

Incidents of conflict-related violence directly impacting access to education continue to be reported in all regions of the country.<sup>176</sup> The vast majority of reported incidents in 2017 were attributed to AGEs, including the Taliban, and included burning of schools, targeted killings and intimidation of teachers and staff, IEDs inside or in the vicinity of schools, rocket attacks against educational facilities, and closure of schools, particularly girls' schools.<sup>177</sup> In July 2018, UNAMA expressed its concern regarding the emerging trend of targeting of schools and education officials by AGEs in response to operations by pro-government forces.<sup>178</sup> Schools were reportedly also occupied and used for military purposes,

<sup>166</sup> "According to UNAMA's definition, a complex attack includes the following elements: two or more attackers, two or more types of weapons, and one of the weapons is a suicide IED – i.e. body-borne suicide IED or vehicle-borne suicide IED." UNAMA, *Afghanistan: Protection of Civilians in Armed Conflict: Annual Report 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 1, footnote 5.

<sup>167</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 4, 26.

<sup>168</sup> *Ibid.*, pp. 26, 28.

<sup>169</sup> *Ibid.*, p. 28..

<sup>170</sup> *Ibid.*, pp. 28-33.

<sup>171</sup> A 17 per cent increase in civilian casualties caused by suicide and complex attacks was recorded in 2017 as compared to 2016, which marks the highest number of civilian casualties recorded by UNAMA since 2009 when the mission began its systematic documentation of civilian casualties. *Ibid.*, p. 29.

<sup>172</sup> *Ibid.*, pp. 1-2, 29.

<sup>173</sup> See for example the statements issued by the Taliban: Islamic Emirate of Afghanistan, *Kabul Administration's Hostility Towards the Religious Schools and Scholars*, 8 April 2018, <https://alemarah-english.com/?p=27449>; Islamic Emirate of Afghanistan, *Afghanistan in the Month of January 2018*, 14 February 2018, <https://alemarah-english.com/?p=25644>.

<sup>174</sup> UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 21. See also for background information on the role of Madrassas in Afghanistan: Royal Danish Defence College, *The Role of Madrassas, Assessing Parental Choice, Financial Pipelines and Recent Developments in Religious Education in Pakistan & Afghanistan*, January 2018, [https://pure.fak.dk/ws/files/7378697/The\\_Role\\_of\\_Madrasas.pdf](https://pure.fak.dk/ws/files/7378697/The_Role_of_Madrasas.pdf), pp. 98-120.

<sup>175</sup> HRW, *"I Won't Be a Doctor, and One Day You'll Be Sick" - Girls' Access to Education in Afghanistan*, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, pp. 69-70; Landinfo, *Afghanistan: Taliban's Organization and Structure*, 23 August 2017, [https://landinfo.no/asset/3589/1/3589\\_1.pdf](https://landinfo.no/asset/3589/1/3589_1.pdf), p. 22; Tolo News, *Daesh Threatens to Replace Curriculum in Jawzjan's District*, 5 July 2017, <https://www.tolonews.com/afghanistan/daesh-threatens-replace-curriculum-jawzjan%E2%80%99s-district>; The Diplomat, *The Schools of the Taliban*, 3 November 2016, <https://thediplomat.com/2016/11/the-schools-of-the-taliban/>.

<sup>176</sup> UNSG, *Children and Armed Conflict*, 24 August 2017, A/72/361-S/2017/821, <http://www.refworld.org/docid/59db4a194.html>, para. 28; IWPR, *School Closures Hit Afghan Province: A Lack of Security in Districts Means that Boys and Girls Can Simply Not Learn*, 27 February 2017, <https://iwpr.net/global-voices/school-closures-hit-afghan-province>; IWPR, *Afghanistan: Ghor's Education System Near Collapse*, <https://iwpr.net/global-voices/afghanistan-ghors-education-system-near>.

<sup>177</sup> Ariana News, *Conflict Leaves 70 Schools Closed in Jawzjan*, 10 April 2018, <https://ariananews.af/conflict-leaves-70-schools-closed-in-jawzjan/>; Pajhwok News, *12 Nangarhar Schools Remain Close Due to Insecurity*, 1 January 2018, <https://www.pajhwok.com/en/2018/01/01/12-nangarhar-schools-remain-close-due-insecurity>; HRW, *"I Won't Be a Doctor, and One Day You'll Be Sick" - Girls' Access to Education in Afghanistan*, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, pp. 66-71; UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict: 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 13.

<sup>178</sup> UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html>, p. 3.

compromising their protected status under international humanitarian law and depriving children of access to education.<sup>179</sup> Moreover, many schools are reported to remain closed in Afghanistan due to the prevailing local security conditions.<sup>180</sup>

AGEs are similarly reported to restrict access to health care.<sup>181</sup> In 2017, UNAMA documented 75 incidents (31 deaths and 34 injured) targeting hospitals and health personnel by AGEs, compared to 120 incidents in 2016 (10 deaths and 13 injured).<sup>182</sup> In addition, AGEs are reported to have imposed bans on polio vaccination campaigns in certain parts of the country, while vaccinators are unable to access other parts due to insecurity.<sup>183</sup>

The right to freedom of religion has reportedly come increasingly under attack from AGEs, including attacks against places of worship, religious leaders and worshippers; AGEs also threaten and attack individuals and communities who are perceived to contravene AGEs' interpretation of Islamic principles, norms and values.<sup>184</sup>

## 2. The Ability and Willingness of the State to Protect Civilians from Human Rights Abuses

Even where the legal framework provides for the protection of human rights, the implementation of Afghanistan's commitments under national and international law to promote and protect these rights in practice frequently remains a challenge. Afghan governance and the adherence to the rule of law are perceived as particularly weak.<sup>185</sup>

The capability of the Government to protect human rights is undermined by insecurity and the high number of attacks by AGEs. Rural and unstable areas reportedly suffer from a generally weak formal

<sup>179</sup> HRW, *World Report 2018: Afghanistan*, 18 January 2018, <http://www.refworld.org/docid/5a61eeac4.html>; HRW, "I Won't Be a Doctor, and One Day You'll Be Sick" - Girls' Access to Education in Afghanistan, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, pp. 17, 71-72.

<sup>180</sup> ITV News Afghanistan, *Daesh Closes Dozens of Schools in North Afghanistan: Local Officials*, 9 December 2017, <http://www.itvnews.af/en/news/afghanistan/32477-daesh-closes-dozens-of-schools-in-north-afghanistan-local-officials>; HRW, "I Won't Be a Doctor, and One Day You'll Be Sick" - Girls' Access to Education in Afghanistan, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, p. 78, citing a HRW interview with the Deputy Minister of General Education, Kabul, 7 May 2016. See also, IWPR, *School Closures Hit Afghan Province: A Lack of Security in Districts Means that Boys and Girls Can Simply Not Learn*, 27 February 2017, <https://iwpr.net/global-voices/school-closures-hit-afghan-province>; Tolo News, *More Than 1,000 Schools Closed Across Afghanistan*, 2 January 2017, <https://www.tolonews.com/afghanistan/more-1000-schools-closed-across-afghanistan>.

<sup>181</sup> "UNAMA documented the temporary closure of at least 147 health facilities in 2017, following threats issued by Anti-Government Elements, compared to 20 such closures in 2016. These closures ranged from several hours, with partial continuation of services, to several months of complete interruption of services, and negatively affected access to healthcare for numerous people in these areas." UNAMA, *Afghanistan: Protection of Civilians in Armed Conflict: Annual Report 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 15. See also, IRIN, *Afghan Healthcare Under Siege as Escalating Conflict Cuts Off Access*, 26 October 2017, <https://www.irinnews.org/feature/2017/10/26/afghan-healthcare-under-siege-escalating-conflict-cuts-access>; OCHA, *Humanitarian Bulletin Issue 68: Afghanistan*, 30 September 2017, <https://reliefweb.int/report/afghanistan/afghanistan-humanitarian-bulletin-issue-68-01-30-september-2017-endari>, p. 2; New York Times, *Afghan Province, Squeezed by Taliban, Loses Access to Medical Care*, 23 September 2017, <https://www.nytimes.com/2017/09/23/world/asia/afghanistan-taliban-oruzgan-hospitals.html>; Dawn, *Doctors and Hospitals in Afghanistan Among Taliban Casualties of War*, 26 September 2017, <https://www.dawn.com/news/1360177>; The Guardian, *Healthcare in Afghanistan: 'Doctors are Threatened at Gunpoint, Even by Civilians'*, 5 October 2016, <https://www.theguardian.com/global-development-professionals-network/2016/oct/05/healthcare-afghanistan-doctors-threatened-gunpoint-civilians>.

<sup>182</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 14.

<sup>183</sup> The Guardian, *Afghan Clerics in Talks with Isis to Break Polio Vaccine Myths*, 27 March 2018, <https://www.theguardian.com/global-development/2018/mar/27/afghan-clerics-in-talks-with-isis-to-break-polio-myths>. WHO and UNICEF reported no attacks against polio workers in 2017. UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 16, citing email from WHO to UNAMA, 15 January 2018. The March 2018 Guardian article nevertheless refers to the killing of a polio worker and a driver, with another health worker missing.

<sup>184</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 37; UNAMA, *Protection of Civilians in Armed Conflict: Attacks Against Places of Worship, Religious Leaders and Worshippers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>. For further analysis of the situation of religious leaders who are at risk from AGEs, see Section III.A.1.h. For analysis of the situation of persons perceived as contravening the Taliban's interpretation of Islamic principles, norms and values, see Section III.A.6. For analysis of the specific situation of women and men who are perceived to contravene social mores, see Section III.A.8.

<sup>185</sup> UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4754.html>, para. 25; Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>. In the annual Rule of Law Index for 2017 compiled by the World Justice Project, Afghanistan ranks 111<sup>th</sup> out of 113 countries. World Justice Project, *Rule of Law Index 2017-2018*, 2018, [https://worldjusticeproject.org/sites/default/files/documents/WJP\\_ROLI\\_2017-18\\_Online-Edition\\_0.pdf](https://worldjusticeproject.org/sites/default/files/documents/WJP_ROLI_2017-18_Online-Edition_0.pdf). See also, FIDH, *Update for the 1st European Union (EU)-Afghanistan Special Working Group on Human Rights, Good Governance and Migration: 5 May 2018, Kabul, Afghanistan*, undated, [https://www.fidh.org/IMG/pdf/20180503\\_eu-afghanistan-dialogue\\_bp.pdf](https://www.fidh.org/IMG/pdf/20180503_eu-afghanistan-dialogue_bp.pdf).



justice system that is unable to effectively and reliably adjudicate civil and criminal disputes.<sup>186</sup> Government-appointed judges and prosecutors are reportedly frequently unable to remain in such communities, due to insecurity.<sup>187</sup> The UN Committee Against Torture expressed concern at the lack of adequate measures taken by the Government to protect human rights defenders and journalists from reprisals for their work.<sup>188</sup>

High levels of corruption, challenges to effective governance and a climate of impunity are all reported by observers as factors that weaken the rule of law and undermine the ability of the State to provide protection from human rights violations.<sup>189</sup> Accountability for human rights violations is reported to remain weak, and little or no political support has materialized for the advancement of transitional justice mechanisms.<sup>190</sup> As noted above, a number of State actors tasked with protecting human rights, including the ANP and ALP, are themselves reported to commit human rights abuses with impunity in certain parts of the country.

Corruption is reported to affect many parts of the State apparatus, on the national, provincial and local levels.<sup>191</sup> Afghan citizens reportedly have to pay bribes to access public services, such as to the provincial governor's office, the municipal governor's office, and the customs office.<sup>192</sup> Within the police, corruption is reported to be endemic, as is the abuse of power and extortion.<sup>193</sup> The justice system is similarly reported to suffer from widespread corruption.<sup>194</sup>

In some areas, local communities are reported to resort to parallel judicial structures, such as local councils or elders, or courts run by the Taliban to settle civil disputes.<sup>195</sup> Nevertheless, UNAMA notes

<sup>186</sup> Freedom House, *Freedom in the World in 2018: Afghanistan*, 2018, <https://freedomhouse.org/report/freedom-world/2018/afghanistan>.

<sup>187</sup> UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651-S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>, para. 66; Pajhwok Afghan News, *Insecurity Keeping Ghazni's Qarabagh Officials at Bay*, 4 December 2017, <https://www.pajhwok.com/en/2017/12/04/insecurity-keeping-ghazni%E2%80%99s-qarabagh-officials-bay>; Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>.

<sup>188</sup> UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 43.

<sup>189</sup> Freedom House, *Freedom in the World in 2018: Afghanistan*, 2018, <https://freedomhouse.org/report/freedom-world/2018/afghanistan>; RFE/RL, *Afghan Woman's Beating Exposes Consequences of Using Militia for Security*, 6 February 2018, <https://www.rferl.org/a/afghanistan-woman-beating-tarkhan-province/29023420.html>; UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, paras 7, 11, 29-30; Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>; FIDH, *Update for the 1st European Union (EU)-Afghanistan Special Working Group on Human Rights, Good Governance and Migration: 5 May 2018, Kabul, Afghanistan*, undated, [https://www.fidh.org/IMG/pdf/20180503\\_eu-afghanistan-dialogue\\_bp.pdf](https://www.fidh.org/IMG/pdf/20180503_eu-afghanistan-dialogue_bp.pdf), pp. 3-4; Delegation of the European Union to Afghanistan, *Corruption: Five Steps to End the Culture of Impunity*, 6 April 2017, [https://eeas.europa.eu/delegations/afghanistan/24286/corruption-five-steps-end-culture-impunity\\_en](https://eeas.europa.eu/delegations/afghanistan/24286/corruption-five-steps-end-culture-impunity_en).

<sup>190</sup> UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, p. 2, para 7; p. 3, para. 11; p. 4, para. 19; p. 7, paras 29-30.

<sup>191</sup> IWPR, *"Unbearable" Corruption in Afghan Province*, 12 February 2018, <https://www.ecoi.net/en/document/1424557.html>; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651-S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>. In 2017, 83.7 per cent of Afghan (respondents) stated that corruption is a major problem in Afghanistan as a whole, with 69.8 per cent saying corruption is a major problem in their daily life. Asia Foundation, *A Survey of the Afghan People: Afghanistan in 2017*, 14 November 2017, [https://asiafoundation.org/wp-content/uploads/2017/11/2017\\_AfghanSurvey\\_report.pdf](https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf), p. 10; Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>. Afghanistan came 177<sup>th</sup> out of 180 countries in the 2017 Corruption Perceptions Index: Transparency International, *2017 Corruption Perceptions Index*, [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2017](https://www.transparency.org/news/feature/corruption_perceptions_index_2017). For information on the Government's anti-corruption strategy, see also: UNSC, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>; UNAMA, *Afghanistan's Fight Against Corruption*, March 2017, [https://unama.unmissions.org/sites/default/files/afghanistans\\_fight\\_against\\_corruption\\_the\\_other\\_battlefield\\_-\\_april\\_2017-english\\_2.pdf](https://unama.unmissions.org/sites/default/files/afghanistans_fight_against_corruption_the_other_battlefield_-_april_2017-english_2.pdf).

<sup>192</sup> Asia Foundation, *A Survey of the Afghan People: Afghanistan in 2017*, 14 November 2017, [https://asiafoundation.org/wp-content/uploads/2017/11/2017\\_AfghanSurvey\\_report.pdf](https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf), p. 100.

<sup>193</sup> Asia Foundation, *A Survey of the Afghan People: Afghanistan in 2017*, 14 November 2017, [https://asiafoundation.org/wp-content/uploads/2017/11/2017\\_AfghanSurvey\\_report.pdf](https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf), p. 100; Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>.

<sup>194</sup> IWPR, *"Unbearable" Corruption in Afghan Province*, 12 February 2018, <https://www.ecoi.net/en/document/1424557.html>. "Afghans on average report giving the biggest bribes to the judiciary/courts, when applying for a job, and to provincial governors' offices." Asia Foundation, *A Survey of the Afghan People: Afghanistan in 2017*, 14 November 2017, [https://asiafoundation.org/wp-content/uploads/2017/11/2017\\_AfghanSurvey\\_report.pdf](https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf), pp. 11, 99-100; UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, paras 7, 11, 29-30.

<sup>195</sup> IWPR, *"Unbearable" Corruption in Afghan Province*, 12 February 2018, <https://www.ecoi.net/en/document/1424557.html>; Deutsche Welle, *The Disturbing Trend of Taliban Justice in Afghanistan*, 15 March 2017, <http://www.dw.com/en/the-disturbing-trend-of-taliban-justice-in-afghanistan/a-37950678>.



that these structures are typically imposed on communities and that punishments such as executions and amputations meted out by these structures are criminal acts under Afghan law.<sup>196</sup>

## D. Humanitarian Situation

The ongoing conflict in Afghanistan continues to exact a heavy toll on the humanitarian situation in the country.<sup>197</sup> As a result of the general rise in insecurity,<sup>198</sup> including a marked rise in security incidents affecting humanitarian workers,<sup>199</sup> humanitarian access to affected populations remains limited.<sup>200</sup> By the end of 2017, out of a total population of approximately 34.5 million people, 14 million lived in the 120 highest conflict-affected districts.<sup>201</sup> The limited presence of humanitarian actors in conflict-affected areas in particular inhibits access to life-saving assistance for Afghanistan's most vulnerable people.<sup>202</sup>

Decades of conflict and recurrent natural disasters have left Afghanistan's population in a state of deep vulnerability, with many people's coping mechanisms having been exhausted. The ongoing conflict further exacerbates these vulnerabilities through the destruction of livelihoods and the loss of livestock, growing rates of communicable diseases, increased displacement, continuous human rights abuses, and higher crime levels.<sup>203</sup> Similarly, the protracted conflict, poor governance and weak or corrupt institutions are reported to have led to a situation where disaster preparedness, risk reduction and emergency response mechanisms are weak or absent.<sup>204</sup> As a result, natural disasters, including floods, mudslides, earthquakes, droughts and severe winter weather, are a further threat to people whose levels of resilience have already been worn down.<sup>205</sup> Accordingly, in addition to the 3.3 million Afghans who were identified in late 2017 as having acute humanitarian needs in 2018, a further 8.7 million Afghans were identified with chronic needs requiring long-term systemic actions.<sup>206</sup> The humanitarian situation in Afghanistan has been further aggravated by a severe drought, which is reported to be particularly

<sup>196</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 36.

<sup>197</sup> OCHA, *Afghanistan: Humanitarian Response Plan 2018-2021*, 1 December 2017, <http://www.refworld.org/docid/5b066f657.html>, p. 6.

<sup>198</sup> UNSG, *Special Report on the Strategic Review of the United Nations Assistance Mission in Afghanistan*, 10 August 2017, A/72/312-S/2017/696, <http://www.refworld.org/docid/599301c49.html>, para. 61. For further information on the security situation, see Section II.B.

<sup>199</sup> "Constraints on humanitarian access continued, with a total of 39 incidents affecting United Nations and aid workers from 15 December to 31 January. In 2017, a total of 388 incidents were reported, compared with 200 in 2016. The higher number can be attributed partly to the protracted nature of the conflict in certain areas of the country as well as to improved reporting. In 2017, 21 aid workers were killed, 33 injured and 149 abducted. In December [2017], 19 incidents against health workers or health facilities were recorded, bringing the total to 143 such incidents for the entire year. Incidents against health workers and facilities represented 38 per cent of all recorded incidents against humanitarian workers in 2017." UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ad73b254.html>, para 44. See also, for example, The Guardian, *Isis Claims Attack on Save the Children Office in Afghanistan*, 24 January 2018, <https://www.theguardian.com/world/2018/jan/24/explosion-attack-save-the-children-office-jalalabad-afghanistan>.

<sup>200</sup> UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ad73b254.html>, paras 26, 44; IRIN, *Red Cross Killings in Afghanistan Reveal the Limits of Aid Access*, 13 February 2017, <http://www.refworld.org/docid/5b069b8a4.html>.

<sup>201</sup> OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, pp. 6-7, 37.

<sup>202</sup> See, for example, ICRC, *Afghanistan: ICRC Reduces its Presence in the Country*, 9 October 2017, <https://www.icrc.org/en/document/afghanistan-icrc-reduces-its-presence-country>.

<sup>203</sup> OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 5; UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 3. According to INFORM, the risk assessment tool developed by the Inter-Agency Standing Committee Task Team for Preparedness and Resilience and the European Commission, Afghanistan ranks third out of 191 countries for the risk of humanitarian crises and disasters that could overwhelm national response capacity. See INFORM, *Global Risk Index - Results 2018*, December 2017, <http://www.inform-index.org/Portals/0/InfoRM/2018/INFORM%20Annual%20Report%202018%20Web%20Spreads.pdf?ver=2017-11-29-171105-863>, p. 6;

see also, INFORM, *Afghanistan Country Profile 2018*, <http://www.inform-index.org/Countries/Country-profiles>.

<sup>204</sup> NRC/IDMC, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, pp. 9-10; OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 8.

<sup>205</sup> See, for example, Reuters, *Emergency Alerts Loom as Drought Takes Hold in War-Torn Afghanistan*, 23 April 2018, <http://news.trust.org/item/20180423120914-3lhm2/>; OCHA, *Afghanistan: Overview of Natural Disasters 2018*, 27 May 2018, <https://www.humanitarianresponse.info/en/operations/afghanistan/natural-disasters-0>; OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 01 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 18; Famine Early Warning Systems Network, *Food Security Outlook: Low Snow Accumulation and Dry Soil Conditions Likely to Impact 2018 Staple Production*, February 2018, <http://fews.net/central-asia/afghanistan/food-security-outlook/february-2018>. See also UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ad73b254.html>, para. 45.

<sup>206</sup> OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, pp. 5-7.

affecting northern and western regions of the country.<sup>207</sup>

Humanitarian indicators are critically low in Afghanistan. Over 1.6 million children reported to suffer from acute malnutrition, while infant mortality rates are amongst the highest in the world at 70 per 1,000 births.<sup>208</sup> According to Afghanistan's Central Statistics Organisation, the proportion of the population who are reported to live below the national poverty line increased to 55 per cent in 2016-17, from 33.7 per cent in 2007-2008 and 38.3 per cent in 2011-2012.<sup>209</sup> 1.9 million Afghans are reported to be severely food insecure.<sup>210</sup> An estimated 45 per cent of the population do not have access to potable water.<sup>211</sup> Afghanistan remains the poorest country in the region, ranking 169 out of 188 countries in the 2016 UN Human Development Index.<sup>212</sup>

The ongoing conflict has particularly serious consequences for access to health care, including as a result of direct attacks on health workers and health facilities, but also because general insecurity impedes access to health care facilities, particularly in areas under the control or influence of AGEs.<sup>213</sup> It is reported that 4.5 million people have no access to essential primary health care services.<sup>214</sup>

## E. Conflict-Induced Displacement

Conflict and insecurity continue to be major drivers of internal displacement in Afghanistan, affecting all areas of the country.<sup>215</sup> By the end of 2017 more than 1.8 million Afghans were estimated to live as

<sup>207</sup> SOFREP, *Drought in Afghanistan: Worst in Recent History*, 31 July 2018, <https://sofrep.com/106550/drought-in-afghanistan-worst-in-recent-history/>; The Telegraph, *Afghanistan Faces Worst Drought in Decades, as UN Warns 1.4 Million People Need Help*, 22 July 2018, <https://www.telegraph.co.uk/news/2018/07/22/afghanistan-faces-worst-drought-decades-un-warns-14m-need-help/>; New York Times, *Drought Adds to Woes of Afghanistan, in Grips of a Raging War*, 27 May 2018, <https://www.nytimes.com/2018/05/27/world/asia/afghanistan-drought-war.html>.

<sup>208</sup> OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 5; UN Inter-Agency Group for Child Mortality Estimation (UN IGME), *Levels & Trends in Child Mortality – Report 2017*, 19 October 2017, [http://www.childmortality.org/files\\_v21/download/IGME%20report%202017%20child%20mortality%20final.pdf](http://www.childmortality.org/files_v21/download/IGME%20report%202017%20child%20mortality%20final.pdf), p. 24; UNICEF, *Country Statistics: Afghanistan*, <http://data.unicef.org/countries/AFG.html>. OCHA also reported that more than one third of Afghan children have been exposed to psychological distress due to loss of family and community members and the constant risk of death and injuries. OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 5.

<sup>209</sup> Central Statistics Organization, *Afghanistan Living Conditions Survey 2016-2017: Highlights Report*, 2018, [http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight\(1\).pdf](http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight(1).pdf), p. 6; see also, UNDP, *Human Development Index*, 2016 rankings, <http://hdr.undp.org/en/composite/MPI>.

<sup>210</sup> OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 5. See also, IFRC, *Information Bulletin, Afghanistan: Drought*, 16 May 2018, <https://reliefweb.int/sites/reliefweb.int/files/resources/IBAFdr160518.pdf>.

<sup>211</sup> OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 33; Washington Post, *In Kabul, Access to Safe Drinking Water is a Matter of Money*, 4 September 2017, [https://www.washingtonpost.com/world/asia\\_pacific/in-kabul-access-to-safe-drinking-water-is-a-matter-of-money/2017/08/31/714ea228-8124-11e7-9e7a-20fa8d7a0db6\\_story.html](https://www.washingtonpost.com/world/asia_pacific/in-kabul-access-to-safe-drinking-water-is-a-matter-of-money/2017/08/31/714ea228-8124-11e7-9e7a-20fa8d7a0db6_story.html).

<sup>212</sup> UNDP, *Human Development Index*, 2016 rankings, <http://hdr.undp.org/en/composite/HDI>. See also, UNDP, *Afghanistan Human Development Indicators*, <http://www.hdr.undp.org/en/countries/profiles/AFG>.

<sup>213</sup> OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 27; Tolo News, *1 in 3 Afghan Children Still Not Vaccinated*, 26 April 2018, <https://www.tolonews.com/afghanistan/1-3-afghan-children-still-not-vaccinated>; UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768-S/2018/165, <http://www.refworld.org/docid/5ad73b254.html>, paras 25, 44; Pajhwok News, *Insecurity, Impassable Routes Hurdles to Health Services*, 10 January 2018, <https://www.pajhwok.com/en/2018/01/10/insecurity-impassable-roads-hurdles-health-services>; Transparency International, *Collective Commitment to Enhance Accountability and Transparency in Emergencies: Afghanistan Report*, 21 April 2017, [https://www.transparency.org/whatwedo/publication/create\\_afghanistan](https://www.transparency.org/whatwedo/publication/create_afghanistan), pp. 20-21.

<sup>214</sup> OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 26.

<sup>215</sup> “31 of 34 provinces produced IDPs in 2016, and all 34 provinces hosted verified IDP populations.” Protection Cluster Afghanistan, *Afghanistan*, April 2017, [https://reliefweb.int/sites/reliefweb.int/files/resources/2017\\_04\\_protection\\_cluster\\_factsheet\\_en.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/2017_04_protection_cluster_factsheet_en.pdf). According to the UN Secretary-General, “Internal displacement has affected 30 of the 34 provinces, with Baghlan and Kunduz in the north, Nangarhar in the east and Uruzgan and Kandahar in the south experiencing the highest levels of displacement. While there was an overall reduction in the number of people displaced compared with the same period in 2016 [mid-June to mid-August], the deteriorating security situation has left many displaced communities in an increasingly precarious situation, with no immediate prospect of returning to their areas of origin.” UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 September 2017, A/72/392-S/2017/783, <http://www.refworld.org/docid/59c3a9f64.html>, para. 38. “The World Bank and UNHCR published a policy brief in 2016 that described an increase in secondary displacement among returnees in Afghanistan. It highlighted a two-fold increase in the incidence of internal displacement among returnees since 2013, when compared with return flows in 2002. As the pace of repatriations increases while the country struggles with simultaneous security and economic crises, the report warns of the risks of displacement upon return. The brief prompted the focus of the research for this report on the refugee-returnee-IDP nexus and the need to recognise the prevalence of multiple displacement in Afghanistan. Many of the households surveyed for this study reported experiencing repeated displacement. Of the returnee-IDPs interviewed, 72 per cent of their households had been displaced twice and 27 per cent displaced three times. Our [research] revealed that returnees and IDPs share the same vulnerabilities, and as such responses should be cohesive and cover all subgroups of the country’s displaced population.”

internally displaced persons (IDPs) as a result of conflict or violence.<sup>216</sup> It was estimated that some 474,000 people were newly displaced in 2017, a reduction from an estimated 653,000 in 2016, but an increase from the displacement levels reported in 2015 (about 335,000 persons).<sup>217</sup> Between 1 January and 20 May 2018, an estimated 114,995 people have reportedly been newly displaced.<sup>218</sup> Precise figures for the total number of IDPs in the country are difficult to obtain: official figures for the total number of IDPs probably under-represent the actual scale of displacement in Afghanistan, as they likely exclude some IDPs dispersed in urban areas, as well as those displaced in rural and conflict-affected locations in areas inaccessible to humanitarian actors.<sup>219</sup> By the end of 2017, over 50 percent of people displaced by conflict in Afghanistan were reported to have been displaced twice or more, compared to just seven percent five years previously.<sup>220</sup>

A National Policy on Internally Displaced Persons (IDPs), launched in February 2014, covers displacement caused by both conflict and natural disaster and sets out the rights of IDPs and roles and responsibilities of the different government ministries, as well as the role of humanitarian and other partners.<sup>221</sup> However, capacity issues on the part of the government reportedly continue to pose challenges to the implementation of the Policy.<sup>222</sup> IDPs are reported to remain among the most vulnerable groups in Afghanistan;<sup>223</sup> many – especially in conflict-affected rural areas – are beyond the

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NRC/IDMC and Samuel Hall, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, p. 17; see also, *ibid.*, pp. 13-14.

<sup>216</sup> UNHCR, *Global Report 2017*, [http://reporting.unhcr.org/sites/default/files/gr2017/pdf/GR2017\\_English\\_Full\\_lowres.pdf](http://reporting.unhcr.org/sites/default/files/gr2017/pdf/GR2017_English_Full_lowres.pdf), p. 97. It should be noted that even this estimate is probably an underestimate, for example because displaced people living in areas that are inaccessible to humanitarian organizations due to security concerns are not included. See also, IOM, *Displacement Survey Shows 3.5 Million Internally Displaced, Returnees from Abroad in 15 Afghan Provinces*, 8 May 2018, <http://afghanistan.iom.int/press-releases/displacement-survey-shows-35-million-internally-displaced-returnees-abroad-15-afghan>.

<sup>217</sup> IDMC, *Global Internal Displacement Database: Afghanistan*, 31 December 2017, <http://www.internal-displacement.org/countries/afghanistan>. “This figure consists of the newly displaced population due to conflict between 1 January 2017 and 31 December 2017 [...] Our estimate is based on the number of displaced households whose petitions to the government for registration and assistance have been accepted and validated, as published by OCHA, multiplied by Afghanistan’s AHHS. [...] The numbers are not verified until a screening or household-level assessment procedure has been completed, which causes delays in obtaining verified figures. Community members often do not register the exact number of displaced families, and sometimes come forth for late registrations if there is a backlog. Community members also tend to report the number of families rather than individuals. As for the stock figure, shrinking humanitarian and development space creates a reporting bias reflected in the availability of the data, and OCHA does not track IDPs after the emergency phase, or six months after their displacement begins.” IDMC, *Afghanistan: Global Report on Internal Displacement (GRID 2018), Conflict Displacement Figures Analysis*, 2018, <http://www.internal-displacement.org/sites/default/files/2018-05/GRID%202018%20-%20Figure%20Analysis%20-%20AFGHANISTAN.pdf>. See also, OCHA, *Afghanistan: Conflict Induced Displacements in 2017*, 31 December 2017, <https://data.humdata.org/dataset/afghanistan-conflict-induced-displacements-in-2017>.

<sup>218</sup> Actual Displacements between 1 January 2018 and 20 May 2018. OCHA, *Afghanistan: Conflict Induced Displacements (as of 27 May 2018)*, 27 May 2018, <https://www.humanitarianresponse.info/en/operations/afghanistan/idps>. See also, OCHA Afghanistan, HDX Dataset, <https://data.humdata.org/organization/ocha-afghanistan>; OCHA, *Afghanistan Weekly Field Report*, 21-27 May 2018, [https://reliefweb.int/sites/reliefweb.int/files/resources/20180528\\_afghanistan\\_weekly\\_field\\_report\\_21\\_-\\_27\\_may\\_2018.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/20180528_afghanistan_weekly_field_report_21_-_27_may_2018.pdf).

<sup>219</sup> “Our 2017 figure is lower than the previous year’s but we were unable to identify any significant methodological change to account for the decrease, which may have been caused, at least in part, by access restrictions in some parts of the country.” IDMC, *Afghanistan: Global Report on Internal Displacement (GRID 2018), Conflict Displacement Figures Analysis*, 2018, <http://www.internal-displacement.org/sites/default/files/2018-05/GRID%202018%20-%20Figure%20Analysis%20-%20AFGHANISTAN.pdf>, p. 5. See also, NRC/IDMC and Samuel Hall, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, pp. 13-14. “In 2017, 93 percent of displaced Afghans fled their homes due to conflict – a 17 percent increase compared to 2012.” OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, pp. 10-11.

<sup>220</sup> OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 5, citing research from NRC and Samuel Hall.

<sup>221</sup> World Bank, UNHCR, *Afghanistan’s Forced Displacement Legal & Policy Framework Assessment*, 20 September 2017, <http://documents.worldbank.org/curated/en/117261515563099980/Afghanistan-s-forced-displacement-legal-and-policy-framework-assessment>, pp. 33-34. See also, The Government of the Islamic Republic of Afghanistan, *National Policy On Internally Displaced Persons*, 25 November 2013, <http://www.refworld.org/docid/5b06ceae4.html>; UNHCR, *UNHCR Welcomes Afghanistan’s New IDP policy*, 11 February 2014, <http://www.unhcr.org/52fa062a9.html>.

<sup>222</sup> “A rapid stakeholder analysis conducted during the study shows that some rights, including the right to education, have been better addressed than others, such as those to adequate housing, livelihoods, healthcare and access to information. [...] The right to education has been prioritised and the Ministry of Education has made progress in easing access restrictions based on documentation. A similar approach is now needed to IDPs’ healthcare, not only for chronic illnesses but also psychosocial conditions, which tend to receive little attention in Afghanistan.” NRC/IDMC and Samuel Hall, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, pp. 54.

<sup>223</sup> “IDPs’ vulnerable economic situation exposes them to a number of protection risks. These include short-term concerns such as access to food, water, housing and healthcare; and long-term concerns such as access to education, legal remedies and livelihood opportunities, which have the potential to trap households in protracted cycles of poverty and vulnerability.” NRC/IDMC and Samuel Hall, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, p. 30. See also, World Bank and Islamic Republic of Afghanistan Ministry of Economy, *Afghanistan Poverty Status Update: Progress at Risk*, 2 May 2017, <http://documents.worldbank.org/curated/en/667181493794491292/pdf/114741-WP-v1-P159553-PUBLIC.pdf>, p. 18.



reach of humanitarian organizations.<sup>224</sup> Among IDPs, women, children, elderly persons and persons with disabilities are reported to be especially vulnerable.<sup>225</sup>

As part of a wider trend of continuing rapid urbanization in Afghanistan, many IDPs end up in large urban centres that have limited absorption capacity and where access to basic services remains a major concern.<sup>226</sup> The lack of efficient urban policy and regulatory frameworks, as well as weak and ineffective governance, have reportedly contributed to increased poverty and inequality in urban areas.<sup>227</sup> A large proportion of Afghanistan's middle and low-income urban households are reportedly residing in poorly located and under-serviced informal settlements.<sup>228</sup> According to the Afghan Living Conditions Survey 2016-2017, 72.4 per cent of the urban population in Afghanistan live in slums, informal settlements or inadequate housing households.<sup>229</sup> Poverty among urban households is reported to be widespread and the economic situation of urban households is reported to have deteriorated significantly in the past years.<sup>230</sup>

- <sup>224</sup> IDMC, *Global Report on Internal Displacement 2018*, May 2018, <http://www.internal-displacement.org/sites/default/files/publications/documents/201805-final-GRID-2018.pdf>, pp. 36-37. "People living in inaccessible areas are likely to be among the most vulnerable, but information is lacking. Humanitarians do not know the extent of displacement in areas not under government control. Nor are they aware of IDPs' protection priorities in these areas, or how they differ from those elsewhere. Almost all profiling exercises and other data collection on IDPs take place in accessible areas, meaning that analyses which inform programming are inherently biased." NRC/IDMC and Samuel Hall, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, p. 14. see also, ICRC, *Afghanistan: ICRC Reduces its Presence in the Country*, 9 October 2017, <https://www.icrc.org/en/document/afghanistan-icrc-reduces-its-presence-country>.
- <sup>225</sup> Protection Cluster Afghanistan, *Protection Cluster Afghanistan, April 2017*, [http://www.globalprotectioncluster.org/assets/files/field\\_protection\\_clusters/Afghanistan/files/factsheets/201704-protection-cluster-factsheet\\_en.pdf](http://www.globalprotectioncluster.org/assets/files/field_protection_clusters/Afghanistan/files/factsheets/201704-protection-cluster-factsheet_en.pdf); OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, pp. 12-13; Protection Cluster Afghanistan, *Protracted Conflict: Increasing Protection Outcomes for Population Affected by the Conflict in Afghanistan*, August 2017, [http://www.globalprotectioncluster.org/assets/files/field\\_protection\\_clusters/Afghanistan/files/afg\\_2017\\_summary\\_of\\_background\\_paper\\_-\\_increasing\\_protection\\_outcomes\\_in\\_afghanistan.en.pdf](http://www.globalprotectioncluster.org/assets/files/field_protection_clusters/Afghanistan/files/afg_2017_summary_of_background_paper_-_increasing_protection_outcomes_in_afghanistan.en.pdf), p. 3; REACH, *Informal Settlement Food Security Assessment: Afghanistan*, January 2017, [http://fscluster.org/sites/default/files/documents/reach\\_afg\\_report\\_informal\\_settlement\\_food\\_security\\_assessment\\_january\\_2017.pdf](http://fscluster.org/sites/default/files/documents/reach_afg_report_informal_settlement_food_security_assessment_january_2017.pdf), p. 12.
- <sup>226</sup> According to the Protection Cluster in Afghanistan, key protection concerns include "Severe strains on existing absorption capacity and infrastructure". The Protection Cluster notes, "The enormous surge in returns [from Pakistan and Iran] resulted in extreme stress on the already overstretched absorption capacity in Afghanistan's main provincial and district centres, as many Afghans joined the legions of IDPs unable to return to their areas of origin due to the worsening conflict. [...] 70% of IDPs reside in urban areas, like Kabul, Herat, Mazar-i-Sharif and Jalalabad. With limited job opportunities, no social protection nets and poor shelter conditions, displaced people not only face increased protection risks in their daily life, but are also forced into secondary displacement and negative coping strategies, like child labour, early marriage, reducing quantity and quality of food etc." Protection Cluster Afghanistan, *Afghanistan*, April 2017, [http://www.globalprotectioncluster.org/assets/files/field\\_protection\\_clusters/Afghanistan/files/factsheets/201704-protection-cluster-factsheet\\_en.pdf](http://www.globalprotectioncluster.org/assets/files/field_protection_clusters/Afghanistan/files/factsheets/201704-protection-cluster-factsheet_en.pdf), p. 2. See also, NRC/IDMC, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, pp. 20, 25; IOM, *Displacement Survey Shows 3.5 Million Internally Displaced, Returnees from Abroad in 15 Afghan Provinces*, 8 May 2018, <http://afghanistan.iom.int/press-releases/displacement-survey-shows-35-million-internally-displaced-returnees-abroad-15-afghan>; OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 11; Protection Cluster Afghanistan, *Central Region Update*, May 2017, [http://www.globalprotectioncluster.org/assets/files/field\\_protection\\_clusters/Afghanistan/files/factsheets/20170621\\_cr\\_may\\_factsheet.pdf](http://www.globalprotectioncluster.org/assets/files/field_protection_clusters/Afghanistan/files/factsheets/20170621_cr_may_factsheet.pdf); Cordaid, *Responding to the Plight of Displaced and Returning Families*, 26 February 2018, <https://reliefweb.int/report/afghanistan/responding-plight-displaced-and-returning-families>.
- <sup>227</sup> Afghan Research and Evaluation Unit (AREU) and German Federal Ministry of Economic Cooperation and Development, *Issues Paper: Urban Governance in Afghanistan: Assessing the New Urban Development Programme and its Implementation*, June 2017, <https://areu.org.af/wp-content/uploads/2017/06/1716E-Urban-Governance-in-Afghanistan-assessing-the-new-urban-development-programme-and-its-implement.pdf>, p. 12.
- <sup>228</sup> International Growth Centre, *Policy Options for Kabul's Informal Settlements*, January 2018, <https://www.theigc.org/wp-content/uploads/2018/01/Policy-options-for-Kabuls-informal-settlements-19.01.188.pdf>, p. 2; OCHA, *Afghanistan: Informal Settlement Mapping and Profiling*, November 2017, [https://reliefweb.int/sites/reliefweb.int/files/resources/reach\\_afg\\_map\\_informal\\_settlement\\_province\\_density\\_nov2017.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/reach_afg_map_informal_settlement_province_density_nov2017.pdf). See also, Government of the Islamic Republic of Afghanistan, *The State of Afghan Cities 2015*, September 2015, <http://unhabitat.org/books/soac2015/>, pp. 10, 86.
- <sup>229</sup> The estimate is based on the criteria to determine slum households used in the Millennium Sustainable Development Goal indicator 11.1.1 for sustainable cities and communities. "The definition of slum- and inadequate housing includes components of durability of housing, overcrowding, access to drinking water and sanitation, and security of tenure." Central Statistics Organization, *Afghanistan Living Condition Survey 2016-2017: Highlights Report*, 2018, [http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight\(1\).pdf](http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight(1).pdf), pp. 2, 10.
- <sup>230</sup> "The latest poverty figures imply that close to 16 million Afghans lived in poverty." The proportion of the population living below the national poverty line reportedly increased from 34 per cent in 2007-2008 to 55 per cent in 2016-2017. Central Statistics Organization, *Afghanistan Living Condition Survey 2016-2017: Highlights Report*, 2018, [http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight\(1\).pdf](http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight(1).pdf), pp. 6-7. Around 80 per cent of IDPs surveyed by NRC/IDMC and Samuel Hall reported holding high levels of household debt and almost 20 per cent of IDP families sent at least one child out to work. NRC/IDMC and Samuel Hall, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, p. 10. "Perception-based indicators of economic health have worsened since last year (figure

The lack of adequate land in urban areas and a lack of affordable housing often forces new and protracted IDPs to reside in informal settlements without an adequate standard of living and limited access to water and sanitation.<sup>231</sup> Antiquated land tenure policies and lack of security of tenure are reported to leave IDPs and other inhabitants of informal settlements vulnerable to continuous threats of evictions and secondary displacement.<sup>232</sup> Land grabbing, including of land allocated for returning refugees or IDPs, reportedly represents an additional obstacle.<sup>233</sup>

3.2). One-third of respondents (33.5%) report that the financial well-being of their household has declined compared to last year, while 20.3% report improvement, and 46.0% report no change. By comparison, in 2012, almost half of respondents (49.8%) reported improvement compared to the previous year, and only 6.9% reported being worse off.” The Asia Foundation, *Afghanistan in 2017: A Survey of the Afghan People*, November 2017, [https://asiafoundation.org/wp-content/uploads/2017/11/2017\\_AfghanSurvey\\_report.pdf](https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf), pp. 66-67. See also, WFP, FAO, Food Security Cluster, *Seasonal Food Security Assessment: Afghanistan 2017*, 3 December 2017, <https://reliefweb.int/sites/reliefweb.int/files/resources/post20harvest20fsa20201720report20by20fsac.pdf>.

<sup>231</sup> 63 per cent of IDPs surveyed by NRC/IDMC and Samuel Hall rated their housing conditions as either poor or very poor, with varying levels depending on the region. The same research found that “IDPs’ inability to afford decent housing, particularly in urban areas, leads them to recur to substandard shelter solutions such as overcrowded informal settlements and slums in order to be closer to services and jobs.” NRC/IDMC and Samuel Hall, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, pp. 25 and 53. See also, The Johanniter, *Afghanistan: “Need for Food and Wood” in Settlements of Kabul*, 12 December 2017, <http://www.johanniter.de/die-johanniter/johanniter-unfall-hilfe/start/news/afghanistan-need-for-food-and-wood-in-settlements-of-kabul/>; Multi-Cluster Needs Assessment, *Afghanistan: Shelter and WASH in Informal Settlements*, November 2017, [https://reliefweb.int/sites/reliefweb.int/files/resources/reach\\_afg\\_report\\_multi-cluster\\_needs\\_assessment\\_wash\\_and\\_esnfi\\_november2017\\_0.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/reach_afg_report_multi-cluster_needs_assessment_wash_and_esnfi_november2017_0.pdf), pp. 21-25. “The food security situation was found to be severe across the two provinces, with 68% of households being severely food insecure, and especially in Nangarhar where 70% of households were considered severely food insecure, and only 9% were food secure. In Kabul, 55% were found to be severely insecure – an increase of seven percentage points since November 2015. However, in Kabul, food secure households had risen very slightly by 0.8 percentage points, possibly indicating greater inequality within the settlements.” REACH, *Informal Settlement Food Security Assessment: Afghanistan*, January 2017, [http://fscluster.org/sites/default/files/documents/reach\\_afg\\_report\\_informal\\_settlement\\_food\\_security\\_assessment\\_january\\_2017.pdf](http://fscluster.org/sites/default/files/documents/reach_afg_report_informal_settlement_food_security_assessment_january_2017.pdf), pp. 3-4.

<sup>232</sup> USAID, *Country Profile: Afghanistan*, May 2018, <https://www.land-links.org/country-profile/afghanistan/>; IRIN, *As Conflict Spreads, Chronic Displacement Becomes a Powderkeg in Afghanistan*, 9 April 2018, <https://www.irinnews.org/feature/2018/04/09/conflict-spreads-chronic-displacement-becomes-powderkeg-afghanistan>; Housing, Land and Property Task Force Afghanistan, *Afghanistan*, April 2017, [http://www.globalprotectioncluster.org/assets/files/field\\_protection\\_clusters/Afghanistan/files/factsheets/201704-hlp-factsheet\\_en.pdf](http://www.globalprotectioncluster.org/assets/files/field_protection_clusters/Afghanistan/files/factsheets/201704-hlp-factsheet_en.pdf); International Growth Centre, *Policy Options for Kabul’s Informal Settlements*, January 2018, <https://www.theigc.org/wp-content/uploads/2018/01/Policy-options-for-Kabuls-informal-settlements-19.01.188.pdf>, pp. 11-12. “A new Land Management Law was issued by presidential decree on 4 March 2017. The law makes the administration of public land more efficient and transparent and reduces institutional vulnerabilities to corruption. In April, a revised land allocation law was drafted [...] The aims of the law are to streamline processes, increase transparency and reduce institutional vulnerabilities to corruption in the allocation of public land. The law is awaiting presidential endorsement.” UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, <http://www.refworld.org/docid/5ad73b254.html>, p. 20. An Executive Decree on Land Allocation was reportedly approved by the Cabinet in March 2018. OCHA, *Afghanistan: Humanitarian Response Plan, Year-End Report, January – December 2017*, 1 December 2017, <http://www.refworld.org/docid/5b082ef77.html>, p. 11. “[A] priority point on reform and implementation of land allocation schemes and restitution and compensation regulations is needed to ensure that both IDPs and returnees are given adequate opportunities to achieve durable solutions. The revision of presidential decree 104 has established a set of guidelines and technical procedures, currently awaiting approval from the president’s office. The guidelines lay out basic requirements for land selection and a bank of all suitable government land, with distribution planned to start in 2018.” NRC/IDMC and Samuel Hall, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, p. 54.

<sup>233</sup> USAID, *Country Profile: Afghanistan*, May 2018, <https://www.land-links.org/country-profile/afghanistan/>. “The new Penal Code, which came into force on 15 February [2018], further consolidated the anti-corruption legal framework, with such measures as the criminalization of land usurpation and the codification of all mandatory provisions under the United Nations Convention Against Corruption.” UN General Assembly, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, <http://www.refworld.org/docid/5ad73b254.html>, para. 37. See, *Afghanistan, Penal Code*, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Usurpation of Land, Articles 715–719. See also, Food Security Cluster, *FASC Strategic Response Plan (SRP) 2018*, 7 February 2018, <https://reliefweb.int/report/afghanistan/fsac-afghanistan-strategic-response-plan-srp-2018>, p. 2; World Bank, UNHCR, *Afghanistan’s Forced Displacement Legal & Policy Framework Assessment*, 20 September 2017, <http://documents.worldbank.org/curated/en/117261515563099980/Afghanistan-s-forced-displacement-legal-and-policy-framework-assessment>, pp. 41-43. As an example of the scale of the land grabbing problem, see Pajhwok Afghan News, *Baghlan Civic Activists Want Government to Free Grabbed Lands*, 9 February 2018, <https://www.pajhwok.com/en/2018/02/09/baghlan-civic-activists-want-government-free-grabbed-lands>. “According to the Land Authority [in Baghlan province], the list of 1,744 land grabbers has been prepared and dispatched to the central government, the Provincial Council and the Attorney Office, but there has been no response.” Ramazan Rastin, head of the Baghlan Land Authority reported that “14,395 acres of land had been usurped by 1,744 government officials and powerful individuals in the province. [...] Meanwhile, Khochi Tribe Authority, claims thousands acres of pasture land belonging to the tribe has been grabbed by powerful individuals. [...] Amanullah Ahmadzai, head of the Kochi Department, said over 65,000 acres of land had been grabbed by former jihadi commanders and powerful individuals.” Pajhwok Afghan News, *Above 14,000 Acres of Land Usurped in Baghlan*, 27 January 2018, <https://www.pajhwok.com/en/2018/01/27/above-14000-acres-land-usurped-baghlan>.

## F. Refugees and Returnees

Pakistan and Iran continue to host the vast majority (an estimated 90 per cent) of the global Afghan refugee population, totalling an estimated 2.35 million people.<sup>234</sup> In 2017, over 620,000 Afghans returned from Iran and Pakistan, following more than 1 million returnees in 2016.<sup>235</sup>

Because of the complexity of the Afghan situation, which affected the region as a whole, the Islamic Republics of Iran, Afghanistan and Pakistan, with the support of UNHCR, initiated a quadripartite consultative process in 2011 to identify and implement lasting solutions for Afghan refugees in the region. A *Solutions Strategy for Afghan Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance for Host Countries* (SSAR) was designed to offer a comprehensive and integrated framework for joint interventions aimed at preserving asylum space for Afghan refugees in neighbouring countries and at supporting sustainable reintegration for those Afghans who voluntarily decide to return to Afghanistan.<sup>236</sup> The latter is particularly important in light of the difficulty for many returnees to reintegrate into their home communities.<sup>237</sup> Returnees reportedly experience severe difficulties in rebuilding their lives in Afghanistan.<sup>238</sup> They are reportedly highly vulnerable with poor access to livelihood, food, and shelter.<sup>239</sup> Obstacles to return for both IDPs and returning refugees

<sup>234</sup> An estimated 1.4 million Afghan refugees are in Pakistan, and an estimated 950,000 Afghan refugees are in Iran. UNHCR, *Global Report 2017*, [http://reporting.unhcr.org/sites/default/files/gr2017/pdf/GR2017\\_English\\_Full\\_lowres.pdf](http://reporting.unhcr.org/sites/default/files/gr2017/pdf/GR2017_English_Full_lowres.pdf), p. 97. In addition, an estimated 2.3-3 million Afghans are reportedly living in Pakistan and Iran. There are an estimated 800,000 to 1 million undocumented Afghans in Pakistan and according to the Government of Iran there are 1.5 to 2 million undocumented Afghans in the Islamic Republic of Iran. 'Undocumented' in Pakistan refers to Afghans who do not hold a Proof of Registration card. In Iran 'undocumented' refers to Afghans who reside irregularly in the country (i.e. without Amayesh cards or valid visa; the designation as 'undocumented' does not refer to the possession of civil documentation in Afghanistan such as Tazkera and/or passports). UNHCR, IOM, *Returns to Afghanistan in 2017*, 28 February 2018, [https://www.iom.int/sites/default/files/press\\_release/file/joint\\_returnee\\_report\\_iom\\_unhcr\\_final.pdf](https://www.iom.int/sites/default/files/press_release/file/joint_returnee_report_iom_unhcr_final.pdf), p. 4.

<sup>235</sup> This includes 60,000 registered refugees who returned from Pakistan, 100,000 undocumented returnees from Pakistan, and over 450,000 undocumented returnees from the Islamic Republic of Iran. UNHCR, IOM, *Returns to Afghanistan in 2017*, 28 February 2018, [https://www.iom.int/sites/default/files/press\\_release/file/joint\\_returnee\\_report\\_iom\\_unhcr\\_final.pdf](https://www.iom.int/sites/default/files/press_release/file/joint_returnee_report_iom_unhcr_final.pdf), p. 4. See also, UNHCR Afghanistan, *Afghan Voluntary Repatriation 2018*, 4 June 2018, <https://data2.unhcr.org/dataset/afghan-voluntary-repatriation-2018>; OCHA, *Pakistan: Afghan Refugees and Undocumented Afghan Repatriation* (06 - 12 May 2018), 17 May 2018, [https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/afghan\\_returns\\_20180512.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/afghan_returns_20180512.pdf); Refugees International, *The Return of Thousands of Afghans from Turkey back to Afghanistan Is Cause for Alarm*, 7 May 2018, <https://www.refugeesinternational.org/advocacy-letters-1/afghanrefugeesinturkey>.

<sup>236</sup> "The Solutions Strategy for Afghan Refugees (SSAR) remained a vital regional platform for solutions in 2017. Since its adoption in 2012, it has continued to pave the way for the UNHCR-assisted voluntary repatriation of more than 660,000 Afghan refugees. In 2017, some 58,800 refugees, mostly from Pakistan, chose to return home. Despite a decrease from the year before, this was still globally the third largest number of voluntary returns from one country in that period." UNHCR, *Global Report 2017*, [http://reporting.unhcr.org/sites/default/files/gr2017/pdf/GR2017\\_English\\_Full\\_lowres.pdf](http://reporting.unhcr.org/sites/default/files/gr2017/pdf/GR2017_English_Full_lowres.pdf), p. 97. See also, *Conclusions of the 29<sup>th</sup> Tripartite Commission Meeting Between the Government of the Islamic Republic of Afghanistan and Pakistan and UNHCR*, 20 November 2017, <https://data2.unhcr.org/en/documents/download/61184>; *Conclusions of the Fifth Meeting of the Quadripartite Steering Committee, Solutions Strategy for Afghan Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries*, 1 December 2017, <https://data2.unhcr.org/en/documents/download/61185>; UNHCR, *Solutions Strategy for Afghan Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries*, May 2012, <http://www.unhcr.org/pages/4f9016576.html>; UNHCR, *Afghan Conference: Delegates Urged to Support New Solutions Strategy*, 2 May 2012, <http://www.unhcr.org/4fa0e8319.html>.

<sup>237</sup> IRIN, *Afghanistan: Where Home is a Battlefield*, 1 May 2018, <https://www.irinnews.org/feature/2018/05/01/Afghanistan-Pakistan-returnees-refugees-conflict>. "[T]he existing capacity to absorb new arrivals in country is under significant strain and negative coping mechanisms such as remigration are increasingly prevalent. [...] Returns are taking place against a backdrop of increased internal displacement and high civilian casualties due to persisting instability in several regions of Afghanistan. During 2017, over 500,000 individuals were newly displaced, while over 674,000 individuals were displaced in 2016. The continuing insecurity and limited capacity to absorb returning Afghans and those displaced within Afghanistan could lead to secondary displacement and onward movement." UNHCR, IOM, *Returns to Afghanistan in 2017*, 28 February 2018, [https://www.iom.int/sites/default/files/press\\_release/file/joint\\_returnee\\_report\\_iom\\_unhcr\\_final.pdf](https://www.iom.int/sites/default/files/press_release/file/joint_returnee_report_iom_unhcr_final.pdf), p. 4.

<sup>238</sup> UN News, *Returning Home, Afghans Continue to Face Challenges in Rebuilding Their Lives – UN Agencies*, 12 April 2018, <https://news.un.org/en/story/2018/04/1007131>; NRC/IDMC and Samuel Hall, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, p. 10; IDMC and Samuel Hall, *The Invisible Majority: Going "Home" to Displacement, Afghanistan's Returnee-IDPs*, December 2017, <http://www.internal-displacement.org/sites/default/files/inline-files/20171214-idmc-afghanistan-case-study.pdf>, pp. 5-7.

<sup>239</sup> "The top five challenges for returnees are food security, shelter, land, livelihoods and access to services." UNHCR, IOM, *Returns to Afghanistan in 2017*, 28 February 2018, [https://www.iom.int/sites/default/files/press\\_release/file/joint\\_returnee\\_report\\_iom\\_unhcr\\_final.pdf](https://www.iom.int/sites/default/files/press_release/file/joint_returnee_report_iom_unhcr_final.pdf), p. 6. "In 2017, 27% of refugee returnees reported skipping a meal in the last week. This trend is much more pronounced amongst female respondents (53%) than male respondents (28%); 31% of refugee returnees reported that they are unable to access healthcare. This trend is again more pronounced amongst female respondents (34%) than male respondents (31%)." *Ibid.*, p. 7. "Housing may vary by region, but 63 per cent of all respondents rated their housing conditions as either poor or very poor, and 27 per cent as average. Only 10 per cent rated them as good or very good. The figures for those who consider that they live in poor or very poor conditions are similar for IDPs and returnee-IDPs, at 65 and 60 per cent respectively. Returnee-IDPs are more likely to live in permanent structures, but 60 per cent said they did not have electricity in their homes." *Ibid.*, p. 5. See also, IDMC, *The Invisible Majority: Going "Home" to Displacement, Afghanistan's Returnee-IDPs*, December 2017, <http://www.internal-displacement.org/sites/default/files/inline-files/20171214-idmc-afghanistan-case-study.pdf>, pp. 5-7.

include on-going insecurity in their areas of origin; loss of livelihoods and assets; lack of access to health care and education; and difficulties in reclaiming land and property.<sup>240</sup>

UNHCR recognizes the right of all individuals to return to their country of origin, even under adverse circumstances. UNHCR therefore continues to stand ready to support Afghans who are registered refugees in the countries neighbouring Afghanistan and who, being fully informed of the situation in their places of origin, voluntarily decide to return to Afghanistan. However, despite the efforts of the government and the international community, returnees continue to face multi-faceted difficulties to their reintegration. More generally, voluntary repatriation of refugees and forced return of former asylum-seekers whose applications were rejected are processes of fundamentally different characters, engaging different responsibilities on the parts of the various actors involved. UNHCR's engagement with Afghan individuals who voluntarily decide to return to Afghanistan should therefore not be construed as implying an assessment on the part of UNHCR of the safety and other aspects of the situation in Afghanistan for individuals who have applied for international protection in countries of asylum.

Among all asylum-seekers who applied for asylum in 22 countries in Europe, North America, Oceania and Asia between January and April 2018, asylum-seekers from Afghanistan were the largest group with over 30,000 claims.<sup>241</sup> Globally, in the first half of 2017 Afghans lodged some 52,400 claims for asylum, a significant decrease from the same period in 2016 (124,000).<sup>242</sup> In 2017, Afghans were the top country of origin lodging claims for asylum with UNHCR, registering a total of 149,824 individual Afghan asylum claims.<sup>243</sup>

### III. Eligibility for International Protection

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

UNHCR considers that individuals falling in one or more of the risk profiles outlined in this Section may be in need of international refugee protection, depending on the individual circumstances of the case. However, the profiles listed here are not necessarily exhaustive; they are based on information available to UNHCR at the time of writing. A claim should not automatically be considered as without merit simply because it does not fall within any of the profiles identified here.

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

<sup>240</sup> IFRC, *Refugees Returning to a Bleak Welcome in Afghanistan*, 7 May 2018, <https://media.ifrc.org/ifrc/2018/05/07/refugees-returning-bleak-welcome-afghanistan/>. "Across all of the surveyed households, 70 per cent of family members do not have any form of documentation, which makes it difficult for them to access assistance and services." IDMC and Samuel Hall, *The Invisible Majority: Going "Home" to Displacement, Afghanistan's Returnee-IDPs*, December 2017, <http://www.internal-displacement.org/sites/default/files/inline-files/20171214-idmc-afghanistan-case-study.pdf>, p. 7; see generally *ibid.*, pp. 5-7. See also, NRC/IDMC and Samuel Hall, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>; Amnesty International, *Forced Back to Danger: Asylum-Seekers Returned from Europe to Afghanistan*, October 2017, <https://www.amnesty.nl/content/uploads/2017/10/Afghanistan-Report-EMBARGOED.pdf>; REACH, Mixed Migration Platform, *Migration from Afghanistan to Europe*, October 2017, [http://mixedmigrationplatform.org/wp-content/uploads/2017/10/REACH\\_AFG\\_Report\\_MMP\\_Drivers-return-and-reintegration\\_October-2017.pdf](http://mixedmigrationplatform.org/wp-content/uploads/2017/10/REACH_AFG_Report_MMP_Drivers-return-and-reintegration_October-2017.pdf), pp. 2-3, 22-23; Asylos, *Afghanistan: Situation of Young Male 'Westernised' Returnees to Kabul*, August 2017, <https://asylos.eu/wp-content/uploads/2017/08/AFG2017-05-Afghanistan-Situation-of-young-male-Westernised-returnees-to-Kabul-1.pdf>; HRW, *Pakistan Coercion, UN Complicity*, 13 February 2017, <https://www.hrw.org/report/2017/02/13/pakistan-coercion-un-complicity/mass-forced-return-afghan-refugees>.

<sup>241</sup> UNHCR, *New Asylum Applications Lodged in Selected Countries in Europe, North America, Oceania and Asia*, May 2018, <http://www.unhcr.org/en-us/statistics/unhcrstats/5b17b2f24/new-asylum-applications-lodged-selected-countries-europe.html>.

<sup>242</sup> UNHCR, *Mid-Year Trends 2017*, March 2018, <http://www.unhcr.org/en-us/statistics/unhcrstats/5aaa4fd27/mid-year-trends-june-2017.html>, pp. 17-18.

<sup>243</sup> [http://popstats.unhcr.org/en/asylum\\_seekers](http://popstats.unhcr.org/en/asylum_seekers).



Afghanistan continues to be affected by a non-international armed conflict.<sup>244</sup> Individuals fleeing violence or the threat of violence in the context of this conflict may also meet the criteria for refugee status as contained in Article 1(A)(2) of the 1951 Convention. For this to be the case, the feared persecution flowing from the violence must be for reason of a 1951 Convention ground. In the context of Afghanistan, examples of circumstances where civilians are subjected to violence for a 1951 Convention reason include situations where violence is targeted at areas where civilians of specific ethnic, political or religious profiles predominantly reside, or at locations where civilians of such profiles predominantly gather (including markets, mosques, schools, or large social gatherings such as weddings). To qualify for refugee status there is no requirement that an individual be known personally to the agent(s) of persecution or be sought out personally by those agents. Similarly, entire communities may have a well-founded fear of persecution for one or more of the 1951 Convention grounds; there is no requirement that an individual suffer a form or degree of harm above that suffered by other individuals with the same profile.<sup>245</sup>

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

- (i) the control over civilian populations by AGEs, including through the imposition of parallel justice structures and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, restrictions on freedom of movement, and the use of extortion and illegal taxation;
- (ii) forced recruitment;
- (iii) the impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty and the destruction of livelihoods;
- (iv) high levels of organized crime and the ability of local strongmen, warlords and corrupt government officials to operate with impunity;
- (v) systematic constraints on access to education and basic health care as a result of insecurity; and
- (vi) systematic constraints on participation in public life, including in particular for women.<sup>246</sup>

All claims lodged by asylum-seekers 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, whether they are assessed on the basis of the refugee criteria in the 1951 Convention, the refugee definitions in regional instruments, UNHCR's mandate, or complementary forms of protection based on broader international protection criteria. Certain claims by asylum-seekers from Afghanistan may require examination for possible exclusion from refugee status (see Section III.D).

<sup>244</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 56; UNSG, *Special Report on the Strategic Review of the United Nations Assistance Mission in Afghanistan*, 10 August 2017, A/72/312–S/2017/696, <http://www.refworld.org/docid/599301c49.html>, para. 9.

<sup>245</sup> UNHCR, *Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions*, 2 December 2016, HCR/GIP/16/12, <http://www.refworld.org/docid/583595ff4.html>, paras 22-23.

<sup>246</sup> See also, UNHCR, *Guidelines on International Protection No. 12*, 2 December 2016, HCR/GIP/16/12, <http://www.refworld.org/docid/583595ff4.html>. See also Section II.B of these Guidelines.



The status of recognized refugees should be reviewed only if there are indications, in an individual case, that there are grounds for:

- (i) Cancellation of refugee status which was wrongly granted in the first instance;
- (ii) Revocation of refugee status on the grounds of Article 1F of the 1951 Convention; or
- (iii) Cessation of refugee status on the basis of Article 1C(1-4) of the 1951 Convention.<sup>247</sup>

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. Risk Profiles

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

AGEs are reported to systematically target civilians who are associated with, or who are perceived to be supporting the Afghan Government, pro-Government armed groups, Afghan civil society and the international community in Afghanistan, including the international military forces and international humanitarian and development actors.<sup>248</sup> The (perceived) association with any of these actors may arise for example through current or former employment or family ties.<sup>249</sup> Civilians who have been targeted include district and provincial governors, judicial and prosecution staff, former and off-duty police officers, tribal elders, religious scholars and leaders, women in the public sphere, teachers and other civilian government workers, civilians perceived to oppose AGE values, human rights activists, and humanitarian and development aid workers.<sup>250</sup>

Between 1 January and 31 December 2017, UNAMA attributed 570 targeted killings to AGEs, which caused 1,032 civilian casualties (650 deaths and 382 injured) and accounted for 10 per cent of all civilian casualties during the year.<sup>251</sup> The number of such incidents perpetrated by AGEs increased from 483 in 2016 to 570 in 2017, and the number of civilians killed in such incidents increased by 13 per cent.<sup>252</sup>

<sup>247</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, Vol. 189, p. 137, <http://www.refworld.org/docid/3be01b964.html>.

<sup>248</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 37-38. “The Taliban leadership has expressly declared its policy of attacking civilians publicly in official documents issued by the Taliban leadership such as the *Layha* and in fatwas; in public statements by Taliban officials or spokespersons who claimed that particular civilians were the primary object of an attack; and in public lists of civilians to be killed or captured”. International Criminal Court (ICC), *Situation in Afghanistan - Summary of the Prosecutor's Request for Authorisation of an Investigation Pursuant to Article 15*, 20 November 2017, <http://www.refworld.org/docid/5a2a74314.html>, para. 19. See also, BBC, *Afghan Attacks 'Want To Spark Uprising'*, 3 February 2018, <http://www.bbc.com/news/world-asia-42929370>; New York Times, *Why Attack Afghan Civilians? Creating Chaos Rewards Taliban*, 28 January 2018, <https://www.nytimes.com/2018/01/28/world/asia/afghanistan-taliban-kabul-attacks.html>.

<sup>249</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 34.

<sup>250</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 35; UNAMA, *Protection of Civilians in Armed Conflict: Attacks Against Places of Worship, Religious Leaders and Worshipers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>; UNAMA, *Quarterly Report on the Protection of Civilians in Armed Conflict: 1 January to 30 September 2017*, 12 October 2017, <http://www.refworld.org/docid/5a0b0c4b4.html>, p. 3; UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, pp. 12, 44-46, 49. “The Taliban have been targeting a wide range of what they consider ‘misbehaving’ people: a) Political enemies: leaders and key members of parties and groups hostile to the Taliban [...]; b) Government officials and employees of western and other ‘hostile’ governments – any civilian working for the government or for western diplomatic representations or agencies; c) Members of the Afghan security forces of any ranks; d) Individual believed to be spying or informing the authorities on the Taliban; e) Violators of Shari’a (as interpreted by the Taliban) and of Taliban rules; f) Collaborators of the Afghan government – potentially anybody helping the government in any way; g) Collaborators of foreign military forces – potentially anybody helping the foreign forces in any way; h) Contractors working for the Afghan government; i) Contractors working for foreign countries, opposed to the Taliban; j) Interpreters working for hostile foreign countries; k) Individuals of any category selected by the Taliban as useful or necessary to their war effort, and who have refused to collaborate.” Landinfo, *Afghanistan: Taliban's Intelligence and the Intimidation Campaign*, 23 August 2017, <http://www.refworld.org/docid/5a86ff4d4.html>, p. 11.

<sup>251</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 33-34.

<sup>252</sup> *Ibid.*, pp. 33-34.

In January 2018, the Taliban launched three separate attacks in Kabul, which killed over 150 civilians and injured over 300.<sup>253</sup> In a public statement issued on 28 January 2018 while referring to one of these attacks, on the Ministry of Interior, the Taliban stated that “that target was the enemy and the true brunt was also borne by the workers of this Ministry”.<sup>254</sup>

On 25 April 2018, the Taliban announced the launch of their spring offensive, the ‘Al Khandaq Jihadi Operations’.<sup>255</sup> As in previous years, the announcement stated that the offensive would target “the foreign occupying forces and their internal backers”.<sup>256</sup> Despite a stated intention by the Taliban to pay special attention “to protecting the lives and properties of the civilian people”,<sup>257</sup> there are continued reports of the Taliban and other AGEs specifically targeting civilians and objects protected under international humanitarian law.<sup>258</sup>

Apart from targeted killings, AGEs are also reported to use threats, intimidation and abductions to intimidate communities and individuals and thus extend their influence and control, targeting those who challenge their authority and ideas.<sup>259</sup>

#### a) *Government Officials and Civil Servants*

In 2017 UNAMA documented a continued pattern of attacks targeting civilian government workers, as well as civilian government offices and other buildings, particularly by the Taliban.<sup>260</sup> Overall, in 2017 the number of claimed attacks against civilian government workers increased, “in line with Taliban’s policy of targeting Government entities.”<sup>261</sup> Similarly, Islamic State targeted individual civilians affiliated with the government as well as those they believed provided “intelligence to the government”.<sup>262</sup> AGEs have targeted politicians and government officials at the local, provincial and

<sup>253</sup> The Economist, *A Spate of Attacks in the Afghan Capital Rattles the Government*, 1 February 2018, <https://www.economist.com/news/asia/21736166-war-against-insurgents-taliban-has-reached-stalemate-spate-attacks>; The Business Insider, *ISIS Wants to Be as Dangerous as the Taliban — But It's Not Even Close*, 11 February 2018, <http://uk.businessinsider.com/isis-taliban-afghanistan-terrorism-2018-2>; Al Jazeera, *Shock in Kabul as Taliban Blast Kills More than 100*, 28 January 2018, <http://www.aljazeera.com/news/2018/01/shock-kabul-taliban-blast-kills-100-180128080023652.html>.

<sup>254</sup> Islamic Emirate of Afghanistan, *Clarification of Islamic Emirate Concerning Attack on Ministry of Interior*, 28 January 2018, <https://alemarah-english.com/?p=25114>.

<sup>255</sup> Islamic Emirate of Afghanistan, *Declaration of the Islamic Emirate about the Inauguration of Al Khandaq Jihadi Operations*, 25 April 2018, <http://alemarah-english.com/?p=28060>.

<sup>256</sup> *Ibid.*

<sup>257</sup> The announcement of the 2018 spring offensive stated that “all Mujahidin should be sympathetic towards the Muslim masses and should be harsh towards the enemy. Therefore special attention should be paid to protecting the lives and properties of the civilian people and all precautionary measures should be taken while attacking a target.” *Ibid.*

<sup>258</sup> UNAMA, *Quarterly Report on the Protection of Civilians in Armed Conflict: 1 January to 30 September 2017*, 12 October 2017, <http://www.refworld.org/docid/5a0b0c4b4.html>, p. 3. See also UNAMA, *Protection of Civilians in Armed Conflict: Attacks against Places of Worship, Religious Leaders and Worshipers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>.

<sup>259</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 35; UNAMA, *Protection of Civilians in Armed Conflict: Attacks Against Places of Worship, Religious Leaders and Worshipers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>, pp. 1-2; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 September 2017, A/72/392–S/2017/783, <http://www.refworld.org/docid/59c3a9f64.html>, p. 8.

<sup>260</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 37; UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 45. See also The Economist, *A Spate of Attacks in the Afghan Capital Rattles the Government*, 1 February 2018, <https://www.economist.com/news/asia/21736166-war-against-insurgents-taliban-has-reached-stalemate-spate-attacks>; Washington Post, *Taliban Attacks in Afghanistan Kill more than 70 People amid Push for Peace Talks*, 17 October 2017, [https://www.washingtonpost.com/world/asia\\_pacific/taliban-attack-on-afghan-police-compound-at-least-15-including-local-police-chief/2017/10/17/d0d1798f-3e2e-4b12-80de-41e7b3e250f6\\_story.html](https://www.washingtonpost.com/world/asia_pacific/taliban-attack-on-afghan-police-compound-at-least-15-including-local-police-chief/2017/10/17/d0d1798f-3e2e-4b12-80de-41e7b3e250f6_story.html); The Guardian, *Afghanistan: Dozens Dead in Kabul Bombing Targeting Government Workers*, 24 July 2017, <https://www.theguardian.com/world/2017/jul/24/afghanistan-dozens-dead-kabul-bombing-politicians>.

<sup>261</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 37

<sup>262</sup> *Ibid.*, p. 39.

national levels of government, including Members of Parliament,<sup>263</sup> members of the HPC,<sup>264</sup> and provincial and district governors and council members.<sup>265</sup>

Government-appointed judges and prosecutors have also been particularly targeted, with UNAMA reporting four such attacks by the Taliban between 1 January and 31 December 2017.<sup>266</sup> AGEs have reportedly also targeted health workers and health facilities, forcing clinics to “close down temporarily, often in an attempt to monopolize trauma care for their combatants”.<sup>267</sup> In 2017, UNAMA documented 75 incidents by AGEs targeting and/or impacting healthcare and healthcare workers, causing 65 civilian casualties (31 deaths and 34 injured).<sup>268</sup>

Teachers, school guards and officials of the Department of Education have also been widely targeted,<sup>269</sup> as have students, and in particular girls.<sup>270</sup>

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- <sup>263</sup> Pajhwok Afghan News, *Lawmaker Stanikzai Survives Armed Attack*, 22 December 2017, <https://www.pajhwok.com/en/2017/12/22/lawmaker-stanikzai-survives-armed-attack>; Reuters, *Islamic State Claims Attack on House of Afghan Lawmaker*, 30 August 2017, <https://www.reuters.com/article/us-afghanistan-attack/islamic-state-claims-attack-on-house-of-afghan-lawmaker-idUSKCN1BA0X4>; Reuters, *Taliban Attack near Afghan Parliament Kills more than 30*, 10 January 2017, <https://www.reuters.com/article/us-afghanistan-blast/taliban-attack-near-afghan-parliament-kills-more-than-30-idUSKBN14U1DL>; Euronews, *Afghan MP Survives Bomb Attack in Kabul*, 28 December 2016, <http://www.euronews.com/2016/12/28/afghan-mp-survives-bomb-attack-in-kabul>; BBC, *Afghanistan Taliban: Eight Dead in Attack on MP's House*, 22 December 2016, <http://www.bbc.com/news/world-asia-38399751>.
- <sup>264</sup> The Telegraph, *More than 95 Dead and 158 Wounded in Kabul Bombing Claimed by Taliban*, 27 January 2018, <http://www.telegraph.co.uk/news/2018/01/27/huge-blast-rocks-centre-kabul>; UNAMA, *Statement by Tadamichi Yamamoto on Attack near High Peace Council Facility in Kabul*, 27 January 2018, <https://unama.unmissions.org/statement-tadamichi-yamamoto-attack-near-high-peace-council-facility-kabul>; Pajhwok Afghan News, *Afghan Diplomat, HPC Official Killed in Attack on Intercontinental Hotel*, 21 January 2018, <https://www.pajhwok.com/en/2018/01/21/afghan-diplomat-hpc-official-killed-attack-intercontinental-hotel>.
- <sup>265</sup> UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 45.
- <sup>266</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 68.
- <sup>267</sup> UNSG, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 15 December 2017, A/72/651-S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>, para 48. See also New York Times, *Afghan Province, Squeezed by Taliban, Loses Access to Medical Care*, 23 September 2017, <https://www.nytimes.com/2017/09/23/world/asia/afghanistan-taliban-oruzgan-hospitals.html>; RFE/RL, *Taliban Targets Medical Clinics in New Afghan Insurgency Strategy*, 27 September 2017, <https://www.rferl.org/a/afghanistan-taliban-targets-hospitals-strategy/28760791.html>; Dawn, *Doctors and Hospitals in Afghanistan Among Taliban Casualties of War*, 26 September 2017, <https://www.dawn.com/news/1360177>; Watchlist on Children and Armed Conflict, *"Every Clinic Is Now on the Frontline": The Impact on Children of Attacks on Health Care in Afghanistan*, 6 March 2017, <http://watchlist.org/wp-content/uploads/2213-watchlist-field-report-afghanistan-lr.pdf>.
- <sup>268</sup> In 2017 UNAMA documented the temporary closure of at least 147 health facilities following threats issued by AGEs, compared to 20 such closures in 2016. The forced closure of the health facilities affected a catchment area of close to 1.4 million people. UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 14.
- <sup>269</sup> In July 2017, a senior education official was killed in the Tagab district of central Kapisa province by a relative who was a member of Taliban. Pajhwok Afghan News, *Taliban Gun Down Kapisa Education Official*, 1 July 2017, <https://www.pajhwok.com/en/2017/07/01/taliban-gun-down-kapisa-education-official>; Khaama Press, *Kapisa Education Official Shot Dead By Own Brother Affiliated With Taliban* 1 July 2017, <https://www.khaama.com/kapisa-education-official-shot-dead-by-own-brother-affiliated-with-taliban-03054>. On 24 May 2017, a staff member of the school authority of southeastern Ghazni province was killed in a bomb attack. The following day, a teacher was killed and nine pupils were injured in northeastern Kunduz when a grenade hit launched by Taliban insurgents hit a school. Germany: Federal Office for Migration and Asylum, *Information Centre Asylum and Migration Briefing Notes*, 29 May 2017, <http://www.refworld.org/docid/5942468e4.html>.
- <sup>270</sup> HRW, *War Is Driving Girls out of School*, 27 November 2017, <https://www.hrw.org/news/2017/11/27/war-driving-girls-out-school>; HRW, *"I Won't Be a Doctor, and One Day You'll Be Sick" - Girls' Access to Education in Afghanistan*, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>. See also, UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 13; Huffington Post, *'Hopeless': Children under Attack in Afghanistan*, 19 April 2016 (updated 6 December 2017), [https://www.huffingtonpost.com/beth-murphy/hopeless-children-under-attack-in-afghanistan\\_b\\_9721470.html](https://www.huffingtonpost.com/beth-murphy/hopeless-children-under-attack-in-afghanistan_b_9721470.html).

b) *Civilian police personnel (including members of the ANP and ALP)<sup>271</sup> and former ANDSF members*

Afghan security forces, particularly the Afghan National Police (ANP), continue to be the object of targeted campaigns.<sup>272</sup> Afghan Local Police (ALP) members are also widely targeted.<sup>273</sup> As ALP members are often stationed in more volatile areas, estimates suggest that their casualty rate is considerably higher than that of other ANDSF members.<sup>274</sup> Both ALP and ANP officers have been targeted both on duty and off-duty.<sup>275</sup> AGEs are also reported to target officers of other police forces in Afghanistan,<sup>276</sup> as well as former members of the ANDSF.<sup>277</sup>

As noted in Section II.C.1.c, since voter registration commenced on 14 April 2018, AGEs have reportedly targeted election-related personnel, including election workers and Afghan National Police officers, including by means of targeted killings, abductions, threats, intimidation and harassment.<sup>278</sup>

<sup>271</sup> According to UNAMA, “civilian police personnel who are not directly participating in hostilities and are not involved in counter-insurgency operations” are considered civilians. UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 56.

<sup>272</sup> Reuters reported that during the first four months of 2017, 2,531 Afghan security forces were killed and 4,238 wounded. Reuters, *Afghan Forces Lose 2,531 Killed from Jan 1-May 8 Says Report*, 1 August 2017, <https://www.reuters.com/article/us-afghanistan-casualties/afghan-forces-lose-2531-killed-from-jan-1-may-8-says-report-idUSKBN1AH33P>. See also, RFE/RL, *At least 11 Afghan Police Killed in Taliban Attack*, 17 December 2017, <https://www.rferl.org/a/afghanistan-police-killed-helmand-attack/28923010.html>; Security Council Report, *December 2017 Monthly Forecast*, 30 November 2017, [http://www.securitycouncilreport.org/monthly-forecast/2017-12/afghanistan\\_23.php](http://www.securitycouncilreport.org/monthly-forecast/2017-12/afghanistan_23.php); Reuters, *Taliban Attack Afghan Checkpoints, Killing more than 20 Police*, 14 November 2017, <https://www.reuters.com/article/us-afghanistan-taliban/taliban-attack-afghan-checkpoints-killing-more-than-20-police-idUSKBN1DE0IV>; New York Times, *Taliban 'Red Unit' with Night Vision Kills Dozens of Afghan Officers*, 14 November 2017, <https://www.nytimes.com/2017/11/14/world/asia/afghanistan-taliban-attack-police.html>; The Guardian, *Wave of Taliban Suicide Attacks on Afghan Forces Kills at Least 74*, 17 October 2017, <https://www.theguardian.com/world/2017/oct/17/attack-afghan-police-training-centre-gardez-taliban>; CBS News, *Dozens Killed in Trio of Taliban Attacks Targeting Police*, 17 October 2017, <https://www.cbsnews.com/news/taliban-attack-afghanistan-police-paktia-ghazni-farah/>; Security Council Report, *June 2017 Monthly Forecast*, 31 May 2017, [http://www.securitycouncilreport.org/monthly-forecast/2017-06/afghanistan\\_21.php](http://www.securitycouncilreport.org/monthly-forecast/2017-06/afghanistan_21.php).

<sup>273</sup> Pajhwok Afghan News, *1 Killed, 7 Injured in Taliban Attack on ALP Post*, 6 February 2018, <https://www.pajhwok.com/en/2018/02/06/1-killed-7-injured-taliban-attack-alp-post>; Xinhua, *5 Police Killed, 2 Injured in Militants' Attack in N. Afghanistan*, 11 January 2018, [http://www.xinhuanet.com/english/2018-01/11/c\\_136888053.htm](http://www.xinhuanet.com/english/2018-01/11/c_136888053.htm); Xinhua, *8 Killed in Car Bombing Attack on Police Station in S. Afghanistan*, 22 December 2017, [http://www.xinhuanet.com/english/2017-12/22/c\\_136845594.html](http://www.xinhuanet.com/english/2017-12/22/c_136845594.html); Pajhwok Afghan News, *7 ALP Men, 12 Taliban Killed in Zabul Clashes*, 12 August 2017, <https://www.pajhwok.com/en/2017/08/12/7-alp-men-12-taliban-killed-zabul-clashes>; Al Jazeera, *Officials: Taliban, ISIL Coordinated Sar-e Pul Attack*, 7 August 2017, <http://www.aljazeera.com/news/2017/08/sar-pul-taliban-isil-joined-forces-kill-afghans-170807085258761.html>; UNAMA, *Human Rights and Protection of Civilians in Armed Conflict: Special Report Attacks in Mirza Olang, Sari Pul Province: 3 - 5 August 2017*, August 2017, <http://www.refworld.org/docid/5a534e764.html>, p. 1; Pajhwok Afghan News, *30 ALP Men Killed in Badakhshan Ambush*, 21 July 2017, <https://www.pajhwok.com/en/2017/07/21/30-alp-men-killed-badakhshan-ambush>; Pajhwok Afghan News, *ALP Commander among 10 Killed in Jawzjan Clash*, 25 February 2017, <https://www.pajhwok.com/en/2017/02/25/alp-commander-among-10-killed-jawzjan-clash>.

<sup>274</sup> “[W]hen the ALP and similar locally-raised forces first emerged, the Taleban took a particularly harsh approach towards them, with campaigns aimed at killing both local policemen and the elders who backed them. The casualty numbers bear this out, with more ALP killed proportionally than ANA soldiers, at a ratio of 5:7-8, according to an estimate by [the head of the ALP Staff Directorate, Colonel Ali Shah] Ahmadzai. He reported that, each month, 60 to 100 ALP were killed and 400 to 600 wounded. The Taleban also used propaganda to cast the ALP as wicked, immoral and isolated, hashish smokers (*charsi*) and the ‘bastard children of Petraeus’.” AAN, *Update on the Afghan Local Police: Making Sure They Are Armed, Trained, Paid and Exist*, 5 July 2017, <https://www.afghanistan-analysts.org/update-on-the-afghan-local-police-making-sure-they-are-armed-trained-paid-and-exist>. The Government of Afghanistan established the ALP, or community police, in 2010 to protect villages and districts around the country where army and police have limited presence. Xinhua, *5 Police Killed, 2 Injured in Militants' Attack in N. Afghanistan*, 11 January 2018, [http://www.xinhuanet.com/english/2018-01/11/c\\_136888053.htm](http://www.xinhuanet.com/english/2018-01/11/c_136888053.htm).

<sup>275</sup> “As in 2016, Anti-Government Elements continued to target off-duty and former Afghan National Police officers.” UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 43; see also *ibid.*, p. 15. “UNAMA observed that Anti-Government Elements frequently kidnapped civilians based on suspicions that they had connections to, or worked for, the Government, in addition to the targeted abduction and kidnapping of civilian Government employees, including off-duty ANP [...] Anti-Government Elements often killed those abductees identified as off-duty members of the Afghan national security forces, their family members or civilian Government staff, as well as people perceived to be government spies.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2016*, February 2017, <http://www.refworld.org/docid/58bd20104.html>, p. 67.

<sup>276</sup> Salam Watandar, *Three ANCOP Men Killed by the Taliban in Kunduz*, 5 July 2017, <http://salamwatandar.com/english/article.aspx?a=32753>; Ariana News, *Taliban Shot Down ANA Chopper in Baghlan*, 9 October 2016, <https://ariananews.af/taliban-shot-down-ana-chopper-in-baghlan>.

<sup>277</sup> UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, pp. 43, 57; UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2016*, February 2017, <http://www.refworld.org/docid/58bd20104.html>, p. 64.

<sup>278</sup> UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html>, pp. 3-4; UNAMA, *Protection of Civilians in Armed Conflict: Election-Related Attacks and Abuses During the Initial Voter Registration Period*, 10 May 2018, [https://unama.unmissions.org/sites/default/files/protection\\_of\\_civilians\\_-\\_special\\_report\\_-\\_election-related\\_attacks\\_and\\_abuses\\_may\\_2018\\_english.pdf](https://unama.unmissions.org/sites/default/files/protection_of_civilians_-_special_report_-_election-related_attacks_and_abuses_may_2018_english.pdf); Reuters, *Kabul Blast Highlights Risk to Long-Delayed Afghan Vote*, 23 April 2018, <https://www.reuters.com/article/us-afghanistan-blast/kabul-blast-highlights-risk-to-long-delayed-afghan-vote>.



c) *Civilians Associated with or Perceived as Supportive of the ANDSF / pro-government forces*

AGEs are widely reported to target civilians who are suspected of collaborating with, or “spying for” pro-government forces, including the ANDSF.<sup>279</sup>

d) *Civilians Associated with or Perceived as Supportive of the International Military Forces*

AGEs have reportedly threatened and attacked Afghan civilians who work for the international military forces as interpreters or in other civilian capacities.<sup>280</sup> There are also reports of AGEs targeting former employees of the international forces and the government.<sup>281</sup>

e) *Humanitarian Workers and Development Workers*

AGEs are reported to target civilians who are employees of international or Afghan humanitarian organizations, including Afghan nationals working for UN organizations, employees of international development agencies, and employees of national and international non-governmental organizations

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idUSKBN1HU1X3; New York Times, ‘So Many Bodies’: Bomber Kills Dozens Signing Up to Vote in Kabul, 22 April 2018, <https://www.nytimes.com/2018/04/22/world/asia/suicide-bomber-afghanistan-elections.html>; Al Jazeera, Afghanistan: 63 Dead in Attacks on Voter Registration Centres, 22 April 2018, <https://www.aljazeera.com/news/2018/04/afghanistan-deaths-attack-id-voter-registration-centre-kabul-180422063114761.html>.

<sup>279</sup> “In the event of the Taliban looking for culprits of spying in the government’s favour, anybody suspected of having gone to the authorities would be at great risk”. Landinfo, *Afghanistan: Taliban’s Intelligence and the Intimidation Campaign*, 23 August 2017, <http://www.refworld.org/docid/5a86ff4d4.html>, p. 17. “The Taliban impose control over population movement, because they are afraid of spying activity against them in areas where they are in control. Anybody visiting a remote area, or moving from a Taliban held area towards a government controlled area and coming back would be viewed with suspicion unless he previously reported his intention. [...] If unlucky enough to travel near the time of a successful raid against the Taliban in the area, he would be at serious risk of being suspected of being a spy.” Landinfo, *Afghanistan: Taliban’s Organization and Structure*, 23 August 2017, <http://www.refworld.org/docid/5b0689e44.html>, p. 20. In November 2017, the Taliban killed an 85-year-old woman after abducting her and cutting off her limbs in Garamsir district in Helmand province, on the basis of accusations of supporting the government. Khaama Press, *Taliban Chop off Elderly Woman’s Limbs Before Murdering her in Helmand*, 3 November 2017, <https://www.khaama.com/taliban-chop-off-elderly-womans-limbs-before-murdering-her-in-helmand-03718>. In September 2017, two civilian hostages were killed by members of Islamic State, who suspected them of being American spies. VoA, *IS Beheads 2 Afghans Accused Being American Spies*, 14 September 2017, <https://www.voanews.com/a/is-beheads-two-afghans-accuses-them-of-being-american-spies/4028460.html>. In August 2017, 44 civilians were killed when Taliban and Islamic State fighters attacked Mirza Olang village in the Sayad district of northern Sar-e Pul province. “Taliban publicly stated that the motive for the attack on Mirza Olang was its residents’ ongoing resistance and affiliation with the Government of Afghanistan.” UNAMA, *Human Rights and Protection of Civilians in Armed Conflict: Special Report Attacks in Mirza Olang, Sari Pul Province: 3 - 5 August 2017*, August 2017, <http://www.refworld.org/docid/5a534e764.html>, p. 1; see also, Al Jazeera, *Officials: Taliban, ISIL Coordinated Sar-e Pul Attack*, 7 August 2017, <http://www.aljazeera.com/news/2017/08/sar-pul-taliban-isil-joined-forces-kill-afghans-170807085258761.html>. Between March and April 2017, 30 male civilians were executed by AGEs in the northern villages of Nesh district in Kandahar province in 13 separate incidents. According to UNAMA, AGEs “deliberately sought out civilian men in areas newly under their control who they believed had links to the Government or prior employment with the Afghan national security forces [...] The killings appeared to be motivated by the desire to remove Government supporters from the area to render it easier for Anti-Government Elements to retain control of its new territory.” UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 43. On 30 January 2017 AGEs reportedly killed a pregnant woman in Yamgan district, Badakhshan province, based on allegations that she supported the government. UNAMA, *ibid.*, p. 11. On 16 September 2016, AGEs abducted and killed a 13-year-old boy in Paktya province on suspicion of being a Government spy. UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2016*, February 2017, <http://www.refworld.org/docid/58bd20104.html>, p. 63. In 2016, UNAMA documented 41 incidents of punishments imposed on civilians by AGE parallel justice structures, resulting in 50 civilian casualties (38 deaths and 12 injured). These punishments included the deliberate killing and/or injuring of a person suspected of the crime of “collaboration” or spying for the Government. UNAMA, *ibid.*, p. 69. Additionally, in 2016 UNAMA attributed seven incidents, involving the abduction of 11 children, to the Taliban, and one incident to Islamic State where the group abducted two children. The children abducted were primarily boys aged 16 and 17 perceived to be government supporters, members of the Afghan national security forces, or linked to rival AGEs. UNAMA, *ibid.*, p. 69.

<sup>280</sup> Since the withdrawal of the US troops from Afghanistan in 2014, the Taliban has increasingly threatened and killed the civilian interpreters who worked for the international, and specifically American military forces. In an interview in 2016 Taliban spokesman Zabihullah Mujahid called the interpreters “national traitors”. Smithsonian Magazine, *The Tragic Fate of the Afghan Interpreters the U.S. Left Behind*, November 2016, <https://www.smithsonianmag.com/history/tragic-fate-afghan-interpreters-left-behind-180960785/>. “The Taliban in Afghanistan is actively targeting [...] Afghan interpreters.” Politico, *Save the Visa Program for Afghan Interpreters*, 31 May 2016, <https://www.politico.com/agenda/story/2016/05/congress-should-save-visa-program-for-afghan-interpreters-000135>. Civilian contractors have also been targeted in deliberate attacks by AGEs. See for example, Reuters, *Gunmen Kill Two Afghan Women Contractors at Air Base near Kabul*, 9 August 2017, <https://www.reuters.com/article/us-afghanistan-attack/gunmen-kill-two-afghan-women-contractors-at-air-base-near-kabul-idUSKBN1AP20R>; Reuters, *Taliban Claim Suicide Attack on Contractor Camp in Kabul*, 4 January 2016, <https://www.reuters.com/article/us-afghanistan-blast/taliban-claim-suicide-attack-on-contractor-camp-in-kabul-idUSKBN0UI0FT20160104>.

<sup>281</sup> Sputnik News, *Abandoned and Fearful: Former Afghan NATO Translators ‘Living a Nightmare’*, 15 October 2017, <https://sputniknews.com/middleeast/201710151058255631-former-nato-interpreters-abandoned/>; SBS, *The Forgotten Frontline: Is Australia Doing Enough for the Afghans Who Helped our Troops?*, 23 June 2017, <https://www.sbs.com.au/yourlanguage/pashto/en/article/2017/06/20/forgotten-frontline-australia-doing-enough-afghans-who-helped-our-troops>; RT, *Afghan Interpreter Blown Up by Taliban Tells of Dangers after Working with Occupation Forces*, 7 February 2017, <https://www.rt.com/uk/376593-afghan-interpreters-defence-committee/>.



(NGOs),<sup>282</sup> as well as truck drivers, construction workers and individuals involved in mining projects and other development projects.<sup>283</sup> Individuals with these profiles are reported to have been killed, abducted, and intimidated.

#### f) Human Rights Activists

AGEs are reported to target human rights activists, with activists having been killed or injured in targeted attacks.<sup>284</sup> Women human rights defenders are reported to be at particularly high risk.<sup>285</sup>

<sup>282</sup> In January 2018 Save the Children temporarily suspended its programmes in Afghanistan following an attack by Islamic State militants on its offices in Jalalabad in which three staff members and one soldier were killed. BBC, *Afghanistan Attack: Save the Children Suspends Programmes*, 24 January 2018, <http://www.bbc.com/news/world-asia-42808342>. In 2017 the ICRC downsized its operations in Afghanistan due to the security threats to its staff. Al Jazeera, *Red Cross 'Drastically Reduces' Presence in Afghanistan*, 9 October 2017, <https://www.aljazeera.com/news/2017/10/red-cross-dramatically-reduces-presence-afghanistan-171009113546225.html>. See also, Khaama Press, *Attack on UN Staff Member in Kabul*, 22 January 2018, <https://www.khaama.com/attack-on-un-staff-member-in-kabul-04317/>. Between 1 January and mid-December 2017, 17 aid workers were killed, 15 injured and 43 abducted. In the same period of 2016, 13 aid workers were killed, 22 wounded and 110 abducted. UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651–S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>, para 48. According to ACAPS, “Incidents involving humanitarian staff [...] increase[d] throughout 2017 with 305 reported incidents by October, representing an 80% increase compared to the same period in 2016”. ACAPS, *Humanitarian Overview - An Analysis of Key Crises Into 2018*, 30 November 2017, [https://www.acaps.org/sites/acaps/files/products/files/acaps\\_humanitarian\\_overview\\_analysis\\_of\\_key\\_crises\\_into\\_2018.pdf](https://www.acaps.org/sites/acaps/files/products/files/acaps_humanitarian_overview_analysis_of_key_crises_into_2018.pdf). Compared to other countries, Afghanistan had the second highest number of attacks on aid workers in 2016, with “kidnapping remain[ing] the principal form of violence affecting aid workers.” Humanitarian Outcomes, *Aid Worker Security Report 2017*, August 2017, <https://aidworkersecurity.org/sites/default/files/AWSR2017.pdf>, p. 2. “Civil society actors continued to face intimidation and threats by anti-government elements and also experienced a lack of cooperation by local authorities in relation to those threats.” UNSG, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 15 September 2017, A/72/392–S/2017/783, <http://www.refworld.org/docid/59c3a9f64.html>, para. 31. On 11 September 2017, an ICRC staff member was killed in Mazar-i-Sharif in Balkh Province. Reuters, *Spanish Red Cross physiotherapist Killed in Afghanistan*, 11 September 2017, <https://www.reuters.com/article-us-afghanistan-red-cross/spanish-red-cross-physiotherapist-killed-in-afghanistan-idUSKCN1BM0YM>. On 9 September 2017, a deminer working for an NGO was shot and killed in Nangarhar Province. UNSG, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 15 December 2017, A/72/651–S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>, para 48. In February 2017, ICRC temporarily suspended its activities in Afghanistan following an attack by AGEs in which six aid workers were killed. Al Jazeera, *Afghanistan: ICRC Halts Operations After Workers Killed*, 9 February 2017, <http://www.aljazeera.com/news/2017/02/afghanistan-icrc-halts-operations-workers-killed-170209062643029.html>; The Guardian, *Six Red Cross Workers in Afghanistan Killed in Ambush*, 8 February 2017, <https://www.theguardian.com/world/2017/feb/08/six-red-cross-workers-in-afghanistan-are-shot-dead-in-attack>. According to Freedom House, “During 2016, the Economy Ministry counted as active 1,971 local NGOs and 279 international NGOs [...] Threats and violence by the Taliban and other actors, especially a pattern of kidnappings, have curbed the activities of many NGOs and have hampered recruitment of foreign aid workers.” Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>. According to a report by Watchlist, between January 2015 and November 2016, 441 attacks were carried out against aid workers; 81 aid workers were killed, 113 were injured, and 268 were abducted. Watchlist on Children and Armed Conflict, *“Every Clinic is Now on the Frontline”: The Impact on Children of Attacks on Health Care in Afghanistan*, 6 March 2017, <http://watchlist.org/wp-content/uploads/2213-watchlist-field-report-afghanistan-lr.pdf>. See also Deutsche Welle, *Why Are Afghan Militants Targeting Aid Workers?*, 18 September 2017, <http://www.dw.com/en/why-are-afghan-militants-targeting-aid-workers/a-40558657>.

<sup>283</sup> In July 2017, Taliban targeted a bus carrying employees of the Afghan Ministry of Mines and Petroleum in a suicide bomb attack which killed 38 people and injured more than 40 people. The Guardian, *Afghanistan: Dozens Dead in Kabul Bombing Targeting Government Workers*, 24 July 2017, <https://www.theguardian.com/world/2017/jul/24/afghanistan-dozens-dead-kabul-bombing-politicians>; Al Jazeera, *Taliban Claim Deadly Kabul Suicide Attack*, 24 July 2017, <http://www.aljazeera.com/news/2017/07/casualties-feared-kabul-car-bomb-attack-170724034019038.html>. “In Afghanistan, targets [of AGE attacks] most frequently included construction firms and personnel, private security firms and personnel, and hospitals/clinics/ [...] In Afghanistan, targets classified as private citizens also included people who were targeted according to their occupation, such as construction workers and engineers”. National Consortium for the Study of Terrorism and Responses to Terrorism (START), *Mass Casualty Explosives Attacks in Iraq and Afghanistan: Background Report*, June 2017, [https://www.start.umd.edu/pubs/START\\_MassCasualtyExplosivesAttacksIraqAfghanistan\\_BackgroundReport\\_June2017.pdf](https://www.start.umd.edu/pubs/START_MassCasualtyExplosivesAttacksIraqAfghanistan_BackgroundReport_June2017.pdf), pp. 2, 3.

<sup>284</sup> Amnesty International, *Amnesty International Report 2017/18: Afghanistan*, 22 February 2018, <http://www.refworld.org/docid/5a99395da.html>. “In 2017, civil society actors, including human rights defenders and media personnel, faced more threats and restrictions [...] Human rights defenders also faced arrests and acts of intimidation from the security authorities on charges related to national security [...] In 2017, UNAMA/OHCHR also verified threats against civil society activists and human rights defenders that created a climate of fear and further inhibited their ability to perform their work. It recorded 12 cases of such threats, mainly by anti-government elements, in the central, southern, north-eastern and south-eastern regions, and in the central highlands. On 18 July [2017], a human rights defender from Badghis Province was threatened by the Taliban, and told to resign from his position.” UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, paras 70, 74. “[I]nsurgents will also target certain individuals inside the cities in drive-by shootings, often involving motorbikes. Victims of targeting include people such as traffic police or alleged spies or mid-level human rights activists, and are often people who received death threats before.” B. Osman, senior analyst at the ICG, quoted in EASO, *Country of Origin Information Report: Afghanistan Individuals Targeted by Armed Actors in the Conflict*, December 2017, <http://www.refworld.org/docid/5a38cd874.html>, p. 26. “Civil society activists [...] risk violence from Anti-Government Elements and Afghan national security forces due to the nature of their work and sometimes their influential role in society”. UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2016*, February 2017, <http://www.refworld.org/docid/58bd20104.html>, p. 32. See also, Pajhwok Afghan News, *Civil Society Activist Gunned down in Nangarhar Capital*, 10 July 2017, <https://www.pajhwok.com/en/2017/07/10/civil-society-activist-gunned-down-nangarhar-capital>.

<sup>285</sup> “Women human rights defenders continued to face threats and intimidation by both state and non-state actors across Afghanistan. Most cases were not reported to police because of lack of trust in the security agencies, which consistently failed to investigate and address these threats.

### g) Tribal Elders and Religious Leaders

AGEs are reported to target local traditional leaders such as tribal elders who are perceived to be supporters of the Government or the international community, or as non-supportive of AGEs.<sup>286</sup>

Attacks by AGEs against religious leaders have reportedly increased.<sup>287</sup> Overall, in 2016 and 2017, UNAMA reported a consistent pattern of killings, abductions, threats and intimidation of religious figures by AGEs, stemming from the religious leaders' "ability to change public attitude through their messages, or their perceived support of the Government."<sup>288</sup> Additionally, since 2016, several incidents of AGEs killing religious scholars who had "publicly challenged the legality of [AGEs'] quasi-government functions and [who had] raised concern about military operations and violence" have been reported.<sup>289</sup> The Taliban has publically sought to justify the killing of religious figures by describing the victims as Government spies who had attempted to "revise Islamic rules for the benefit of the Government".<sup>290</sup>

### h) Women in the Public Sphere

Although women have attained some leadership roles in Afghan Government and civil society since 2001, including as judges and members of parliament, women in the public sphere and those holding public office continue to be subjected to threats, intimidation and violent attacks.<sup>291</sup> There are reports of pervasive targeting of women in the public sphere, including female parliamentarians, provincial council members, civil servants, journalists, lawyers, police officers, teachers, human rights activists

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Some who did report threats were not given support or protection." Amnesty International, *Amnesty International Report 2017/18: Afghanistan*, 22 February 2018, <http://www.refworld.org/docid/5a99395da.html>. "Civil society actors, including human rights defenders, specifically women human rights defenders and activists, and journalists faced threats, acts of intimidation and harassment and, at times, deadly attacks." UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, para. 82. UNAMA reports that women activists have been "disproportionately affected" by threats or intimidation by AGEs, "mainly because of violent extremist ideologies propagated by Anti-Government Elements in conflict-affected areas that reject the participation of women in public life and the promotion of women's rights." UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2016*, February 2017, <http://www.refworld.org/docid/58bd20104.html>, p. 32. "In the current conservative and insecure environment, women HRDs [human rights defenders] are in a particularly difficult situation: they are not only targeted for the work they do, but also for who they are and for challenging social and religious patriarchal norms, which may result in stigmatization, isolation and various forms of threats and violence [...] Women HRDs attempting to report violations are stigmatised or even blamed for causing the violations themselves." European External Action Service, *EU+ Local Strategy for Human Rights Defenders in Afghanistan 2014 – Revised 2016*, 15 January 2017, [https://eeas.europa.eu/sites/eeas/files/170115\\_final\\_eu\\_local\\_strategy\\_for\\_hrds\\_in\\_afghanistan.pdf](https://eeas.europa.eu/sites/eeas/files/170115_final_eu_local_strategy_for_hrds_in_afghanistan.pdf), p. 4.

<sup>286</sup> In 2017, there were 59 targeted attacks by AGEs against tribal elders, involving the death of 58 civilians and injuries to 31. UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 34. See also, UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2016*, February 2017, <http://www.refworld.org/docid/58bd20104.html>, pp. 8, 51, 64, 73, 75, 80. Groups claiming affiliation to Islamic State are reported to have targeted and killed tribal leaders in eastern Afghanistan. See for example: Foreign Policy, *Afghans Want More 'Mothers of all Bombs'*, 19 April 2017, <http://foreignpolicy.com/2017/04/19/afghans-want-more-mothers-of-all-bombs/>; Reuters, *Afghan Elders Killed in Suicide Attack on Meeting*, 31 October 2016, <https://www.reuters.com/article/us-afghanistan-blast/afghan-elders-killed-in-suicide-attack-on-meeting-idUSKBN12V1A6>.

<sup>287</sup> "UNAMA continued to document incidents of [...] targeted killings, abductions, and intimidation of religious scholars and religious leaders, mainly by Anti-Government Elements". UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 27; see also *ibid.*, p. 37. "Since 1 January 2016, UNAMA documented 27 incidents of targeted killings of religious figures by Anti-Government Elements, causing 51 civilian casualties (28 killed and 23 injured), most of which occurred in 2017 and mainly attributed to Taliban." UNAMA, *Protection of Civilians in Armed Conflict: Attacks against Places of Worship, Religious Leaders and Worshipers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>, p. 2; see also *ibid.*, p. 1.

<sup>288</sup> UNAMA, *Protection of Civilians in Armed Conflict: Attacks against Places of Worship, Religious Leaders and Worshipers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>, p. 2.

<sup>289</sup> *Ibid.*

<sup>290</sup> *Ibid.*

<sup>291</sup> In April 2017 the Afghanistan Independent Human Rights Commission (AIHRC) expressed concern about the harassment of women in the Afghan police. Ariana News, *AIHRC Voices Concern about Harassment of Women in Afghan Police*, 30 April 2017, <https://ariananews.af/aihrc-voices-concern-about-harassment-of-women-in-afghan-police>. In March 2017 the UN Security Council expressed deep concern about "the targeted and deliberate killings, in particular of women and girls, including high-level women officials and those promoting women's rights." UN Security Council, *Security Council Resolution 2344 (2017) [on extension of the mandate of the UN Assistance Mission in Afghanistan (UNAMA) until 17 Mar. 2018]*, 17 March 2017, S/RES/2344 (2017), <http://www.refworld.org/docid/592ec0724.html>, p. 2. See also, E-International Relations, *The Role of Policewomen in Ending Gender Violence in Afghanistan*, 3 August 2017, <http://www.e-ir.info/2017/08/03/the-role-of-policewomen-in-ending-gender-violence-in-afghanistan/>; USIP, *Afghan Women Defy Taliban in a City on the Edge*, 20 February 2017, <https://www.usip.org/index.php/publications/2017/02/afghan-women-defy-taliban-city-edge>.

and women working for international organizations.<sup>292</sup> They have been targeted by AGEs,<sup>293</sup> local traditional and religious power-holders, community members, and government authorities.<sup>294</sup> Women who seek to engage in public life are often perceived as transgressing social norms, condemned as “immoral” and targeted for threats and intimidation, harassment, or violence, including killings.<sup>295</sup>

Law enforcement agencies have reportedly failed to combat impunity for harassment and attacks against women in the public sphere.<sup>296</sup>

#### *i) Individuals perceived as “Westernized”*

There are reports of individuals who returned from Western countries having been threatened, tortured or killed by AGEs on the grounds that they were perceived to have adopted values associated with these countries, or they had become “foreigners” or that they were spies for or supported a Western country.<sup>297</sup> Returnees are reportedly often treated with suspicion by the local community as well as by State

<sup>292</sup> In January 2017, HRW noted the “continuing threats that female public officials face in Afghanistan.” HRW, *World Report 2017: Afghanistan*, 12 January 2017, <http://www.refworld.org/docid/587b586111.html>. See also, LA Times, *In Afghanistan, an Elite Female Police Officer Battles Cultural Taboos as well as the Taliban*, 3 May 2017, <http://www.latimes.com/world/la-fg-afghanistan-female-police-2017-story.html>; Council on Foreign Relations, *Violence Against Female Politicians*, 11 July 2017, <https://www.cfr.org/article/violence-against-female-politicians>; Amnesty International, *Human Rights Defenders under Threat – A Shrinking Space for Civil Society*, 16 May 2017, <http://www.refworld.org/docid/5a7db6494.html>, p. 36; New National Democratic Institute, *#NotTheCost: Program Guidance for Stopping Violence Against Women in Politics*, 17 March 2017, <https://www.ndi.org/sites/default/files/not-the-cost-program-guidance-final.pdf>, p. 15.

<sup>293</sup> “Women and girls have been deliberately attacked by the Taliban and their affiliates to prevent them from studying, teaching, working or participating in public affairs, through intimidation, death threats, abductions and killings.” ICC, *Situation in Afghanistan: Summary of the Prosecutor’s Request for Authorisation of an Investigation Pursuant to Article 15*, 20 November 2017, <http://www.refworld.org/docid/5a2a74314.html>, para. 20. “The Taliban oppose any public role for women in Afghan society and have targeted women’s organizations in Kunduz”. USIP, *Afghan Women Defend Their Rights Against the Taliban*, 9 May 2017, <https://www.usip.org/publications/2017/05/afghan-women-defend-their-rights-against-taliban>. “Anti-Government Elements targeted women human rights defenders and women active in public life, as well as women employed in non-traditional sectors such as policing and security, limiting their ability to participate in these areas due to fear of reprisal.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2016*, February 2017, <http://www.refworld.org/docid/58bd20104.html>, p. 17.

<sup>294</sup> The Australian, *War on Women*, 2 September, 2017, <https://www.theaustralian.com.au/life/weekend-australian-magazine/why-war-in-afghanistan-has-failed-to-liberate-women/news-story/a8444d36173c622950ff757cbb8b6872>.

<sup>295</sup> A study published by the AIHRC in December 2017 found that 20.4 per cent of the 579 female respondents in the ANP had experienced sexual harassment in the workplace. Similarly of the 18.3 per cent of 60 female respondents in the ANA and 16.7 per cent of the 12 female respondents in the NDS had faced sexual harassment. AIHRC, *Situation of Women Employed in Defense and Security Sectors*, 9 December 2017, <http://www.refworld.org/docid/5a4f76654.html>, pp. 8, 20. The NGO Working Group on Women, Peace and Security reported in October 2017 that “over the last year there was a 25% increase in targeted and deliberate killings of women in public roles including human rights defenders, teachers and politicians who are seen to be failing to conform to prevailing social gender norms.” NGO Working Group On Women, Peace And Security, *Open Letter to Permanent Representatives to the UN: Recommendations on the Security Council Open Debate on Women, Peace and Security*, 16 October 2017, <http://www.womenpeaceandsecurity.org/resource/open-letter-unsc-wps-anniversary-october-2017>. In September 2017, Masooma Muradi, the governor of the province of Daikundi and Afghanistan’s only female provincial governor, was replaced by a man after “encounter[ing] strong opposition to the idea of a woman holding a powerful position in the conservative and patriarchal country.” The Independent, *Afghanistan’s Only Female Governor Has Been Replaced by a Man*, 28 September 2017, <http://www.independent.co.uk/news/world/middle-east/afghanistan-female-governor-replaced-by-man-masooma-muradi-daikundi-sexism-resistance-gender-a7972166.html>. See also, IWPR, *Afghanistan: Female Reporters Hide Their Identities*, 8 March 2018, <https://iwpr.net/global-voices/afghanistan-female-reporters-hide-their>; IWPR, *Afghan Women Hounded out of the Media*, 26 February 2018, <https://iwpr.net/global-voices/afghan-women-hounded-out-media>; Huffington Post, *Being a Female Police Officer in Afghanistan Can Be Dangerous. But Here They Are*, 7 September 2017, [https://www.huffingtonpost.com/entry/female-police-officers-afghanistan\\_us\\_5966771ae4b0d51cda5f9c0a](https://www.huffingtonpost.com/entry/female-police-officers-afghanistan_us_5966771ae4b0d51cda5f9c0a); Reuters, *Gunmen Kill Two Afghan Women Contractors at Air Base near Kabul*, 9 August 2017, <https://www.reuters.com/article/us-afghanistan-attack/gunmen-kill-two-afghan-women-contractors-at-air-base-near-kabul-idUSKBN1AP20R>; Reuters, *Women in Afghan Army Overcome Opposition, Threats*, 4 November 2016, <https://www.reuters.com/article/us-afghanistan-women-army/women-in-afghan-army-overcome-opposition-threats-idUSKBN12Z05W>. “[Female] MPs, members of the provincial councils, civil servants, journalists, lawyers, police officers, teachers, human rights activists and women working for international organisations faced frequent intimidation, threats and violence. They are seen as immoral because they are contravening social norms. The central authorities are scarcely able to offer them any protection against these problems.” The Netherlands: Ministry of Foreign Affairs, *Country of Origin Report on Afghanistan*, November 2016, <http://www.refworld.org/docid/5a60d67d4.html>, p. 81. For further information on the treatment of women perceived as transgressing social norms, see Section III.A.8.

<sup>296</sup> “In recent years there have been a continuing series of attacks and assassinations of high-profile female politicians and women rights’ activists, to which the government has categorically turned a blind eye.” The Diplomat, *The Women in Afghanistan’s Moral Prisons*, 8 March 2017, <https://thediplomat.com/2017/03/the-women-in-afghanistans-moral-prisons>. “The continued inability of the Government to hold the perpetrators of conflict-related targeted killings of women accountable raises the concern of possible acquiescence in crimes against women, particularly women perceived to hold roles, or engage in activities, that may conflict with prevailing social norms.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2016*, February 2017, <http://www.refworld.org/docid/58bd20104.html>, p. 17.

<sup>297</sup> “[P]eople returned to the country [Afghanistan] live in constant fear of being killed or injured in attacks. Others risk persecution for their beliefs, their sexuality, or even looking western.” EU Observer, *Afghan Migrant Returns Unlawful, Says Charity*, 5 October 2017, <https://euobserver.com/migration/139290>. See also Section III.A.6.



officials, leading to discrimination and isolation.<sup>298</sup> Individuals who fall under other profiles, such as profile 1.e (humanitarian workers and development workers) and profile 1.i (women in the public sphere) may similarly be accused by AGEs for having adopted values and/or appearances associated with Western countries, and may be targeted for that reason.

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

AGEs are reported to abduct<sup>299</sup> and kill<sup>300</sup> civilians deliberately to punish them for supporting or being perceived to support the government, with the killings intended to serve as a warning to others.<sup>301</sup> AGEs are also reported to use different mechanisms to warn civilians against supporting the Government, including text messages, local radio broadcasts, social media and “night letters” (*shab nameha*).<sup>302</sup> In locations where AGEs have been unable to win public support, they are reported to harass and intimidate

<sup>298</sup> The Swedish Network of Refugee Support Groups reports that returnees from western countries are a small group, marginalized in comparison to the vast amount of Afghans who have arrived from neighbouring countries, mainly Pakistan. They are generally not accepted, and are seen as fraudulent or failures. After several years in the West, they stand out through their appearance and clothing. Swedish Network of Refugee Support Groups (FARR), *Utväisning Till Afghanistan Trots Nya Larm – Men Många Räddades*, 9 October 2017, <http://farr.se/en/aktuellt-press/notiser/1495-grupputvisning-till-afghanistan-trots-nya-larm>. The Danish Refugee Council reports that suspicion of returnees from Europe or “the west” more generally is greater the longer the returnee has stayed outside Afghanistan and the further away the returnee has been. Furthermore, young returnee boys and men are at particular risk of recruitment by extreme groups or criminal networks as a result of their high visibility in rural areas, social isolation and lack of social networks and income. Danish Refugee Council, *Tilbagevenden til Afghanistan*, October 2017, <https://flygtning.dk/media/3886281/tilbagevenden-til-afghanistan-2017.pdf>, p. 16. “[S]tate authorities perceive young male returnees as a security threat as the lack of education or job opportunities mean that they can easily turn to drug trafficking or are considered soft targets for recruitment by armed non-state actors.” Asylos, *Afghanistan: Situation of Young Male ‘Westernised’ Returnees to Kabul*, August 2017, <https://asylos.eu/wp-content/uploads/2017/08/AFG2017-05-Afghanistan-Situation-of-young-male-Westernised-returnees-to-Kabul-1.pdf>, p. 18. “In terms of westernized lifestyle and religious issues, they [returnees] aren’t perceived very well. It has been very easy to recognize a person if someone has been to Europe from the way of style, haircut and clothes. [...] [T]here are times they are excluded from the society. [...] For someone who has been in Europe for 5 or 6 years and he has been away from religious issues, [...] it is very difficult to reintegrate into the family and society. [T]here have been case that returnees were marginalized by the family because they are too westernized and they can create problems for their brother, their sister and parents, so they tell them don’t come to the area and stay away from us.” *Ibid.*, pp. 37-38. “[T]here is a clear rejection of those who have changed when abroad [...] Society fears returnees as they are perceived as intoxicated by western values; some of the youngest ones even picked up an accent when speaking Dari or Pashto, making them foreigners in their own home country. There is a clear rejection of those who have changed when abroad: for example, some might have embraced secularism or might have turned towards another religion; other might have discovered their sexuality and became homosexuals. Such behaviours will be rejected and will cause rejection if not death.” *Ibid.*, p. 39. “[M]any [...] young people wanted to hide the fact that they had been in the UK [...] When traveling in Taliban-held areas in particular, they would not want to be heard speaking English or to be seen to have international contacts on their phone”. E. Bowerman, *Risks Encountered after Forced Removal: The Return Experiences of Young Afghans*, February 2017, <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/resettlement/bowerman.pdf>, p. 79.

<sup>299</sup> “Anti-Government Elements kidnapped civilians based on suspicions that they had connections to or worked for the Government [...] Throughout 2017, UNAMA continued to record the abduction of civilians by Anti-Government Elements, documenting 255 incidents involving the abduction of 1,005 civilians and resulting in the death of 76 and injury to 17.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 34; see also *ibid.*, p. 35.

<sup>300</sup> “While Anti-Government Elements released many abductees after payment of ransom or intervention by elders, they also killed some – especially those deemed spies. Of the 33 civilian abductions claimed by Taliban, they executed three. [...] The 76 civilians killed during abduction incidents in 2017 nearly all died as a result of intentional killings with only a handful of deaths occurring during escape attempts.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 35. “Islamic State of Khorosan (IS-K) and a resurgent Taliban [...] use suicide attacks, IEDs, and targeted killings against civilians seen as sympathetic to the government. Civilians are also kidnapped and subject to extortion largely by AOGs.” CIVIC, *Saving Ourselves: Security Transition and Impact on Civilian Protection in Afghanistan*, 21 November 2016, [https://civiliansinconflict.org/wp-content/uploads/2017/09/Afghanistan\\_CivilianProtection\\_Interactive\\_FINAL.pdf](https://civiliansinconflict.org/wp-content/uploads/2017/09/Afghanistan_CivilianProtection_Interactive_FINAL.pdf), p. 11.

<sup>301</sup> “The information available provides a reasonable basis to believe that members of the Taliban and their affiliates are responsible for alleged crimes committed within the context of the situation, constituting crimes against humanity and war crimes, as part of a widespread and systematic campaign of intimidation, targeted killings and abductions of civilians perceived to support the Afghan government and foreign entities, or to oppose Taliban rule and ideology.” ICC, *Situation in Afghanistan: Summary of the Prosecutor’s Request for Authorisation of an Investigation Pursuant to Article 15*, 20 November 2017, <http://www.refworld.org/docid/5a2a74314.html>, para 3. See also, UNAMA, *Protection of Civilians in Armed Conflict: Attacks Against Places of Worship, Religious Leaders and Worshipers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>, pp. 1-2; UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 September 2017, A/72/392–S/2017/783, <http://www.refworld.org/docid/59c3a9f64.html>, p. 8; UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, pp. 37, 43.

<sup>302</sup> See for example, Times of Islamabad, *Daesh Night Letters across Afghan Province; Warning Support Against Taliban*, 9 January 2018, <https://timesofislamabad.com/09-Jan-2018/daesh-night-letters-across-afghan-province-warning-support-against-taliban>; The New Arab, *The Taliban’s Massive Social Media Presence that’s Being Ignored*, 22 November 2017, <https://www.alaraby.co.uk/english/indepth/2017/11/22/The-Talibans-massive-social-media-presence-thats-being-ignored>; RFE/RL, *Taliban Propaganda Meets the Digital Age*, 10 July 2017, <https://gandhara.rferl.org/a/taliban-propaganda/28606576.html>; The Diplomat, *The Taliban’s Latest Battlefield: Social Media*, 8 September 2016, <https://thediplomat.com/2016/09/the-talibans-latest-battlefield-social-media>. According to Landinfo, “Essentially the [Taliban’s] blacklist includes any type of wrongdoer (in Taliban’s definition) whose identity and address the Taliban have been able to ascertain. Such details are essential because according to Taliban rules before being included in the blacklist, a collaborator has to be warned and to be given the chance to amend his ways.” Landinfo, *Afghanistan: Taliban’s Intelligence and the Intimidation Campaign*, 23 August 2017, <http://www.refworld.org/docid/5a86ff4d4.html>, p. 14.



local communities, and to mete out punishments against the local population for supporting or for being perceived as supportive of the Government or rival AGEs.<sup>303</sup> Civilians accused of “spying for” the Government are reportedly subjected to summary trials in parallel and illegal judicial procedures operated by AGEs; the punishment for such alleged “crimes” is usually execution.<sup>304</sup>

k) *Family Members of Individuals Associated with, or Perceived as Supportive of, the Government and the International Community*

AGEs have been reported to target family members of individuals with the above profiles, both as acts of retaliation and on a “guilty by association” basis.<sup>305</sup> In particular, relatives, including women and children, of government officials and members of the ANDSF have been subjected to harassment, kidnappings, violence, and killings.<sup>306</sup>

l) *Summary*

Based on the preceding analysis, UNHCR considers that, depending on the individual circumstances of the case, persons associated with, or perceived as supportive of, the Government or the international community, including the international military forces, may be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of non-State actors for reasons of their (imputed) political opinion or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution. Such persons include:

- a) government officials and civil servants;
- b) members of the ANP and ALP and former members of the ANDSF;
- c) civilians associated with or perceived as supportive of the ANDSF / pro-government forces;
- d) civilians associated with or perceived as supportive of the international military forces;
- e) humanitarian workers and development workers;
- f) human rights activists;
- g) other civilians perceived as supporting the government or the international community;

<sup>303</sup> For example, in January 2018, Islamic State circulated night letters in Qarabagh district of southern Ghazni province, “threatening residents with death if they provided support to Taliban rivals.” Pajhwok Afghan News, *Daesh Night Letters Threaten Qarabagh Residents*, 9 January 2018, <https://www.pajhwok.com/en/2018/01/09/daesh-night-letters-threaten-qarabagh-residents>.

<sup>304</sup> For example, in 2016 UNAMA documented 41 incidents of punishments imposed on civilians by AGE parallel justice structures, resulting in 50 civilian casualties (38 deaths and 12 injured). These punishments included the deliberate killing and/or injuring of a person suspected of the crime of “collaboration” or spying for the Government. UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2016*, February 2017, <http://www.refworld.org/docid/58bd20104.html>, p. 69.

<sup>305</sup> “Victims of abduction by Anti-Government Elements in 2017 continued to comprise a wide range of civilians including Government workers and their family members, off-duty and former Afghan National Police officers, civilians perceived as opposing Anti-Government Element values, relatives of Afghan national security forces, and civilians deemed spies for the Government.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 35. “As in 2016, Anti-Government Elements continued to target [...] family members of civilian Government workers and Afghan national security forces.” UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 43.

<sup>306</sup> New York Times, *Afghan Army Recruitment Dwindles as Taliban Threaten Families*, 18 November 2017, <https://www.nytimes.com/2017/11/18/world/asia/afghanistan-taliban-army-recruitment.html>; The Christian Science Monitor, *How Taliban Are Evolving to Compete in Afghanistan*, 26 October 2017, <https://www.csmonitor.com/World/Middle-East/2017/1026/How-Taliban-are-evolving-to-compete-in-Afghanistan>. “Taliban have exercised pressure on [...] families [of members of the ANDSF] in order to force them to resign, threatening punishment in case of non-compliance. In some cases, they have gone as far as executing relatives.” Landinfo, *Afghanistan: Taliban's Intelligence and the Intimidation Campaign*, 23 August 2017, <http://www.refworld.org/docid/5a86ff4d4.html>, p. 13. On 6 March 2017, AGEs “abducted 35 adult men from Nawa, Gonbad, Jamak, Chini, Shin Karez, Farmo, and Bawri villages after searching for relatives of government and Afghan national security forces.” UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 42. “Anti-Government Elements often killed those abductees identified as off-duty members of the Afghan national security forces, their family members or civilian Government staff, as well as people perceived to be government spies.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2016*, February 2017, <http://www.refworld.org/docid/58bd20104.html>, p. 67. On 13 November 2016, in Alishang district, Laghman province, AGEs abducted a man and two boys from a vehicle based on the assumption that their family members worked for the Government. UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2016*, February 2017, <http://www.refworld.org/docid/58bd20104.html>, p. 20.

- h) tribal elders and religious leaders;
- i) women in the public sphere;
- j) individuals perceived as “westernized”; and
- k) family members of individuals associated with, or perceived as supportive of, the government and the international community.

## 2. Journalists and Other Media Professionals

The Constitution guarantees the right to freedom of expression, and the right to print and publish without prior submission to State authorities, while the 2009 Media Law prohibits censorship and guarantees citizens’ right to obtain information.<sup>307</sup> The December 2014 Access to Information Law provides that all government-held information should be presumed available to the public except where this would threaten Afghanistan’s national security, constitute a violation of individual privacy, or threaten a criminal investigation.<sup>308</sup> Despite a Presidential decree of 31 January 2017 which was reportedly introduced to improve implementation of the laws related to mass media, concerns remain about threats to the rights to freedom of expression and access to information.<sup>309</sup> The 2009 Mass Media Law includes a broadly-worded provision prohibiting the publication of matters contrary to the principles of Islam or offensive to other religions and sects.<sup>310</sup>

The defamation provision of the Media Law is reportedly sometimes used as a pretext to suppress criticism of government officials, with politicians, security officials, and others in positions of power reportedly arresting, threatening, or harassing journalists because of their coverage, in particular those who reported critically on the government and powerful local figures.<sup>311</sup> The government formed a new

<sup>307</sup> Freedom House, *Freedom of the Press 2016: Afghanistan*, 18 October 2016, <http://www.refworld.org/docid/582ac6e313.html>; Freedom House, *Freedom of the Press 2015: Afghanistan*, 4 September 2015, <http://www.refworld.org/docid/55f001263d.html>. Article 34 of the Constitution qualifies the right to print and publish without prior submission to State authorities by means of the phrase “according to provisions of law”. Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>.

<sup>308</sup> “Afghanistan has an Access to Media Law (2014), but its implementation remains limited.” Australian Government: Department of Foreign Affairs and Trade, *Country Information Report Afghanistan*, 18 September 2017, [https://www.ecoi.net/en/file/local/1419296/4792\\_1512554335\\_country-information-report-afghanistan.pdf](https://www.ecoi.net/en/file/local/1419296/4792_1512554335_country-information-report-afghanistan.pdf), p. 18. See also, Freedom House, *Freedom of the Press 2016: Afghanistan*, 18 October 2016, <http://www.refworld.org/docid/582ac6e313.html>. An unofficial translation of the Access to Information Law is available at: Afghanistan, *Access to Information Law*, 2017, <http://www.refworld.org/docid/5b165b2b4.html>.

<sup>309</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2016*, February 2017, <http://www.refworld.org/docid/58bd20104.html>, p. 33. For details of the orders issued in accordance with the President’s decree on 3 January 2017, see: Office of the President, Islamic Republic of Afghanistan, *President of Islamic Republic of Afghanistan’s Decree on Better Implementation of the Laws Related to Mass Media to Reinforce Liberty of Speech and Ensure Access to Information*, 3 January 2017, <https://president.gov.af/en/decrees/president-of-islamic-republic-of-afghanistans-decree-on-better-implementation-of-the-laws-related-to-mass-media-to-reinforce-liberty-of-speech-and-ensure-access-to-information/>. “Although the government’s leadership has made many commitments to protect journalists and collaborate with the media, issuing numerous decrees for protecting journalists, these official measures have failed to deliver the desired results in reducing violence against journalists. The main reason for this is a lack of consistent law enforcement and follow-up by relevant government institutions, based on the decrees and other relevant laws.” Afghan Journalists Safety Committee (AJSC), *Six-Month Report, July – December 2017*, 11 January 2018, <http://ajsc.af/wp-content/uploads/2018/01/Six-Month-Report-July-Dec-2017-AJSC-English.pdf>, p. 4.

<sup>310</sup> “[T]here are broad legal restrictions on content that is deemed ‘contrary to the principles of Islam and offensive to other religions and sects.’ [...] [T]he legal framework’s ambiguity has led to muddled implementation. Five media laws have been approved since 2002, and journalists lack clarity on how different provisions are meant to be applied. Article 130 of the constitution vaguely stipulates that courts and Islamic jurists can rule on cases ‘in a way that attains justice in the best manner,’ creating leeway for discriminatory or contradictory rulings.” Freedom House, *Freedom of the Press 2016: Afghanistan*, 18 October 2016, <http://www.refworld.org/docid/582ac6e313.html>. See also, US Department of State, *2014 Report on International Religious Freedom: Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>. An unofficial translation of the 2009 Mass Media Law is on file with UNHCR.

<sup>311</sup> AJSC, *Six-Month Report, Jul-Dec 2017*, 11 January 2018, <http://ajsc.af/wp-content/uploads/2018/01/Six-Month-Report-July-Dec-2017-AJSC-English.pdf>, p. 4. “AJSC has recorded 73 cases which includes killing, intimidation, beating, inflicting injury, humiliation, and detention of journalists. During these six months, like the previous years, most of the violence against journalists in terms of quantity, has been committed by government affiliated individuals and security forces. They are responsible for 34 cases of violence that form 46% of all instances of violence. The violence exercised by government officials is mostly due to the revelations by journalists of illegal activities of these individuals and institutions.” AJSC, *Six-Month Report, Jan-June 2017*, 24 July 2017, <http://ajsc.af/wp-content/uploads/2017/07/FirstSixMonthsReport2017-English.pdf>, p. 2. “Afghan government officials and security forces remain responsible for the largest number of reported cases of violence and intimidation, which are often linked to coverage of corruption or other official wrongdoing.” Freedom House, *Freedom of the Press 2017: Afghanistan*, 1 November 2017, <http://www.refworld.org/docid/59fc6803a.html>. See also, IWPR, *Afghanistan: All Sides Violating Human Rights*, 27 July 2017, <http://www.refworld.org/docid/5979fd054.html>. For further examples of individual incidents, see the monthly Media Watch Reports by Nai Supporting Open Media in Afghanistan here: <http://nai.org.af/media-watch-reports/>.

Media Complaints and Violations Investigations Commission under amendments to the Media Law adopted in January 2015; powerful individuals, mostly government officials, have reportedly used the commission as a tool to intimidate and silence journalists.<sup>312</sup> Media outlets have on occasion been closed by local authorities, reportedly in retaliation for reporting on issues considered as sensitive by the authorities, such as allegations of corruption.<sup>313</sup> Journalists reportedly revert to self-censorship due to concerns for their safety.<sup>314</sup> Violence against journalists is reported to be a serious concern, with incidents of violence reportedly on the rise,<sup>315</sup> and with State authorities reportedly responsible for the majority of incidents of violence and intimidation against journalists in 2017.<sup>316</sup> Women journalists are reportedly at a particular risk of harassment and threats.<sup>317</sup> Many female journalists have been directly

<sup>312</sup> Human Rights Watch reported that in 2016 the “Media Violations Investigations Commission, which the government had dissolved in 2015 in response to demands by media watchdogs, was reinstated” but “powerful individuals, mostly government officials, have used the commission as a tool to intimidate and silence journalists.” HRW, *World Report 2017: Afghanistan*, 12 January 2017, <http://www.refworld.org/docid/587b586111.html>. “The new commission is supposed to review all cases involving media and journalists before possible referral to prosecutors or the courts, but this procedure was not always observed. In November, the Attorney General’s Office directly summoned the chief editor of the popular newspaper *Hasht e Subh* (8 AM Daily) for questioning about its coverage, drawing objections from civil society groups.” Freedom House, *Freedom of the Press 2016: Afghanistan*, 18 October 2016, <http://www.refworld.org/docid/582ac6e313.html>.

<sup>313</sup> “Media outlets routinely cover stories that are critical of the government, including reporting on human rights abuses and serious crimes against women and children. However, on occasion authorities have reportedly threatened journalists and forced the closure of media outlets for reporting on official corruption and other sensitive topics.” Australian Government: Department of Foreign Affairs and Trade, *Country Information Report Afghanistan*, 18 September 2017, [https://www.ecoi.net/en/file/local/1419296/4792\\_1512554335\\_country-information-report-afghanistan.pdf](https://www.ecoi.net/en/file/local/1419296/4792_1512554335_country-information-report-afghanistan.pdf), p. 19. See also, Freedom House, *Freedom of the Press 2016: Afghanistan*, 18 October 2016, <http://www.refworld.org/docid/582ac6e313.html>. Journalists are also reported to have difficulties accessing information and accessing combat zones where illegal activities were suspected of taking place. IWPR, *Afghanistan: All Sides Violating Human Rights*, 27 July 2017, <http://www.refworld.org/docid/5979fd054.html>.

<sup>314</sup> “‘Journalists are conscious of the implications of critical reporting,’ says the Kabul-based journalist. ‘The media is consciously and unconsciously self-censoring. Sometimes, the media may not run a story because they are afraid of the security implications.’” Gandhara, *In Afghanistan, Militant Groups Unite Against a Common Enemy: Journalist*, 11 November, 2017, <https://gandhara.rferl.org/a/afghanistan-media-press-freedom-militants/28848102.html>. “Journalists continue to self-censor, especially in the face of rising threats from the Taliban, the Islamic State (IS) militant group, and regional warlords.” Freedom House, *Freedom of the Press 2017: Afghanistan*, 1 November 2017, <http://www.refworld.org/docid/59fc6803a.html>. “Increased threats against journalists and the media has created self-censorship among journalists and media in insecure parts of Afghanistan. This limits the scope of reporting to areas where relative security prevails. The fear among journalists and the media has increased and reporters are wary of covering terrorist cases.” AJSC, *Six-Month Report, Jan-June 2017*, 24 July 2017, <http://ajsc.af/wp-content/uploads/2017/07/FirstSixMonthsReport2017-English.pdf>, p. 9. See also, UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2016*, February 2017, <http://www.refworld.org/docid/58bd20104.html>, p. 32.

<sup>315</sup> “2017 was the bloodiest year for journalists and media workers in Afghanistan’s history. In 2017, not only violence against journalists increased significantly but the number of journalists killed and targeted attacks against media also increased unprecedentedly. In 2017, there were a total of 169 cases of violence and threats against journalists. Of these, there were 20 cases of killing of journalists and media workers. From among 169 incidents, 12 have been inflicted against female journalists, which makes up 7% of the incidents. The figures of 2017 shows a 67% increase compared to the number of incidents of violence inflicted against journalists and media workers in 2016. In 2016, AJSC recorded a total number of 101 cases. The incidences of killing of journalists has also increased by 54%, as the total number of murders AJSC recorded in 2016 was 13.” AJSC, *Six-month Report, Jul-Dec 2017*, January 2018, <http://ajsc.af/wp-content/uploads/2018/01/Six-Month-Report-July-Dec-2017-AJSC-English.pdf>, p. 2. Nai Supporting Open Media reported that 21 journalists and media staff were killed in 2017, while 41 others injured. 167 violence cases were registered with Nai in 2017. “This is the biggest number of violence cases against journalists and media since 2001.” Nai Supporting Open Media in Afghanistan, *Media Watch Annual Report 2017*, December 2017, <http://nai.org.af/files/documents/mw/annual/Annual%20report%20English%20version%202017.pdf>, p. 2. See also, Freedom House, *Freedom of the Press 2017: Afghanistan*, 1 November 2017, <http://www.refworld.org/docid/59fc6803a.html>; Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>; and Freedom House, *Freedom of the Press 2016: Afghanistan*, 18 October 2016, <http://www.refworld.org/docid/582ac6e313.html>.

<sup>316</sup> “In addition, reports were received of State actors or local power brokers subjecting journalists to beating, arbitrary detention and harassment, and of obstructing access to information and reporting.” UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, para 73. See also, AJSC, *Six-Month Report, Jul-Dec 2017*, January 2018, <http://ajsc.af/wp-content/uploads/2017/07/FirstSixMonthsReport2017-English.pdf>, p. 2; *ibid.*, p. 4; Freedom House, *Freedom of the Press 2017: Afghanistan*, 1 November 2017, <http://www.refworld.org/docid/59fc6803a.html>.

<sup>317</sup> “Women in the media are particularly frequent victims, in part because they have public profiles, and often use social media with their real identities. That often attracts men who hurl sexual abuse at them with abandon – often not even bothering to disguise their names. The abuse frequently includes sexually explicit photographs.” The New York Times, *Harassment All Around, Afghan Women Weigh Risks of Speaking Out*, 10 December 2017, [www.nytimes.com/2017/12/10/world/asia/afghan-metoo-women-harassment.html](http://www.nytimes.com/2017/12/10/world/asia/afghan-metoo-women-harassment.html). “Those who report abuse – from simple harassment to severe beatings and rape – risk retribution and often more violence, sometimes including murder, for speaking out.” UNAMA, *Afghan Women Reporters, Seizing on Global Trends, Empower Voices Against Abuse and Violence*, 25 November 2017, <https://unama.unmissions.org/afghan-women-reporters-seizing-global-trends-empower-voices-against-abuse-and-violence>. “The findings of the Female Journalists Support Center in Afghanistan indicate that in recent years, particularly in the past two years, the presence of women journalists in media outlets has been decreasing day by day in the country. This is more tangible in provinces. The spreading out of war and an increase in the level of insecurity are the main reasons behind the reduction. Female journalists are more prone than male journalists to insecurity both in their work place as well as outside of their work”, Center for The Protection of Women Journalists in Afghanistan, *The Continuation of Insecurity Is the Main Cause of Decline in the Number of Women Journalists in Afghanistan*, 20 November 2017, [www.cpawj.org/en/2017/11/20/the-continuation-of-insecurity-is-the-main-cause-of-decline-in-the-number-of-women-journalists-in-afghanistan/](http://www.cpawj.org/en/2017/11/20/the-continuation-of-insecurity-is-the-main-cause-of-decline-in-the-number-of-women-journalists-in-afghanistan/). See also, Gandhara, *Violence Threats Forcing Afghan Women to Abandon Journalism*, 14 May 2017,



targeted,<sup>318</sup> forced to quit their jobs or indirectly pressured to suspend their activities, or even to flee the country.<sup>319</sup> The perpetrators of violence against journalists are reported to frequently enjoy impunity, and journalists accused the Government of failing to protect them.<sup>320</sup>

The number of incidents of violence and intimidation of journalists and media outlets at the hands of non-State actors is reported to be increasing,<sup>321</sup> with non-state actors reportedly responsible for the majority of killings of journalists in 2017.<sup>322</sup> The Taliban has reportedly targeted regional and private media in a number of attacks, including threats, beatings, kidnappings, extortion, and targeted killings.<sup>323</sup> There was reportedly an increase in attacks by Islamic State, which claimed responsibility for several attacks on media outlets in 2017.<sup>324</sup> In April 2018, nine journalists were killed in a double

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<https://gandhara.rferl.org/a/afghanistan-women-journalists/28487199.html>. Based on a survey of 100 female journalists in Kabul, Nengarhar, Kandahar, Balkh, Kunduz, Herat, and Khost on different aspects of the work of female journalists in Afghanistan, the AJSC reported: “Since media work by nature takes place in public spaces, female journalists were subjected to sexual harassment in many contexts. Sixty-nine percent of the participants reported that they had been subjected to sexual harassment within their workplaces.” AJSC, *The Reporting Heroes – A Study on the Condition of Afghan Female Journalists*, 14 April 2016, <http://ajsc.af/wp-content/uploads/2016/04/women-in-media.pdf>, p. 6; see also *ibid.*, pp. 8, 10-11. “Relatives, acquaintances and extremist religious groups that are opposed to women working outside the house are the most commonly responsible parties for these threats and intimidation. Female journalists are furthermore subjected to moral accusations that often negatively affect their personal lives, such as the opportunity to get married.” *Ibid.*, p. 12.

<sup>318</sup> “I and my colleagues were threatened several times, we did not take it seriously. But they [the Taliban] attacked a bus carrying our colleagues [in January 2016], [...] The attack, by a Taliban suicide bomber, killed seven Tolo employees while they were being driven to their homes from work on the evening of January 20 last year.” Gandhara, *Violence Threats Forcing Afghan Women to Abandon Journalism*, 14 May 2017, <https://gandhara.rferl.org/a/afghanistan-women-journalists/28487199.html>.

<sup>319</sup> Australian Government: Department of Foreign Affairs and Trade, *Country Information Report Afghanistan*, 18 September 2017, [https://www.ecoi.net/en/file/local/1419296/4792\\_1512554335\\_country-information-report-afghanistan.pdf](https://www.ecoi.net/en/file/local/1419296/4792_1512554335_country-information-report-afghanistan.pdf); USIP, *Afghan Women Defend Their Rights Against the Taliban*, 18 May 2017, [www.usip.org/publications/2017/05/afghan-women-defend-their-rights-against-taliban](http://www.usip.org/publications/2017/05/afghan-women-defend-their-rights-against-taliban). In 2017, Najib Sharifi, the head of the AJSC reportedly estimated that “more than 100 women journalists and media workers have stopped working in the Afghan media organizations since 2014 due to increasing insecurity”, with some reportedly having fled the country. Gandhara, *Violence Threats Forcing Afghan Women to Abandon Journalism*, 14 May 2017, <https://gandhara.rferl.org/a/afghanistan-women-journalists/28487199.html>. “Women journalists in particular encounter regular harassment and threats, leading some to leave the profession.” Freedom House, *Freedom of the Press 2016: Afghanistan*, 18 October 2016, <http://www.refworld.org/docid/582ac6e313.html>.

<sup>320</sup> “The Afghan Ministry of Interior Affairs is investigating 172 cases of violation of journalists’ rights after a committee constituted in 2015 to review 700 such cases since 2000 recommended investigation and follow-up of 427 cases. Yet, after two years of investigation, there has been no practical action for justice. The committee noted that among 427 cases, in 401 cases security forces were responsible. The cases include 60 killing [sic], 46 serious injuries, 222 assaults and beating, 84 arrests, 29 abductions and 238 threats, insults and others.” International Federation of Journalists (IFJ), *Impunity Continues to Cripple Afghanistan’s Media*, 13 November 2017, <http://www.ifj.org/nc/news-single-view/backpid/1/article/impunity-continues-to-cripple-afghanistans-media/>. “Despite such positive initiatives, implementation has often been inadequate, particularly on the issue of violence against the press.” Freedom House, *Freedom of the Press 2017: Afghanistan*, 1 November 2017, <http://www.refworld.org/docid/59fc6803a.html>. “[G]overnment officials continued to be influenced by a culture of impunity and failed to punish those found guilty.” AJSC, *Six-Month Report, Jan-June 2017*, 24 July 2017, <http://ajsc.af/wp-content/uploads/2017/07/FirstSixMonthsReport2017-English.pdf>, p. 4. “In a number of instances, journalists were first abused by police or other officials and then threatened to suppress any formal complaint or legal proceedings.” Freedom House, *Freedom of the Press 2016: Afghanistan*, 18 October 2016, <http://www.refworld.org/docid/582ac6e313.html>.

<sup>321</sup> “The level of violence perpetuated by terrorist groups has increased by 28% compared to last year. In 2016, terrorist groups (Taliban and ISIS) were responsible for 23% of violence and intimidation against journalists, while they are responsible for 51% of the cases of violence in 2017.” AJSC, *Six-Month Report, Jan-June 2017*, 24 July 2017, <http://ajsc.af/wp-content/uploads/2017/07/FirstSixMonthsReport2017-English.pdf>, p. 2. Examples of attacks in 2017 include: Reporters Without Borders, *Gummen Attack TV Channel in Kabul*, 7 November 2017, <http://www.refworld.org/docid/5a0bf5804.html>; Reporters Without Borders, *Twin Bombs Kill Parliamentary TV Cameraman, Woman Employee*, 12 January 2017, <http://www.refworld.org/docid/5878f7a74.html>.

<sup>322</sup> AJSC, *Six-Month Report, Jul-Dec 2017*, January 2018, <http://ajsc.af/wp-content/uploads/2018/01/Six-Month-Report-July-Dec-2017-AJSC-English.pdf>, p. 2.

<sup>323</sup> “Anti-government elements subjected journalists and media outlets to threats, acts of intimidation, deliberate attacks and killings, labelling specific outlets ‘military targets’.” UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, para 71. See also, VOA, *Taliban Rebels Impose Taxes on Media Outlets in Restive Ghazni*, 21 February 2018, <https://www.voanews.com/a/taliban-rebels-impose-taxes-on-media-outlets-in-restive-ghanzi/4264402.html>; Committee to Protect Journalists (CPJ), *Journalists Killed in 2017: Motive Confirmed: Habibollah Hosseinzadeh*, 31 December 2017, <http://www.refworld.org/docid/5a4e33bc3.html>; Gandhara, *In Afghanistan, Militant Groups Unite Against a Common Enemy: Journalist*, 11 November 2017, <https://gandhara.rferl.org/a/afghanistan-media-press-freedom-militants/28848102.html>.

<sup>324</sup> “Attacks against the media by the Taliban and Islamic State (also known as Daesh) have been growing in intensity.” Reporters Without Borders, *RSF Condemns Deadly Attack on State Radio and TV in Jalalabad*, 18 May 2017, <http://www.refworld.org/docid/591d5a627.html>. For examples of attacks against journalists and media organizations, see: CPJ, *Media Workers Killed in 2017: Ghani*, 31 December 2017, <http://www.refworld.org/docid/5a4e33574.html>; CPJ, *Media Workers Killed in 2017: Zainullah*, 31 December 2017, <http://www.refworld.org/docid/5a4e335126.html>; CPJ, *Media Workers Killed in 2017: Abdul Latif Amiri*, 31 December 2017, <http://www.refworld.org/docid/5a4e335a3.html>; CPJ, *Journalists Killed in 2017 - Motive Confirmed: Hussain Nazari*, 31 December 2017, <http://www.refworld.org/docid/5a4e33b5a.html>; CPJ, *Media Workers Killed in 2017: Mohammed Amir Shinwari*, 31 December 2017, <http://www.refworld.org/docid/5a4e33548.html>.



coordinated suicide attack by Islamic State in Kabul; the second bomber was reportedly disguised as a journalist.<sup>325</sup>

In light of the foregoing, UNHCR considers that journalists and other media professionals who engage in critical reporting on what are perceived to be sensitive issues by either State or non-State actors, may be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of non-State actors for reasons of their (imputed) political opinion or religious views, or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution. Depending on the specific circumstances of the case, family members of individuals with this profile may also be in need of international protection on the basis of their association with individuals at risk.

### 3. *Men of Fighting Age, and Children in the Context of Underage and Forced Recruitment*

Incidents of forced recruitment of children are said to be subject to widespread underreporting.<sup>326</sup> However, the recruitment and use of children by all parties to the conflict, both in support and combat roles, is reported to be observed throughout the country.<sup>327</sup>

#### a) *Forced Recruitment by AGEs*

In areas where AGEs exercise effective control over territory and the population, they are reported to use a variety of mechanisms to recruit fighters, including recruitment mechanisms based on coercive

<sup>325</sup> “According to reports, after one terrorist blast killed many civilians, a follow-up blast targeted journalists who arrived to cover the attack.” OHCHR, *Afghanistan: UN Expert Condemns Attacks on Journalists, Says Perpetrators Must Be Brought to Justice*, 1 May 2018, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23021&LangID=E>. A day earlier, another journalist, Ahmad Shah, was shot dead in the eastern province of Khost, in a separate incident. *Ibid.* See also, New York Times, *Journalists Suffer Deadliest Day in Afghanistan Since at Least 2002*, 30 April 2018, <https://www.nytimes.com/2018/04/30/world/asia/kabul-bombing-photographer.html>; Guardian, *Ten Journalists Among 36 Killed in Afghanistan Attacks*, 30 April 2018, <https://www.theguardian.com/world/2018/apr/30/kabul-explosions-hit-city-centre-attack>.

<sup>326</sup> “Given the high likelihood of under-reporting, UNAMA notes that [gathered] data may not accurately reflect the actual scale of child recruitment and use by parties to the conflict.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 14.

<sup>327</sup> “Throughout 2017, UNAMA continued to receive reports of recruitment and use of children by Anti-Government Elements and the Afghan security forces. From 1 January to 31 December 2017, it verified the recruitment and use of 83 boys [...]. Children are inter alia recruited to function as bodyguards, assist in intelligence gathering, plant IEDs, carry out suicide attacks and participate in hostilities.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 13. Between 1 January and 30 November 2017, the UN verified 30 incidents of underage recruitment involving 115 boys, representing an increase when compared with the 88 children verified during the same period in 2016. The underage recruitment of 103 boys was attributed to AGEs and the recruitment of 12 underage boys to pro-government forces, including the ANP, the ALP and the NDS. UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, para. 32. “The government and armed non-state groups in Afghanistan recruit and use children in combat and non-combat roles.” US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>. See also Deutsche Welle, *Child Soldiers: What's their Role in the Afghan Conflict?*, 13 February 2016, <http://www.dw.com/en/child-soldiers-whats-their-role-in-the-afghan-conflict/a-19042010>. Police forces and four AGEs (the Haqqani Network, Hezb-i-Islami of Gulbuddin Hekmatyar, ISIL-Khorasan Province, and the Taliban) are listed by the UN Security Council according to Resolution 1612 among parties that recruit or use children, kill or maim children, commit rape and other forms of sexual violence against children, or engage in attacks on schools and/or hospitals in situations of armed conflict. UNSG, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, <http://www.refworld.org/docid/557abf904.html>, p. 48; Watchlist on Children and Armed Conflict, *Afghanistan*, undated, <https://watchlist.org/countries/afghanistan/>.

strategies.<sup>328</sup> Persons who resist recruitment, and their family members, are reportedly at risk of being killed or punished.<sup>329</sup>

AGEs are reported to continue to recruit children<sup>330</sup> to carry out suicide attacks and be used as human shields, as well as to participate in active combat, to plant IEDs, to smuggle weapons and uniforms, and to act as spies, guards or scouts for reconnaissance.<sup>331</sup>

<sup>328</sup> “Insurgent groups forcibly recruit and use children as suicide bombers. The Taliban indoctrinate children using religious and military education and teach children to use small arms and deploy improvised explosive devices. Some families receive cash payments or protection in exchange for sending their children to the Taliban-run schools. Children from impoverished and rural areas, particularly those under Taliban control, are especially vulnerable to recruitment.” US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>. In October 2017, France 24 reported that 77 men from various villages in Kunduz province were “captured by the Taliban and forced to join their ranks.” Reportedly, “[w]hen the Taliban take over a region, the men who haven’t managed to run away are forced to either join the Taliban or get killed”. France 24, *Did 77 Members of the Afghan Security Forces Really Join the Taliban*, 20 October 2017, <http://observers.france24.com/en/20171020-afghan-security-forces-taliban-kunduz-video>. In July 2017, Radio Free Europe reported that a human trafficking ring kidnapped 25 children aged between 4 and 14 and tried to smuggle them into Pakistan, where they were to be trained as suicide bombers for the Afghan Taliban. RFE/RL, *Afghan Police: Children Kidnapped to Be Suicide Bombers for Taliban*, 10 July 2017, <https://www.rferl.org/a/afghan-police-children-kidnapped-by-taliban-to-be-suicide-bombers/28606744.html>. In March 2017, IOM reported that the local population of Nangarhar “is threatened by abductions and forced recruitment, as well as reprisal violence”. IOM, *Baseline Mobility Assessment: Afghanistan*, March 2017, [https://afghanistan.iom.int/sites/default/files/Reports/iom\\_dtm\\_afg\\_baseline\\_assessment\\_round1\\_summary\\_results.pdf](https://afghanistan.iom.int/sites/default/files/Reports/iom_dtm_afg_baseline_assessment_round1_summary_results.pdf), p. 10. “[I]n many villages there was a well-established agreement within the tribe on mobilisation of fighters. Large families usually contribute two fighters [to Taliban]. In case of emergency, for example when facing an imminent attack, refusing this mobilisation would be difficult. It can be avoided by the family paying a ‘fine’.” B. Osman, analyst with the AAN, as quoted in EASO, *Country of Origin Information Report. Afghanistan: Recruitment by Armed Groups*, September 2016, <http://www.refworld.org/docid/57e145c44.html>, p. 15. See also, VOA, *Unemployment Leads Dozens of Youths to Join IS Ranks in Eastern Afghanistan*, 4 March 2018, <https://www.voanews.com/a/unemployment-leads-dozens-of-youths-to-join-is-in-eastern-afghanistan/4280056.html>; The Local, *How I Fled from a Taliban Training Centre to Sweden*, 19 September 2017, <https://www.thelocal.se/20170919/how-i-fled-from-a-taliban-training-centre-to-sweden>; Hindustan Times, *Poverty Drives Child Soldiers into Afghanistan’s Endless War*, 6 September 2017, <https://www.hindustantimes.com/world-news/poverty-drives-child-soldiers-into-afghanistan-s-endless-war/story-MUGQDKJPjocjsID2ZQO.html>.

<sup>329</sup> “The recruiters employ a ruthless ‘carrot and stick’ approach, with some of the child recruits describing death threats being levied upon them by militants if they do not go through with an attack.” Andrew Fraser, “Martyrdom’s Children: The Tragedy of Child Suicide Bombers in Afghanistan”, *Canadian Military Journal*, Vol. 17(3), Summer 2017, <http://www.journal.forces.gc.ca/Vol17/no3/PDF/CMJ173Ep40.pdf>, p. 42. “[I]n areas controlled by the Taliban, or areas where the Taliban has a large presence, it is virtually impossible to be in open opposition to the movement. Local communities must adapt to Taliban’s local governance. [...] If a local community is attacked or there is an imminent risk of attack, there is a need to mobilise fighters locally, and in such cases it can be difficult not to contribute [fighters to the Taliban]. [...] [H]owever, it may be possible for the extended family to pay instead of contributing with recruits. Such practices imply that the poorest families contribute with fighters because they do not have the means to pay their way out of the situation.” Landinfo, *Afghanistan: Recruitment to Taliban*, 29 June 2017, <http://www.refworld.org/docid/5a943aee4.html>, p. 18. See also, Counter Extremism Project, *Taliban*, undated, <https://www.counterextremism.com/threat/taliban>.

<sup>330</sup> In the first half of 2018, UNAMA verified the recruitment and use of 22 boys and documented credible allegations of the recruitment and use of seven boys by parties to the armed conflict. Of the total of 29 boys, UNAMA attributed the recruitment and use of 24 boys to AGEs. UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html>, p. 3. In 2017, the UN Country Taskforce on Monitoring and Reporting on Children and Armed Conflict attributed the recruitment of 103 boys to AGEs. Additionally, the task force documented and verified eight incidents of abduction by the Taliban involving 18 children and one incident by Daesh/ISIL-KP involving two children. UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, paras 32-33. In 2017 “UNAMA attributed the recruitment and use of 40 boys to the Taliban, 19 boys to Daesh/ISIL-KP [...] and two to undetermined Anti-Government Elements.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 14. “Armed groups remained the main perpetrators of recruitment and use of children, with 84 verified cases, of which 69 (including 1 girl) were attributed to the Taliban (a threefold increase compared with to ISIL-Khorasan Province (ISIL-KP), while 5 could not be attributed to a specific group. In addition, there were unverified reports of recruitment affecting more than 3,000 children, mostly by armed groups including Taliban and ISIL-KP.” UNSG, *Children and Armed conflict: Report of the Secretary-General*, 24 August 2017, A/72/361-S/2017/821, <http://www.refworld.org/docid/5a95820e4.html>, para. 21. See also for example: IWPR, *Afghan Children Lured to Fight with Taleban*, 23 February 2018, <https://iwpr.net/global-voices/afghan-children-lured-fight-taleban>; Ferghana News, *20 Dollars Caliphate. How Militants Recruit Children and Youth in Northern Afghanistan*, 13 December 2017, <http://enews.ferghananews.com/articles/3070>; Ariana News, *300 Afghan Children under IS Military Training in Northern Afghanistan*, 6 December 2017, <https://ariananews.af/300-afghan-children-under-is-military-training-in-northern-afghanistan>; Pajhwok Afghan News, *Daesh Foreign Mentors Recruiting Jawzjan Youth*, 12 November 2017, <https://www.pajhwok.com/en/2017/11/12/daesh-foreign-mentors-recruiting-jawzjan-youth>; Stuff, *The Afghan Children Being Smuggled to Pakistan Seminars*, 31 July 2017, <https://www.stuff.co.nz/world/asia/95301826/the-afghan-children-being-smuggled-to-pakistan-seminaries>; Tolo News, *Daesh Militants Recruiting in Ghor Province: Officials*, 9 June 2017, <https://www.toloneews.com/afghanistan/daesh-recruiting-ghor-province-officials>; Pajhwok Afghan News, *Underage Deceived Recruitment by Armed Groups in Combat Zones: A Form of Trafficking of Children in Armed Conflict Situation*, 30 April 2017, <https://www.pajhwok.com/en/2017/04/30/underage-deceived-recruitment-armed-groups-combat-zones-form-trafficking-children-armed>; Tolo News, *Daesh Recruiting in Nangarhar*, 30 December 2016, <https://www.toloneews.com/afghanistan/daesh-fighters-recruiting-nangarhar>; Afghan Times, *Taliban Recruit Children In Ghor*, 28 September 2016, <http://afghanistantimes.af/taliban-recruit-children-in-ghor/>.

<sup>331</sup> UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html>, p. 3. According to the UN Country Taskforce on Monitoring and Reporting on Children and Armed Conflict, underage recruits are “mainly used for planting improvised explosive devices, transporting explosives, conducting suicide attacks, and spying.” UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the*

b) *Forced and Underage Recruitment by Pro-Government Forces*

Despite the government's efforts to combat underage recruitment, the recruitment of children for military purposes by the ANDSF, particularly the ANP and ALP, and by pro-government militias, reportedly continues.<sup>332</sup> In January 2011 the UN and the Government signed an action plan for the prevention of underage recruitment.<sup>333</sup> In July 2014 the Government endorsed a road map towards compliance with the action plan.<sup>334</sup> In February 2015 President Ghani endorsed a law which had been passed by the Parliament and the Senate in 2014, criminalizing underage recruitment into the ANDSF.<sup>335</sup> The new Penal Code which entered into force on 15 February 2018, contains provisions prohibiting and criminalizing the recruitment and use of children by armed forces.<sup>336</sup> However, despite the Government's efforts to eradicate underage recruitment, challenges are reported to remain, including non-standardised recruitment processes, ineffective age verification procedures and a lack of accountability for underage recruitment.<sup>337</sup> In August 2017, the UN Secretary-General noted that while advances to strengthen age assessment processes in ANP recruitment centres were realized, the lack of

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*Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, para. 32. See also, Salaam Times, *Weakened ISIS Stoops to Brainwashing Children to Carry out Terror Attacks*, 13 April 2018, [http://afghanistan.asia-news.com/en\\_GB/articles/cnmi\\_st/features/2018/04/13/feature-02](http://afghanistan.asia-news.com/en_GB/articles/cnmi_st/features/2018/04/13/feature-02); The Telegraph, *Suicide Bomber Thought to Be as Young as 12 Kills Five in Kabul's Diplomatic Zone*, 31 October 2017, <https://www.telegraph.co.uk/news/2017/10/31/motorcycle-suicide-bomber-kills-three-kabuls-diplomatic-zone/>; Salaam Times, *New ISIS in Afghanistan Video: Children Executing Children*, 20 July 2017, [http://afghanistan.asia-news.com/en\\_GB/articles/cnmi\\_st/features/2017/07/20/feature-01](http://afghanistan.asia-news.com/en_GB/articles/cnmi_st/features/2017/07/20/feature-01); Euronews, *Afghan Children 'Abducted for Training as Suicide Bombers'*, 11 July 2017, <http://www.euronews.com/2017/07/11/afghan-children-abducted-for-training-as-suicide-bombers>; 1TV News, *Afghan Boy, 11, Surrenders Before Suicide Bombing*, 20 June 2017, <http://www.1tvnews.af/en/news/afghanistan/29859-afghan-boy-11-surrenders-before-suicide-bombing>.

<sup>332</sup> In the first half of 2018, UNAMA verified the recruitment and use of three boys by the ALP, and documented credible allegations of the recruitment and use of two boys by the ANP and one boy by the National Directorate of Security. UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html>, p. 3. In 2017, the UN Country Taskforce on Monitoring and Reporting on Children and Armed Conflict attributed the recruitment of 12 boys to pro-government forces, including the ANP (7), the ALP (4) and the NDS (1). UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, para. 32. "The Afghan Local and National Police use children in combat and non-combat roles, including as personal servants, support staff, and body guards. The ANA also recruits children, although to a lesser extent". US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>. See also, UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 14; UNSG, *Children and Armed Conflict: Report of the Secretary-General*, 24 August 2017, A/72/361-S/2017/821, <http://www.refworld.org/docid/5a95820e4.html>, para. 22.

<sup>333</sup> UNSG, *Report of the Secretary-General on Children and Armed Conflict*, 15 May 2013, A/67/845-S/2013/245, <http://www.refworld.org/docid/51b9864e4.html>, para. 33; UN General Assembly / Security Council, *The Situation in Afghanistan and its Implications for International Peace and Security*, A/66/728 – S/2012/133, 5 March 2012, <http://www.refworld.org/docid/4fbf60732.html>, p. 23; UN General Assembly, *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Afghanistan and Technical Achievements in the Field of Human Rights*, A/HRC/19/47, 18 January 2012, <http://www.refworld.org/docid/4f391a772.html>, para. 23. Afghanistan has acceded to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. The Protocol prohibits the compulsory recruitment of children (defined as persons under the age of 18) into a State's armed forces (Article 2). Voluntary recruitment of children above the age of 16 into national armed forces is allowed under certain conditions (Article 3), but children may not take direct part in hostilities (Article 1). The recruitment of children or their use in hostilities by non-State armed groups is prohibited in all circumstances (Article 4). Un General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, 25 May 2000, United Nations Treaty Series, Vol. 2173, p. 222, <http://www.refworld.org/docid/47fdfb180.html>.

<sup>334</sup> UNSG, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926-S/2015/409, <http://www.refworld.org/docid/557abf904.html>, para. 38; Child Soldiers International, *Briefing on the Situation of the Recruitment and Use of Children by Armed Forces and Insurgent Groups in Afghanistan to the UN Security Council Working Group on Children and Armed Conflict*, June 2015, [http://www.child-soldiers.org/user\\_uploads/pdf/childsoldiersinternationalafghanistanbriefingjune2015final7404027.pdf](http://www.child-soldiers.org/user_uploads/pdf/childsoldiersinternationalafghanistanbriefingjune2015final7404027.pdf).

<sup>335</sup> UNICEF, *Afghanistan Parliament Approves Draft Law To Ban Recruitment Of Child Soldiers*, 3 November 2014, [https://www.unicef.org/afghanistan/protection\\_9042.html](https://www.unicef.org/afghanistan/protection_9042.html); Pajhwok Afghan News, *UN Hails Draft Law Against Child Soldiers' Recruitment*, 5 November 2014, <https://www.pajhwok.com/en/2015/03/10/un-hails-draft-law-against-child-soldiers%E2%80%99recruitment>; UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2014*, February 2015, <http://www.refworld.org/docid/54e44e274.html>, p. 19.

<sup>336</sup> Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Articles 605 and 606.

<sup>337</sup> According to the UN Secretary-General, "while important advances to strengthen age assessment processes in Afghan National Police recruitment centres were realized, the lack of corresponding procedures for Afghan Local Police recruitment, as well as the continued reliance on pro-government militias for which no recruitment oversight mechanisms are evident, remain cause for concern." UNSG, *Children and Armed Conflict*, 24 August 2017, A/72/361-S/2017/821, <http://www.refworld.org/docid/59db4a194.html>, para. 34. See also Foreign Policy, *Afghan Forces Use Child Soldiers, and the U.S. Still Gives Them Money*, 3 August 2016, <http://foreignpolicy.com/2016/08/03/afghan-forces-use-child-soldiers-and-the-u-s-still-gives-them-money/>; Child Soldiers International, *Ongoing Recruitment and Use of Children by Parties to the Armed Conflict in Afghanistan*, March 2016, <https://www.child-soldiers.org/Handlers/Download.ashx?IDMF=d585b8b1-08bc-482d-ac75-1e7b6d80c24b>, pp. 2, 4.

corresponding procedures for ALP recruitment, as well as the continued reliance on pro-government militias for which no recruitment oversight mechanisms are evident, remained a cause for concern.<sup>338</sup>

Pro-government armed groups have also been reported to force families to send young men to join the fight against the Taliban and other AGEs.<sup>339</sup>

c) *Summary*

In light of the foregoing, UNHCR considers that, depending on the specific circumstances of the case, men of fighting age and children living in areas under the effective control of AGEs, or in areas where pro-government forces, AGEs and/or armed groups affiliated to ISIS are engaged in a struggle for control, may be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of State or non-State actors for reasons of their membership of a particular social group or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution where the actors of persecution are AGEs.

Depending on the specific circumstances of the case, men of fighting age and children living in areas where ALP commanders are in a sufficiently powerful position to forcibly recruit community members into the ALP may equally be in need of international refugee protection on the basis of a well-founded fear of persecution for reasons of their membership of a particular social group or other relevant grounds.

Men of fighting age and children who resist forced recruitment by either State or non-State actors may also be in need of international refugee protection basis of a well-founded fear of persecution for reasons of their (imputed) political opinion or other relevant grounds.

Depending on the specific circumstances of the case, family members of men and children with this profile may be in need of international protection on the basis of their association with individuals at risk.

Asylum claims made by children need to be assessed carefully and in accordance with the UNHCR Guidelines on child asylum claims, including in relation to the examination of any exclusion considerations for former child soldiers.<sup>340</sup> Where children associated with armed groups are alleged to have committed crimes, it is important to bear in mind that they may be victims of offences against international law and not only perpetrators.<sup>341</sup>

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

The Constitution provides that no one shall be arrested or detained without due process of law, and contains an absolute prohibition on the use of torture.<sup>342</sup> The use of torture is criminalized in the Penal

<sup>338</sup> *Ibid.*

<sup>339</sup> According to B. Osman, analyst with the AAN, due to the “absence of a strong religious ideology in the recruitment rhetoric in pro-government militias and because the aim of these militias often serves the political fortunes of the local strongman, commanders will more easily resort to coercive strategies of recruitment. In [...] not-so-rare cases, [pro-government militias] have used very direct force”. B. Osman, analyst with the AAN, as quoted in EASO, *Country of Origin Information Report. Afghanistan: Recruitment By Armed Groups*, September 2016, <http://www.refworld.org/docid/57e145c44.html>, p. 37. See also HRW, *Afghanistan: Proposed Militia a Threat to Civilians*, 15 September 2017, <https://www.hrw.org/news/2017/09/15/afghanistan-proposed-militia-threat-civilians>.

<sup>340</sup> UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <http://www.refworld.org/docid/4b2f4f6d2.html>.

<sup>341</sup> The Paris Principles state: “Children who are accused of crimes under international law allegedly committed while they were associated with armed forces or armed groups should be considered primarily as victims of offences against international law; not only as perpetrators. They must be treated in accordance with international law in a framework of restorative justice and social rehabilitation, consistent with international law which offers children special protection through numerous agreements and principles”. UNICEF, *The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, February 2007, <http://www.refworld.org/docid/465198442.html>, paras 3.6 and 3.7.

<sup>342</sup> Articles 27 and 29 of the Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>. Afghanistan has ratified the Convention Against Torture (CAT). On 17 April 2018 it acceded to the Optional Protocol, which establishes a system of independent monitoring visits to detention centres. See <http://indicators.ohchr.org/> for ratification status. Afghanistan has also ratified the International Covenant on Civil and Political Rights (ICCPR), which provides that no one shall be subject to arbitrary arrest or detention (Article 9).



Code,<sup>343</sup> while harsh punishment against children is prohibited in the Juvenile Code.<sup>344</sup> Additionally, in January 2018 the upper house of the National Assembly approved the consolidated text of a new anti-torture law.<sup>345</sup>

Despite these legal guarantees, concerns have been raised about the use of torture and cruel, inhuman or degrading treatment against detainees, especially conflict-related detainees accused of supporting AGEs, in detention facilities operated by the NDS, ANP (including the Afghan National Border Police, ANBP), ANA and ALP.<sup>346</sup> In 2017 UNAMA reported that the use of torture was “systematic or regular and prevalent” in NDS facilities in five provinces,<sup>347</sup> “with sufficiently credible and reliable reports of torture in NDS custody recorded in 17 other provincial and national NDS facilities”.<sup>348</sup> UNAMA also documented a “systematic use of torture and ill-treatment” in ANP or ANBP detention facilities in Kandahar and Nangarhar provinces,<sup>349</sup> as well as “reports of violations in 20 other provinces, with particular concerns over the treatment of detainees by the ANP in Farah and Herat provinces”.<sup>350</sup>

Among the detainees who were found to have been subjected to torture were children.<sup>351</sup>

<sup>343</sup> Afghanistan, *Penal Code*, as published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Articles 450 and 451.

<sup>344</sup> Afghanistan, *Juvenile Code*, as published in the Official Gazette No. 846, 23 March 2005, <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/>, Article 7.

<sup>345</sup> “The draft law contains a revised definition of the crime of torture in domestic law that is consistent with the definition contained in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. It also sets out provisions allowing victims of torture to claim redress in civil and criminal courts.” UNSC, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768–S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, para. 29. See also, Afghanistan Times, *ED: Anti-Torture Law Approved*, 24 December 2017, <http://afghanistantimes.af/ed-anti-torture-law-approved/>; Pajhwok Afghan News, *MPs Endorse Anti-Torture Law in Prisons*, 23 December 2017, <https://www.pajhwok.com/en/2017/12/23/mps-endorse-anti-torture-law-prisons>.

<sup>346</sup> UNAMA, *Treatment of Conflict-Related Detainees: Implementation of Afghanistan's National Plan on the Elimination of Torture*, April 2017, <http://www.refworld.org/docid/5909d15e4.html> (hereafter: UNAMA, *Treatment of Conflict-Related Detainees*, April 2017), pp. 6-7. In June 2017 the UN Committee Against Torture expressed its concern over “numerous reports [...] that beatings, electric shocks, suspensions, threats, sexual abuse, and other forms of mental and physical abuse are widely and increasingly practised on detainees in custody in facilities run by the National Directorate of Security, the Afghan National Police and the Afghan Local Police primarily to extract confessions or information to be used in criminal proceedings.” UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 9. See also, HRW, *Afghanistan's Entrenched Systemic Torture*, 19 April 2017, <https://www.hrw.org/news/2017/04/19/afghanistans-entrenched-systemic-torture>.

<sup>347</sup> “The high levels of torture and ill-treatment by NDS in Kandahar and Farah suggest the systematic use of torture and ill-treatment in these facilities. UNAMA found indications of the regular and prevalent use of torture by NDS in Herat, Nangarhar, and in NDS 241 (Counter Terrorism Department) in Kabul.” UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, p. 24. According to UNAMA, especially the “treatment of detainees by NDS in Kandahar remains a major concern. UNAMA found that 60 per cent of those interviewed who were detained at the NDS provincial facility in Kandahar gave credible and reliable accounts of having experienced torture or other forms of ill-treatment prohibited under international law. This indicates a worrisome return to the systematic use of torture and ill-treatment by NDS Kandahar, which was last documented by UNAMA in 2011-2012.” *Ibid.* Similarly, in June 2017 the UN Committee Against Torture expressed deep concern especially regarding the situation in Kandahar province following numerous reports on “(a) the worrisome number of detainees of the National Directorate of Security and the national police who have allegedly experienced torture or ill-treatment, including suffocation, crushing of the testicles, water forcibly pumped into the stomach and electric shocks; and (b) the allegations that the national police have been responsible for incommunicado detention, enforced disappearances, mass arbitrary detention and extrajudicial killings, during counter-insurgency operations.” UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 15.

<sup>348</sup> UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, p. 8. See also, UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 9.

<sup>349</sup> UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, p. 31. See also, UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 15.

<sup>350</sup> UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, p. 9. Of the 172 detainees in ANP custody interviewed by UNAMA between 1 January 2015 and 31 December 2016, 77 (45 per cent) gave credible accounts of being subjected to torture or other forms of ill-treatment. This represents a 14 per cent increase compared to the previous observation period and is the highest level of reported torture and ill-treatment in ANP custody since UNAMA began its systematic monitoring of conflict-related detainees in 2010. UNAMA documented the highest levels of torture and other forms of ill-treatment by ANP in Kandahar, where “an unprecedented 91 per cent” of those interviewed gave credible accounts of being subjected to torture or ill-treatment. UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, p. 31.

<sup>351</sup> Overall, of the 85 underage detainees interviewed by UNAMA between 1 January 2015 and 31 December 2016, 38 (45 per cent) gave credible accounts of being subjected to torture or ill treatment whilst in the custody of ANDSF. UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, pp. 6-7, 9, 24. In June 2017 the UN Committee Against Torture stated that it was “deeply concerned by the numerous allegations that at least 160 children in Parwan are detained with and under the same regime as adult detainees [...] the Committee is further concerned by reports that minors associated with armed groups involved in insurgent movements are being punished instead of rehabilitated.” UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 17. In December 2016, 167 boys were detained on national security charges, including for alleged association with armed groups. UNSG, *Children and Armed Conflict*, 24 August 2017, A/72/361–S/2017/821, <http://www.refworld.org/docid/59db4a194.htm>, para 23.

UNAMA also reported incidents of extrajudicial killings and enforced disappearances of detainees held by the ANP and ALP.<sup>352</sup> Torture is reportedly used by the NDS, ANP and ALP as a means of obtaining confessions, with criminal courts reportedly routinely allowing these to be used as evidence.<sup>353</sup> Despite the efforts by the NDS to improve internal oversight mechanisms, “a pervasive culture of impunity” reportedly persisted.<sup>354</sup>

Concerns also continue to be raised about arbitrary detention.<sup>355</sup> In addition, amendments to the Criminal Procedure Code introduced in 2015 “allow security personnel to hold suspects accused of terrorist crimes and crimes against internal and external security for up to 70 days without requiring those suspects to be brought before a judge”, leaving suspects more vulnerable to ill-treatment.<sup>356</sup> Detainees reportedly lack access to remedial mechanisms, independent medical examination and care, as well as meaningful access to defence counsel, especially during the investigation and the prolonged pre-trial detention period, including in particular in remote detention facilities.<sup>357</sup> ALP and ANDSF officers as well as members of pro-government armed groups also reportedly use threats, intimidation and physical violence against civilians suspected of supporting AGEs,<sup>358</sup> while in some instances such civilians have reportedly been killed,<sup>359</sup> including family members of AGE recruits.<sup>360</sup>

<sup>352</sup> UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, <http://www.refworld.org/docid/5909d15e4.html>, pp. 9, 10, 33-34.

<sup>353</sup> In June 2017, the UN Committee Against Torture expressed concern regarding the “numerous reports [...] that beatings, electric shocks, suspensions, threats, sexual abuse, and other forms of mental and physical abuse are widely and increasingly practised on detainees in custody in facilities run by the National Directorate of Security, the Afghan National Police and the Afghan Local Police primarily to extract confessions or information to be used in criminal proceedings.” CAT, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para 9. “In the majority of cases, the detainees interviewed for this report stated that the torture was inflicted in order to force them to confess, and that the torture and ill-treatment stopped once they had signed or thumb-printed a confession. Many of those interviewed stated that they did not understand or could not read what was written on the ‘confession’ and almost all stated that they had no access to a lawyer before they signed the confession.” UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, p. 6; see also *ibid.*, p. 46.

<sup>354</sup> UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, p. 8; see also *ibid.*, p. 12. In June 2017 the UN Committee against Torture stated that it remained “gravely concerned about the general climate and culture of impunity in Afghanistan, as evidenced by the large number of cases of alleged human rights violations involving senior State officials.” Furthermore, the Committee expressed concern over “numerous and credible allegations that complaints of torture and ill-treatment are dismissed due to the absence of documentation of physical signs of torture, possibly because no medical examination was conducted or was conducted too late to document them.” UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, paras 7, 11.

<sup>355</sup> UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 3. See also, UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, para 73.

<sup>356</sup> UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, p. 11; see also, AAN, *Torture as Prevalent as Ever: New UN Report Finds No End to Impunity for Afghan Torturers*, 24 April 2017, <https://www.afghanistan-analysts.org/torture-as-prevalent-as-ever-new-un-report-finds-no-end-to-impunity-for-afghan-torturers/>; UNAMA/OHCHR, *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 in 2015*, 11 February 2016, A/HRC/31/46, <http://www.refworld.org/docid/56f171fc4.html>, paras 52-54; AAN, *Casting a Very Wide Net: Did Ghani Just Authorise Interning Afghans Without Trial?*, 21 January 2016, <https://www.afghanistan-analysts.org/casting-a-very-wide-net-did-ghani-just-authorise-interning-afghans-without-trial/>; HRW, *Afghanistan: Reject Indefinite Detention Without Trial*, 15 November 2015, <http://www.refworld.org/docid/564b4a124.html>.

<sup>357</sup> UNAMA, *Treatment of Conflict-Related Detainees*, April 2017, pp. 12, 45-49, 58-59.

<sup>358</sup> In 2017 UNAMA documented 13 incidents of threat, intimidation, and harassment by ALP officers, causing the injury of 12 civilians, including severe beating of civilians, burning of homes, and harassment of staff and patients at medical facilities. On 4 October 2017, in Ali Abad district, Kunduz province, ALP officers blocked the movement of approximately 100 village residents to the district centre and bazaar, preventing them from attending work and selling their goods in the bazaar after accusing the residents of supporting AGEs, reportedly due to the ethnicity of the residents. UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 50. Additionally, in 2017 in Sari Pul city, ALP burnt down at least four homes of civilians they believed related to AGEs and tortured one man by beating him to the an extent requiring hospitalization in retaliation for the AGE abduction of five sons of an ALP commander. UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 59.

<sup>359</sup> For example, in 2017 UNAMA reported that a 60-year old man suspected of supporting the Taliban was shot death by ANP officers, following his arrest in Shah Wali Kot district, Kandahar province. Additionally, civilian victims reportedly mistaken for AGE members by ANDSF accounted for 38 civilian casualties in 2017, including 23 civilians killed and 15 injured during 26 incidents. UNAMA also recorded an incident of ALP opening fire on residents of Darzab district, Jawzjan province on 18 July 2017 after accusing the residents of providing food, water and shelter to Islamic State fighters, injuring a woman and two men. UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 48-49.

<sup>360</sup> On 8 May 2017 in Almar district, Faryab province, pro-Government armed group members reportedly shot dead the father of an AGE recruit, while on 17 April 2017 in the same district, pro-Government armed group members shot dead another civilian related to an AGE member. UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 60.

In areas where armed groups affiliated to Islamic State are present, civilians suspected of supporting the Taliban have reportedly been threatened and killed by such groups.<sup>361</sup>

In light of the foregoing, UNHCR considers that civilians suspected of supporting AGEs may be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of the State for reasons of (imputed) political opinion or other relevant Convention grounds, depending on their individual profile and circumstances of the case.

In view of the need to maintain the civilian and humanitarian character of asylum, former armed elements should only be considered as asylum-seekers if it has been established that they have genuinely and permanently renounced military activities.<sup>362</sup> Claims by former armed elements, may, furthermore, give rise to the need to examine possible exclusion from refugee status. In view of the particular circumstances and vulnerabilities of children, the application of the exclusion clauses to children needs to be exercised with great caution.<sup>363</sup> Where children associated with armed groups are alleged to have committed crimes, it is important to bear in mind that they may be victims of offences against international law and not only perpetrators.<sup>364</sup>

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

The Constitution provides that followers of religions other than Islam are “free within the bounds of law in the exercise and performance of their religious rights.”<sup>365</sup> However, the Constitution also declares that Islam is the official religion of the State<sup>366</sup> and that “[n]o law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan.”<sup>367</sup> The Constitution provides furthermore that the courts shall follow Hanafi jurisprudence, a school of Sunni Islamic jurisprudence common across two-thirds of the Muslim world, in situations where neither the Constitution nor other laws provide guidance.<sup>368</sup> Afghan jurists and government officials have been criticized for giving precedence to Islamic law over Afghanistan’s obligations under international human rights law,<sup>369</sup> in situations where

<sup>361</sup> In July 2017 Islamic State reportedly declared war on the Taliban, with the group’s commander stating that “Taliban members and its supporters should be killed everywhere and their properties should be seized.” Tasnim News Agency, *Daesh Declares War on Taliban in Afghanistan*, 25 June 2017, <https://www.tasnimnews.com/en/news/2017/06/25/1446759/daesh-declares-war-on-taliban-in-afghanistan>. See also, BBC, *Why Taliban Special Forces are Fighting Islamic State*, 18 December 2016, <http://www.bbc.com/news/world-asia-35123748>.

<sup>362</sup> UNHCR Executive Committee, *Conclusion on the Civilian and Humanitarian Character of Asylum*, No. 94 (LIII) - 2002, 8 October 2002, <http://www.refworld.org/docid/3dafdd7c4.html>. For guidance on how to establish the genuineness and permanence of renunciation, see, by analogy, UNHCR, *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum*, September 2006, <http://www.refworld.org/docid/452b9bca2.html>.

<sup>363</sup> For further guidance on the application of the exclusion clauses to children, see UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <http://www.refworld.org/docid/4b2f4f6d2.html>, paras 58-64.

<sup>364</sup> The Paris Principles state: “Children who are accused of crimes under international law allegedly committed while they were associated with armed forces or armed groups should be considered primarily as victims of offences against international law; not only as perpetrators. They must be treated in accordance with international law in a framework of restorative justice and social rehabilitation, consistent with international law which offers children special protection through numerous agreements and principles”. UNICEF, *The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, February 2007, <http://www.refworld.org/docid/465198442.html>, paras 3.6 and 3.7.

<sup>365</sup> Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>, Article 2.

<sup>366</sup> *Ibid.*

<sup>367</sup> *Ibid.* Article 149 of the Constitution places restrictions on any future amendments of the Constitution and provides, among other restrictions, “[t]he principles of adherence to the tenets of the Holy religion of Islam as well as Islamic Republicanism shall not be amended.”

<sup>368</sup> *Ibid.*, Article 130. The Hanafi school of Islamic jurisprudence is one of four schools of Sunni Islamic jurisprudence. The Office of Fatwa and Accounts within the Supreme Court interprets Hanafi jurisprudence when a judge needs assistance in understanding its application. US Department of State, *2014 Report on International Religious Freedom: Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>. Matters of family law concerning members of the Shi’ite minority in Afghanistan are governed by the Shi’ite Personal Status Law, which was adopted pursuant to Article 131 of the Constitution of Afghanistan: Shi’ite Personal Status Law, March 2009, <http://www.refworld.org/docid/4a24ed5b2.html>.

<sup>369</sup> Article 6 of the Constitution provides that “The State shall create a prosperous and progressive society based on [...] protection of human rights”, while Article 7 provides that “The United Nations Charter, inter-state agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights shall be respected.” Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>.

the Constitution's commitments to the two bodies of law are in conflict, in particular in relation to the rights of those Afghans who are not Sunni Muslims and in relation to the rights of women.<sup>370</sup>

#### a) Minority Religious Groups

Non-Muslim minority groups, particularly Christian, Hindu, and Sikh groups, continue to suffer discrimination under the law.<sup>371</sup> As noted above, in situations where the Constitution and Afghanistan's codified laws do not provide guidance, the Constitution defers to Hanafi Sunni jurisprudence. This applies to all Afghan citizens, regardless of their religion. The only exception is for matters of personal law where all parties are Shi'ites, in which case the Shi'ite Personal Status Law applies. There is no separate law for other religious minorities.<sup>372</sup>

The 2017 Penal Code addresses "crimes of insulting religions", making it an offence to intentionally insult a religion or disrupt its rites or destroy its permitted places of worship or any symbols respectable to followers of a religion.<sup>373</sup> It is also a crime to attack a follower of any religion who lawfully performs religious rituals through public means, or to insult or distort beliefs or provisions of Islam.<sup>374</sup> In addition, it is a crime to incite discrimination on the grounds of religion.<sup>375</sup>

Nevertheless, non-Muslim minority groups are reported to continue to suffer societal harassment and in some cases violence.<sup>376</sup> Members of religious minorities such as Baha'is and Christians reportedly avoid stating their beliefs publicly or gathering openly to worship, out of fear of discrimination, ill-

<sup>370</sup> US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>; US Commission on International Religious Freedom, *USCIRF Annual Report 2018 (Tier 2 Countries): Afghanistan*, 25 April 2018, <http://www.refworld.org/docid/5b278eb70.html>. For further analysis of the situation of women in Afghanistan, see Section III.A.7. For further guidance on religion-based asylum claims, see UNHCR, *Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, HCR/GIP/04/06, 28 April 2004, <http://www.unhcr.org/refworld/docid/4090f9794.html>.

<sup>371</sup> Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>. The US State Department notes that, "There are no reliable statistics available concerning the percentages of Shia and Sunni Muslims in the country; the government's Central Statistics Office does not collect data disaggregated in this way. Shia leaders claim Shia make up approximately 20-25 percent of the population, while Sunni leaders claim the Shia comprise only 10 percent. The Shia population includes Ismailis and a majority of ethnic Hazaras. Other religious groups, mainly Hindus, Sikhs, Bahais, and Christians, comprise less than 0.3 percent of the population. The number of Sikhs and Hindus is declining due to emigration. Sikh and Hindu leaders estimate there are 180 Sikh and Hindu families totaling 900 individuals, which is a decline from 343 families totaling 2,000 individuals in 2015. Reliable estimates of the Bahai and Christian communities are not available. There are small numbers of practitioners of other religions, including one Jew." US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>. "Afghanistan's population is estimated to be 33.3 million, 84 to 89 percent of which is Sunni Muslim, and 10 to 15 percent Shi'a Muslim. [...] In December 2016, the nongovernmental organization National Council of Hindus and Sikhs (NCHS) reported that there were fewer than 200 families, or about 900 individuals, from these two communities remaining in Afghanistan. [...] There are no reliable estimates of the size of Afghanistan's Christian and Baha'i populations; however, based on reports from refugees in Europe, these populations likely have diminished significantly since the Taliban's resurgence in 2015." US Commission on International Religious Freedom, *USCIRF Annual Report 2017 (Tier 2 Countries): Afghanistan*, 26 April 2017, <http://www.refworld.org/docid/59072f4429.html>. The US State Department noted in 2011 that most members of the non-Muslim communities in Afghanistan left the country during the civil war and the period of Taliban rule that followed, so that by 2001 these non-Muslim populations had been virtually eliminated. US Department of State, *2011 Report on International Religious Freedom: Afghanistan*, 30 July 2012, <http://www.refworld.org/docid/502105e25a.html>.

<sup>372</sup> The US State Department report notes that while a Muslim man may marry a Christian or Jewish woman (women from other religious minorities must first convert to Islam), a Muslim woman is not allowed to marry a non-Muslim man. US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>. See also, Porsesh Research and Studies Organization, *'Ignored Identities: The Status of Hindus and Sikhs in Afghanistan's Legal System'*, 19 November 2016, <http://www.porseshresearch.org/porseshv2/wp-content/uploads/2016/11/Ignored-Identities-Status-of-Hindus-and-Sikhs-in-Afghanistans-Legal-System.pdf>.

<sup>373</sup> Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017, Chapter Six, Articles 323-325 (English unofficial translation on record with UNHCR). The commission of a crime because of religion is considered an aggravating circumstance (Article 218).

<sup>374</sup> *Ibid.*, Article 325. Article 4(2)(a)-(c) of the Penal Code defines the scope of public speech, words or other public instruments.

<sup>375</sup> *Ibid.*, Article 256.

<sup>376</sup> US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>; Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>.



treatment, arbitrary detention, or death.<sup>377</sup> Non-Muslim women reportedly feel compelled to wear a burqa or other face veils to increase their security in public and to decrease societal pressures.<sup>378</sup>

In the period between 1 January 2016 and 7 November 2017, UNAMA “documented 51 incidents of attacks against places of worship and persons exercising their right to religious worship, observance, and practice and targeted killings, abductions, and intimidation of religious scholars and religious leaders, mainly by AGEs. These incidents resulted in 850 civilian casualties (273 persons killed and 577 injured), nearly double the number of civilian casualties recorded in such attacks during the entire previous seven-year period from 2009 to 2015.”<sup>379</sup> In 2016 and 2017, religious leaders were reportedly consistently and increasingly targeted for killings, abductions, threats and intimidation, mainly by AGEs.<sup>380</sup> Religious scholars have reportedly also been targeted on a number of occasions by AGEs, while pro-government forces have reportedly targeted imams of mosques perceived as supporters of AGEs.<sup>381</sup>

Analysts have expressed concern that certain provisions included in a new draft law on freedom of assembly will in particular restrict religious minorities’ rights; the draft law reportedly designates as unlawful protests, “gatherings, strikes, demonstrations and sit-ins on the basis of ethnic, religious and regional demands”.<sup>382</sup>

### Baha’is

In May 2007, the General Directorate of Fatwas and Accounts of the Afghan Supreme Court ruled that the Baha’i faith was distinct from Islam and a form of blasphemy. It held that all Muslims who converted to the Baha’i faith were apostates and that all Baha’is were infidels.<sup>383</sup> Baha’is are reported to have lived a covert existence since the ruling.<sup>384</sup>

### Christians

<sup>377</sup> “Members of the Christian community, who often had converted to Christianity while in other countries, said they continued to worship alone or in small congregations in private homes out of fear of societal discrimination and persecution.” US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>. See also, US Commission on International Religious Freedom, *USCIRF Annual Report 2018 (Tier 2 Countries): Afghanistan*, 25 April 2018, <http://www.refworld.org/docid/5b278eb70.html>.

<sup>378</sup> US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>; US Commission on International Religious Freedom, *USCIRF Annual Report 2017 (Tier 2 Countries): Afghanistan*, 26 April 2017, <http://www.refworld.org/docid/59072f4429.html>.

<sup>379</sup> “UNAMA began systematic documentation of civilian casualties as a result of armed conflict in Afghanistan in 2009. From 1 January 2009 to 31 December 2015, UNAMA recorded a total of 475 civilian casualties (164 killed and 311 injured) from attacks against people and places of worship.” UNAMA, *Protection of Civilians in Armed Conflict: Attacks Against Places of Worship, Religious Leaders and Worshippers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>, p. 1. See also, New York Times, *Twin Mosque Attacks Kill Scores in One of Afghanistan’s Deadliest Weeks*, 20 October 2017, <https://www.nytimes.com/2017/10/20/world/asia/afghanistan-kabul-attack-mosque.html>.

<sup>380</sup> Religious leaders are reportedly targeted by AGEs because of their ability to influence public attitudes or because of their perceived support of the government. UNAMA, *Protection of Civilians in Armed Conflict: Attacks Against Places of Worship, Religious Leaders and Worshippers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>, p. 2; for additional examples of specific incidents see *ibid.*, pp. 2-3. “UNAMA also notes concern with the use of abduction of religious leaders and scholars by Anti-Government Elements, particularly Taliban, as a tactic of intimidation, warning or method to coerce support.” *Ibid.*, p. 2. “UNAMA documented a disturbing increase in attacks against places of worship, religious leaders and worshippers, recording 499 civilian casualties (202 deaths and 297 injured) during 38 attacks in 2017. This amounted to three times as many attacks as in 2016, double the number of deaths and 30 per cent more total civilian casualties.” UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 3.

<sup>381</sup> “Since 2016, UNAMA documented several incidents of Anti-Government Elements killing religious scholars who had publicly challenged the legality of their quasi-government functions and raised concern about military operations and violence.” UNAMA, *Protection of Civilians in Armed Conflict: Attacks Against Places of Worship, Religious Leaders and Worshippers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>, p. 2. See also, New York Times, *Taliban Target: Scholars of Islam*, 28 May 2017, <https://www.nytimes.com/2017/05/28/world/asia/uptick-in-killing-of-religious-scholars-as-taliban-look-to-curtail-their-influence.html>.

<sup>382</sup> AAN, *Afghanistan’s New Law on Freedom of Assembly: Limiting the Space to Demonstrate*, 26 August 2017, <https://www.afghanistan-analysts.org/afghanistans-new-law-on-freedom-of-assembly-limiting-the-space-to-demonstrate/>.

<sup>383</sup> US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>. “As in the previous two years [2014 and 2015], there were no reports of prosecutions for blasphemy or apostasy during the year, including of Bahais who, although labeled infidels, were not considered to be converts and as such not charged with either crime. One individual convicted of blasphemy in 2013 remained in prison serving a 20-year sentence.” *Ibid.* See also, for example, Bahai Awareness, *Fatwa of Ulema Council of Afghanistan*, August 2011, [http://www.bahaiawareness.com/fatwas\\_afghanistan.html](http://www.bahaiawareness.com/fatwas_afghanistan.html).

<sup>384</sup> US Commission on International Religious Freedom, *USCIRF Annual Report 2018 (Tier 2 Countries): Afghanistan*, 25 April 2018, <http://www.refworld.org/docid/5b278eb70.html>.

Societal attitudes towards Christians reportedly remained openly hostile, and Christians are effectively forced to conceal their faith.<sup>385</sup> There are no public churches left in Afghanistan, and Christians worship alone or in small congregations in private homes.<sup>386</sup> In 2013 four Members of Parliament reportedly called for the execution of converts to Christianity.<sup>387</sup>

## Shi'ites

According to Shi'ite representatives, the number of Shi'ites holding government positions is not proportional to Shi'ites' overall representation in the population.<sup>388</sup> While some sources report that overt discrimination by Sunnis against the Shi'ite community has decreased,<sup>389</sup> other sources report that such discrimination continues in certain localities.<sup>390</sup> AGEs reportedly view Shi'ites as "infidels", "apostates" or "half-Muslims".<sup>391</sup> Moreover, violent attacks by AGEs targeting the Shi'ite population have reportedly increased significantly since 2016.<sup>392</sup> Attacks by AGEs are reported to have included disappearances and abductions, targeted killings, targeting of Shi'ites at places of worship or villages, as well as complex and suicide attacks.<sup>393</sup> It should be noted that in Afghanistan ethnicity and religion

<sup>385</sup> US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>. Afghanistan is ranked number two out of 50 countries where it is most difficult to live as a Christian. Open Doors UK, *World Watch List: Country Profiles 2018*, <https://www.opendoorsuk.org/persecution/countries/>.

<sup>386</sup> US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>.

<sup>387</sup> The State Department reported that, "During a session of parliament in July 2013, four members of parliament called for the execution of converts to Christianity and the speaker of parliament's lower house stated that security officials should investigate the spread of Christianity in the country." US Department of State, *2014 Report on International Religious Freedom: Afghanistan*, 14 October 2015, <http://www.refworld.org/docid/562105e015.html>.

<sup>388</sup> "Although Shia Muslims held senior positions in government, they said appointments to government administrative bodies continued not to reflect the country's demographics based on their estimate of the percentage of Shia in the country's population. Sunni members of the Ulama Council stated Shia were overrepresented in government based on Sunni estimates of the percentage of Shia in the population." US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>. 59 of Afghanistan's 249 Members of Parliament are Shi'ites. US Commission on International Religious Freedom, *USCIRF Annual Report 2012 - The Commission's Watch List: Afghanistan*, 20 March 2012, <http://www.refworld.org/docid/4f71a66d32.html>.

<sup>389</sup> US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>.

<sup>390</sup> "The observers said there continued to be reports of discrimination in different localities." US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>.

<sup>391</sup> CTV News, *ISIS Claims Responsibility for Afghan Mosque Attack*, 21 October 2017, <https://www.ctvnews.ca/world/isis-claims-responsibility-for-afghan-mosque-attack-1.3642887>; UNAMA, *Human Rights and Protection of Civilians in Armed Conflict: Special Report Attacks in Mirza Olang, Sari Pul Province: 3-5 August 2017*, August 2017, <http://www.refworld.org/docid/5a534e764.html>, p. 6.

<sup>392</sup> "The mission is also deeply concerned by the significant increase in sectarian motivated attacks targeting Shi'a Muslim congregations, mostly perpetrated by Daesh/ISIL-KP." UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 3. "Since 1 January 2016, UNAMA documented 12 incidents targeting Shi'a Muslim worshippers at places of worship, resulting in 689 civilian casualties (230 deaths and 459 injuries), raising grave concerns regarding the right to freedom of religion or belief and the protection of religious minorities. ISKP publicly claimed eight of the 12 attacks through the Islamic State-affiliated Al Amaq news agency. Four of the 12 incidents took place in 2016 and eight in the first 10 months of 2017. [...] Prior to 2016, UNAMA rarely recorded Anti-Government Elements undertaking deliberate attacks against Shi'a Muslims." UNAMA, *Protection of Civilians in Armed Conflict: Attacks Against Places of Worship, Religious Leaders and Worshippers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>, p. 1. "The ISKP publicly claimed responsibility for attacks killing over 100 members of the Shia community. [...] The Taliban were responsible for a number of kidnappings of Shia Hazaras and continued to threaten clerics with death for preaching messages contrary to the Taliban's interpretation of Islam." US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>. See also, UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, pp. 46, 48; Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>. Reportedly, more than 500 members of the Shi'ite community were injured or killed between July and November 2016; the majority of the attacks were claimed by or attributed to the Taliban or Islamic State. US Commission on International Religious Freedom, *USCIRF Annual Report 2017 (Tier 2 Countries): Afghanistan*, 26 April 2017, <http://www.refworld.org/docid/59072f4429.html>. In its 2018 report, the Commission noted that, "Despite a rise in socioeconomic status for Shi'a Muslims in recent years, attacks against this community—especially by the Islamic State in the Khorasan Province (ISKP)—continued during 2017, and in some cases worsened." US Commission on International Religious Freedom, *USCIRF Annual Report 2018 (Tier 2 Countries): Afghanistan*, 25 April 2018, <http://www.refworld.org/docid/5b278eb70.html>. For further information on these incidents, see Section III.A 13.

<sup>393</sup> Reuters, *Suicide Bomb Kills at Least Seven at Shi'ite Gathering in Kabul*, 9 March 2018, <https://www.reuters.com/article/us-afghanistan-blast/suicide-bomb-kills-at-least-seven-at-shiite-gathering-in-kabul-idUSKCN1GL0WI>; UNAMA, *Protection of Civilians in Armed Conflict: Attacks Against Places of Worship, Religious Leaders and Worshippers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>, p. 2. US Department of State, *2016 Country Reports on Human Rights Practices: Afghanistan*, 3 March 2017, <http://www.refworld.org/docid/58ec8a7fa.html>. See also, Reuters, *Afghanistan's Shi'ites Call for Protection After Latest Mosque Attack*, 26 August 2017, <http://news.trust.org/item/20170826094946-qgwwqk/>; HRW, *Afghanistan: Deadly Attack on Mosque a War Crime*, 25 August 2017, <https://www.ecoi.net/en/document/1405914.html>. UNAMA, *Human Rights and Protection of Civilians in Armed Conflict: Special Report Attacks in Mirza Olang, Sari Pul Province: 3-5 August 2017*, August 2017, <http://www.refworld.org/docid/5a534e764.html>, pp. 1, 6, 7; Hazara International Network, *AIHRC: Attacks Against Hazaras in Afghanistan*, 30 May 2017, <http://www.hazarapeople.com/2017/05/30/aihrc-attacks-against-hazaras-in-afghanistan/>.

are often inextricably linked, especially in the case of the Hazaras, who are predominantly Shi'ites.<sup>394</sup> As a result, it is not always possible to distinguish clearly between discrimination and ill-treatment on the ground of religion and discrimination and ill-treatment on the ground of ethnicity.<sup>395</sup>

## Sikhs and Hindus

Although reliable data about the current size of the Sikh and Hindu communities in Afghanistan are not available, large numbers of Sikhs and Hindus are believed to have left Afghanistan as a result of the severe difficulties they faced.<sup>396</sup> The small number of Sikhs and Hindus who are reported to remain in Afghanistan have reportedly been left even more vulnerable to abuse, particularly by the police and by extremist elements of the Muslim community.<sup>397</sup> On 1 July 2018, a suicide bombing in Jalalabad claimed by Islamic State reportedly killed 19 people and injured 20 others; 17 of the individuals killed were Sikhs and Hindus.<sup>398</sup> High-ranking government officials are reported to have told Sikhs that they were “not from Afghanistan”, that they were “Indians”, and that they “did not belong here.”<sup>399</sup> Although the Sikh and Hindu communities are allowed to practise their religion publicly, they reportedly continue to face discrimination at the hands of the State, including when seeking access to justice, political participation and government jobs.<sup>400</sup> They reportedly continue to face societal discrimination and intimidation.<sup>401</sup> Both communities report difficulties in carrying out funerals in accordance with their

<sup>394</sup> US Department of State, 2016 Report on International Religious Freedom: Afghanistan, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>; UNAMA, Human Rights and Protection of Civilians in Armed Conflict: Special Report Attacks in Mirza Olang, Sari Pul Province: 3-5 August 2017, August 2017, <http://www.refworld.org/docid/5a534e764.html>, p. 1; Huffington Post, Why ISIS Have Declared War On The Hazara Shias Of Afghanistan, 26 June 2017, [https://www.huffingtonpost.in/syed-zafar-mehdi/why-isis-have-declared-war-on-the-hazara-shias-of-afghanistan\\_a\\_22504421/](https://www.huffingtonpost.in/syed-zafar-mehdi/why-isis-have-declared-war-on-the-hazara-shias-of-afghanistan_a_22504421/); Freedom House, Freedom in the World 2017: Afghanistan, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>; World Hazara Council, A Human Rights Situational Analysis of Ethnic-Hazaras in Afghanistan and Pakistan, 22 October 2016, <http://worldhazaracouncil.org/en/wp-content/uploads/Brief-report-on-Human-rights-of-Hazaras-Oct-2016.pdf>; HRW, Afghanistan's Shia Hazara Suffer Latest Atrocity, 13 October 2016, <https://www.hrw.org/news/2016/10/13/afghanistans-shia-hazara-suffer-latest-atrocity>; Washington Post, Attack on Hazaras Raises Fears of Sunni-Shiite Violence in Afghanistan, 24 July 2016, [https://www.washingtonpost.com/world/asia\\_pacific/attack-on-hazaras-raises-fears-of-sunni-shiite-violence-in-afghanistan/2016/07/24/a7681f62-512b-11e6-bf27-405106836f96\\_story.html](https://www.washingtonpost.com/world/asia_pacific/attack-on-hazaras-raises-fears-of-sunni-shiite-violence-in-afghanistan/2016/07/24/a7681f62-512b-11e6-bf27-405106836f96_story.html); AIHRC, Attacks Against Hazaras in Afghanistan, undated, [http://www.aihrc.org.af/media/files/A%20Short%20Report%20on%20Attack%20against%20Hazaras\\_English\\_Final.pdf](http://www.aihrc.org.af/media/files/A%20Short%20Report%20on%20Attack%20against%20Hazaras_English_Final.pdf).

<sup>395</sup> US Department of State, 2016 Report on International Religious Freedom: Afghanistan, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>. For further analysis of the situation of members of ethnic minority groups, see Section III.A.13.

<sup>396</sup> According to some sources, the current number of Sikhs and Hindus in Afghanistan is estimated to be 180 to 200 families. See US Department of State, 2016 Report on International Religious Freedom: Afghanistan, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>; US Commission on International Religious Freedom, USCIRF Annual Report 2018 (Tier 2 Countries): Afghanistan, 25 April 2018, <http://www.refworld.org/docid/5b278eb70.html>. See also, Al Jazeera, 'The Decline of Afghanistan's Hindu and Sikh Communities', 1 January 2017, <http://www.aljazeera.com/indepth/features/2016/12/decline-afghanistan-hindu-sikh-communities161225082540860.html>; Reuters, 'Afghanistan's Dwindling Sikh, Hindu Communities Flee New Abuses', 22 June 2016, <http://www.reuters.com/article/us-afghanistan-minority-idUSKCN0Z82SL>; TOLO News, 'Nearly 99% Of Hindus, Sikhs Left Afghanistan in Last Three Decades', 20 June 2016, <http://www.tolonews.com/afghanistan/nearly-99-hindus-sikhs-left-afghanistan-last-three-decades>.

<sup>397</sup> In late December 2016, a prominent Sikh leader was reportedly shot by unidentified gunmen in Kunduz; he later died as a result of his injuries. In October 2016, another Sikh individual was abducted and killed by suspected militants. Hindustan Times, Afghanistan: Head of Sikh Community in Kunduz Shot Dead by Unknown Gunmen, 30 December 2016, <https://www.hindustantimes.com/world-news/afghanistan-sikh-community-head-of-kunduz-shot-dead-by-unknown-gunmen/story-bqmG9cC441LUB2Lj6K1JeO.html>; RFE/RL, Afghanistan's Sikh, Hindu Minorities Demand Probe into Sikh Killing, 30 December 2016, <http://www.refworld.org/docid/5975a3cf3.html>; Pajhwok Afghan News, Sikh Man's Killing Sparks Protest in Jalalabad, 1 October 2016, <https://www.pajhwok.com/en/2016/10/01/sikh-man%E2%80%99s-killing-sparks-protest-jalalabad>.

<sup>398</sup> BBC, Afghanistan Blast: Sikhs Among 19 Dead in Jalalabad Suicide Attack, 1 July 2018, <https://www.bbc.com/news/world-asia-44677823>.

<sup>399</sup> US Department of State, 2016 Report on International Religious Freedom: Afghanistan, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>.

<sup>400</sup> Al Jazeera, The Decline of Afghanistan's Hindu and Sikh Communities, 1 January 2017, <https://www.aljazeera.com/indepth/features/2016/12/decline-afghanistan-hindu-sikh-communities-161225082540860.html>. Pursuant to Article 48 of the 2016 Electoral Law, Sikhs and Hindus have one representative seat in the Wolesi Jirga lower house. Afghanistan, Election Law, published in the Official Gazette No. 1226, 25 September 2016, <http://www.refworld.org/docid/5adf31924.html>, Article 48. See also, AAN, Afghanistan's Incomplete New Electoral Law: Changes and Controversies, 22 January 2017, <https://www.ecoi.net/en/document/1068653.html>.

<sup>401</sup> “Members of the Hindu community said they continued to face fewer incidents of harassment than Sikhs, ascribing the difference to their lack of a distinctive male headdress. Despite the differences between the groups, many Afghans reportedly continued to use the terms Sikh and Hindu interchangeably. Because religion and ethnicity are often closely linked, it was often difficult to categorize many incidents as being solely based on religious identity.” US Department of State, 2016 Report on International Religious Freedom: Afghanistan, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>. See also, The National, Afghan Hindus and Sikhs Celebrate Diwali Without 'Pomp and Splendour' Amid Fear, 19 October 2017, <https://www.thenational.ae/world/asia/afghan-hindus-and-sikhs-celebrate-diwali-without-pomp-and-splendour-amid-fear-1.668735>; Freedom House, Freedom in the World 2017: Afghanistan, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>; IWPR, Afghan Hindus and Sikhs Still Struggling, 30 November 2017, <https://iwpr.net/global-voices/afghan-hindus-and-sikhs-still-struggling>; Al Jazeera, The Decline of Afghanistan's Hindu and Sikh



customs, due to harassment and discrimination.<sup>402</sup> While the police are reported to provide protection to Hindu and Sikh communities during burial rituals, members of the two communities report feeling unprotected by State authorities in other contexts, including in relation to land disputes.<sup>403</sup> Sikhs and Hindus have reportedly been victims of illegal occupation and seizure of their land.<sup>404</sup> Members of the Sikh and Hindu communities reportedly refrain from pursuing restitution through the courts, for fear of retaliation.<sup>405</sup> There is reportedly only one government school remaining for Sikh children, and many of the private schools for Sikhs are reported to have closed; as there is not a separate school for Hindus, some Hindu children are reportedly sent to Sikh schools. Hindu and Sikh children attending government schools in Kabul are reported to be subjected to harassment and bullying by other students.<sup>406</sup>

## Sufis

Practitioners of Sufism, a school of Islam sometime seen as heretical by followers of other schools of Islam, have reportedly been targeted by AGEs.<sup>407</sup>

### b) Conversion from Islam

Conversion from Islam is considered apostasy; under the courts' interpretation of Islamic law it is punishable by death.<sup>408</sup> While Afghanistan's Penal Code does not explicitly mention apostasy as a crime and the Constitution provides that no deed shall be considered a crime unless defined as such by law, the Penal Code states that egregious crimes, including apostasy, should be punished in line with the Hanafi jurisprudence of Islamic law<sup>409</sup> and should be handled by the Attorney General's office. Male

Communities, 1 January 2017, <https://www.aljazeera.com/indepth/features/2016/12/decline-afghanistan-hindu-sikh-communities-161225082540860.html>

<sup>402</sup> US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>; IWPR, *Afghan Hindus and Sikhs Still Struggling*, 30 November 2017, <https://iwpr.net/global-voices/afghan-hindus-and-sikhs-still-struggling>.

<sup>403</sup> US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>; Reuters, *Afghanistan's Dwindling Sikh, Hindu Communities Flee New Abuses*, 22 June 2016, <http://www.reuters.com/article/us-afghanistan-minority-idUSKCN0Z82SL>; APPRO, *Afghanistan Rights Monitor: Baseline Report*, April 2016, <https://www.baag.org.uk/sites/www.baag.org.uk/files/resources/attachments/2016%2005%2002%20-%20ARM%20Baseline%20Assessment.pdf>, p. 55. In a country guidance judgment, the UK Upper Tribunal held that, at the local level, the police may not be able to provide protection even if there is a willingness to do so. United Kingdom Upper Tribunal (Immigration and Asylum Chamber), *TG and others (Afghan Sikhs persecuted) Afghanistan CG*, [2015] UKUT 00595 (IAC), 3 November 2015, <http://www.refworld.org/docid/5641c7df4.html>. See also the evidence provided by Dr. Giustozzi to the Tribunal, quoted in the judgment at para. 39. "On 5 February 2017, information obtained by the British Embassy, from Senator Anarkali Hunaryar, stated as regard to District 21 [an area annexed to Kabul Municipality which has not yet been developed but which has been provided for Hindus and Sikhs for the purposes of building residential units and a cremation ground] that '[The] Majority of the people from the Hindu/Sikh community weren't in favour of residing in the area far away from the main city, citing security issues. The land is allotted to the community and they may think of developing it in the future although the municipality was ready to work with them on the development of the area.'" United Kingdom: Home Office, *Country Policy and Information Note: Afghanistan: Hindus and Sikhs*, 7 February 2017, Version 3.0, <http://www.refworld.org/docid/589c78314.html>, para. 7.6.3, citing British Embassy letter, 5 February 2017, Annex A.

<sup>404</sup> "According to the Sikh and Hindu Council, there had been 64 gurdwaras (Sikh temples) and mandus (Hindu temples) across the country, but residents of Kandahar, Ghazni, Paktya, and other provinces had seized approximately 30 sites in previous years. Fourteen of those remaining continued to be active, including two sites belonging to the Hindu community." US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>; Al Jazeera, *The Decline of Afghanistan's Hindu and Sikh Communities*, 1 January 2017, <https://www.aljazeera.com/indepth/features/2016/12/decline-afghanistan-hindu-sikh-communities-161225082540860.html>.

<sup>405</sup> US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>.

<sup>406</sup> "Per the Sikh and Hindu Council, there was one school in Nangarhar and two schools in Kabul which remained operational." US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>; IWPR, *Afghan Hindus and Sikhs Still Struggling*, 30 November 2017, <https://iwpr.net/global-voices/afghan-hindus-and-sikhs-still-struggling>.

<sup>407</sup> EASO, *Individuals Targeted Under Societal and Legal Norms*, December 2017, <http://www.refworld.org/docid/5a38ce314.html>, p. 30, citing an email from Dr. Neamatollah Nojumi received by EASO on 22 September 2017; AAN, *ISKP's Battle for Minds: What Are its Main Messages and Who Do They Attract?*, 12 December 2016, <https://www.ecoi.net/en/document/1104239.html>; Afghanistan Analysts Network: *With an Active Cell in Kabul, ISKP Tries to Bring Sectarianism to the Afghan War*, 19 October 2016, <https://www.ecoi.net/en/document/1251094.html>.

<sup>408</sup> Apostasy "is punishable by death, imprisonment, or confiscation of property according to the Hanafi school of jurisprudence, which the constitution states shall apply 'if there is no provision in the constitution or other laws about a case.' [...] As in the past two years, there were no reported prosecutions for apostasy or blasphemy, but individuals who converted from Islam to other religions stated they continued to fear punishment from the government and reprisals from family and society." US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>. Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>, Article 130. See also M. Knust Rassekh Afshar, "The Case of an Afghan Apostate – The Right to a Fair Trial Between Islamic Law and Human Rights in the Afghan Constitution", *Max Planck UNYB* 10 (2006), [http://www.mpil.de/files/pdf3/mpunyb\\_13\\_knust1.pdf](http://www.mpil.de/files/pdf3/mpunyb_13_knust1.pdf).

<sup>409</sup> Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Article 2(2); see also Library of Congress, *Laws Criminalizing Apostasy*, undated, <http://www.loc.gov/law/help/apostasy/>, accessed 4 April



citizens over age 18 or female citizens over age 16 of sound mind who convert from Islam and who do not recant their conversions within three days risk the invalidation of their marriage, and deprivation of all property and possessions. They may also face rejection from their families and community members, and loss of employment.<sup>410</sup> Individuals who have converted from Islam reportedly fear for their physical safety.<sup>411</sup>

Proselytizing to try to convert individuals from Islam to another religion is also reportedly illegal according to Hanafi jurisprudence and subject to the same punishment as apostasy.<sup>412</sup> Public opinion is reportedly hostile towards individuals and organizations that proselytize.<sup>413</sup> Lawyers who assist defendants accused of apostasy may reportedly themselves be charged with apostasy and may be at risk of death threats;<sup>414</sup> accused individuals reportedly usually do not have access to a defence attorney or other procedural safeguards.<sup>415</sup>

### c) Other Acts Contravening Sharia Law

In addition to the provisions in the 2017 Penal Code that criminalize the acts of insulting or distorting of Islamic religious beliefs, Afghanistan's courts also rely on Islamic law in relation to blasphemy.<sup>416</sup> Under the courts' interpretation of Islamic law blasphemy is a capital crime; men over the age of 18 and women over the age of 16 who are of sound mind and who are accused of blasphemy may thus be sentenced to death. As with apostasy, those accused of blasphemy have three days to recant; there is reportedly no clear process for recanting under Sharia law.<sup>417</sup>

Furthermore, persons accused of committing crimes against Sharia law, such as apostasy, blasphemy, having consensual same-sex relations, or adultery (*zina*), are at risk not only of prosecution, but also of social rejection and violence at the hands of their families, other community members and the Taliban and other AGEs.<sup>418</sup>

2018; Verfassungsblog on Matters Constitutional, Adeel Hussain: *Afghanistan's Constitution Between Sharia Law and International Human Rights*, 22 May 2017, <https://verfassungsblog.de/afghanistans-constitution-between-sharia-law-and-international-human-rights/>.

<sup>410</sup> US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>. For threats at the hand of family members see, for example, The New York Times, *A Christian Convert, on the Run in Afghanistan*, 21 June 2014, <http://www.nytimes.com/2014/06/22/world/asia/afghanistan-a-christian-convert-on-the-run.html>.

<sup>411</sup> See Interview with Abdul Ghafoor, Director of Afghanistan Migrants Advice and Support Organisation, Kabul, 28 May 2017; and Interview with Shoaib Sharifi, Independent Afghan documentary filmmaker and journalist, 23 April 2016: Asylos, *Afghanistan: Situation of Young Male 'Westernised' Returnees to Kabul*, August 2017, [https://www.ecoi.net/en/file/local/1405844/1226\\_1503654307\\_afg2017-05-afghanistan-situation-of-young-male-westernised-returnees-to-kabul-1.pdf](https://www.ecoi.net/en/file/local/1405844/1226_1503654307_afg2017-05-afghanistan-situation-of-young-male-westernised-returnees-to-kabul-1.pdf), pp. 83, 106. See also, BBC, *Controversy of Apostasy in Afghanistan*, 14 January 2014, <http://www.bbc.com/news/world-asia-25732919>.

<sup>412</sup> US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>; Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>.

<sup>413</sup> US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>; Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>.

<sup>414</sup> "Assuming or defending any right to criticize, abandon or renounce Islam is considered a taboo even by many people who adhere to broadly democratic values." International Humanist and Ethical Union, *The Freedom of Thought Report: Afghanistan*, 1 November 2016, <http://freethoughtreport.com/countries/asia-southern-asia/afghanistan/>.

<sup>415</sup> EASO, *Individuals Targeted under Societal and Legal Norms*, December 2017, <http://www.refworld.org/docid/5a38ce314.html>, p. 25, citing an email from Dr. Neamatollah Nojumi received by EASO on 22 September 2017 and comments from his review of this EASO report.

<sup>416</sup> This can include anti-Islamic writings or speech, although the Constitution protects freedom of expression and the press. The Mass Media Law of 2009 (Chapter 8, Article 31) prohibits the publication of matters contrary to the principles of Islam and offensive to other religions and sects. Freedom House, *Freedom of the Press 2015: Afghanistan*, 4 September 2015, <http://www.refworld.org/docid/55f001263d.html>. An unofficial translation of the 2009 Mass Media Law is on file with UNHCR.

<sup>417</sup> "Blasphemy, which may include anti-Islamic writings or speech, is a capital crime according to the Hanafi school of jurisprudence applicable in the courts. Similar to apostates, blasphemers have three days to recant or face death, although there is no clear process for recanting under sharia. Some hadiths (sayings or traditions of the Prophet Muhammad that serve as a source of religious law or guidance) address the issue, suggesting discussion and negotiation with an apostate to encourage the apostate to recant." US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>. See also, The Guardian, *Afghan Newspaper's 'Blasphemy' Causes Protests after Rebuking Isis and Islam*, 24 October 2014, <http://www.theguardian.com/world/2014/oct/24/afghanistan-express-article-isis-taliban-islam-blasphemy>.

<sup>418</sup> "With regard to non-believers and apostates, very few incidents are recorded, though this probably means that many converts and dissenters from Islam generally are simply too afraid to speak out." International Humanist and Ethical Union, *The Freedom of Thought Report: Afghanistan*, 1 November 2016, <http://freethoughtreport.com/countries/asia-southern-asia/afghanistan/>. See also, Star Tribune, *The Latest: UN Chief Condemns Attack on Afghan Vote Center*, 22 April 2018, <http://www.startribune.com/the-latest-12-killed-57-wounded-in-afghanistan-bombing/480482101/>; CTV News, *ISIS Claims Responsibility for Afghan Mosque Attack*, 21 October 2017, <https://www.ctvnews.ca/world/isis-claims-responsibility-for-afghan-mosque-attack-1.3642887>; US Department of State, *2016 Report on*

#### d) Summary

Based on the preceding analysis, UNHCR considers that persons perceived as contravening Sharia law, including persons accused of blasphemy and converts from Islam, as well as members of minority religious groups, may depending on the individual circumstances of the case be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of State or non-State actors for reasons of religion or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution where the actors of persecution are non-State actors.<sup>419</sup>

### 6. Individuals Perceived as Contravening AGEs' Interpretation of Islamic Principles, Norms and Values

The Taliban have reportedly killed, attacked and threatened individuals and communities who are perceived to contravene the Taliban's interpretation of Islamic principles, norms and values.<sup>420</sup>

In areas where the Taliban are trying to win the hearts and minds of the local population, the Taliban have reportedly softened their stance.<sup>421</sup> However, once areas are under its effective control, the Taliban are reported to enforce a strict interpretation of Islamic principles, norms and values.<sup>422</sup> There are reports of officers of the Taliban's Ministry for the Promotion of Virtue and the Prevention of Vice patrolling

*International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>; UNAMA, *Human Rights and Protection of Civilians in Armed Conflict: Special Report Attacks in Mirza Olang, Sari Pul Province: 3-5 August 2017*, August 2017, <http://www.refworld.org/docid/5a534e764.html>, p. 6; Washington Post, *It Was a Brutal Killing that Shocked Afghanistan. Now, the Outrage Has Faded*, 28 March 2017, [https://www.washingtonpost.com/world/asia\\_pacific/it-was-a-brutal-killing-that-shocked-afghanistan-now-the-outrage-has-faded/2017/03/27/e3301f5a-109c-11e7-aa57-2ca1b05c41b8\\_story.html](https://www.washingtonpost.com/world/asia_pacific/it-was-a-brutal-killing-that-shocked-afghanistan-now-the-outrage-has-faded/2017/03/27/e3301f5a-109c-11e7-aa57-2ca1b05c41b8_story.html). It should be noted that both men and women may be at risk on the grounds of accusations of engagement in "moral crimes", including adultery (*zina*) and other sexual relations outside wedlock. For further analysis of the treatment of women and men accused of moral crimes, please refer to Section III.A.8. For further analysis of the treatment of persons perceived as contravening Sharia law, please refer to Sections III.A.6 and III.A.12.

<sup>419</sup> For further guidance on religion-based asylum claims, see UNHCR, *Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, HCR/GIP/04/06, 28 April 2004, <http://www.refworld.org/docid/4090f9794.html>. The risk that Christian converts may face in Afghanistan has been recognized in national jurisdictions. For example, the UK Asylum and Immigration Tribunal held that a Christian convert from Islam would be at real risk of serious ill-treatment amounting to persecution on return to Afghanistan; see *NM (Christian Converts)* CG [2009] UKAIT 00045, 13 November 2009, <http://www.refworld.org/docid/4afd6a8d2.html>. Similarly, the Verwaltungsgericht in Germany has held that Hindus from Afghanistan had a well-founded fear of persecution on the grounds of their religion; see Case No. K 103/09.KS.A, Verwaltungsgericht (VG) Kassel, judgment of 27 July 2010, [http://www.asyl.net/fileadmin/user\\_upload/dokumente/17462.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/17462.pdf); and Case No. 7 K 746/09.F.A, Verwaltungsgericht (VG) Frankfurt/Main, Judgment of 11 February 2010, [http://www.asyl.net/fileadmin/user\\_upload/dokumente/18127.pdf](http://www.asyl.net/fileadmin/user_upload/dokumente/18127.pdf).

<sup>420</sup> For analysis of the situation of religious leaders who are at risk from AGEs, see Section III.A.1.h. For analysis of the situation of women and men who are perceived to contravene social mores, see Section III.A.8. For analysis of the specific situation of individuals of diverse sexual orientations and/or gender identities, see Section III.A.12. The Taliban has publicly sought to justify the killing of religious figures by describing the victims as Government spies who had attempted to "revise Islamic rules for the benefit of the Government". UNAMA, *Protection of Civilians in Armed Conflict: Attacks against Places of Worship, Religious Leaders and Worshippers*, 7 November 2017, <http://www.refworld.org/docid/5a0b0b534.html>, p. 2. In May 2017, AGEs abducted a 14-year-old boy in Darah Suf-e-Payin district, Samangan province after he was seen in a video of a wedding posted on social media dancing in a manner that the AGEs deemed 'immoral'. UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 43. In 2016, the Taliban and other insurgent groups continued to threaten religious leaders with death for preaching messages contrary to the Taliban's interpretation of Islam or its political agenda. The Taliban also continued to warn mullahs not to perform funeral prayers for government security officials. Between June and September 2016 in the Rodat and Momand Dara districts of Nangarhar, the Taliban reportedly killed a number of clerics, including two imams. As a result, according to the director of madrassas at the MOHRA, imams stated they feared performing funeral rites for ANDSF and other government employees. The Taliban also continued to monitor the social habits of local populations in areas under their control and imposed punishments on residents according to their interpretation of Islamic law. Insurgents claiming affiliation with Islamic State continued to engage in similar activities. US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>.

<sup>421</sup> Al Jazeera, *This Is Taliban Country*, 31 January 2017, <https://www.aljazeera.com/programmes/rewind/2017/01/taliban-country-170131060044414.html>.

<sup>422</sup> According to media reports, Taliban has strengthened its control of the Badakhshan province and have "imposed harsh rules in the two districts [of Warduj and Yumgan] in the name of implementing the Islamic Shari'a law [...]. After capturing the region, they first collected all television sets to enforce a ban on watching it, and they banned women from going to the local bazaar without a male guardian [...]. They have established roll calls at the mosques to know if any men are missing prayers' [...]. Similar to the Taliban's feared religious police [...]. an insurgent mullah now 'whips and beats' locals if he deems them to be committing a 'vice'." Gandhara, *Taliban Increasing Presence in Remote Afghan Region Bordering China*, 12 February 2018, <https://gandhara.rferl.org/a/afghanistan-badakhshan-taliban-chian-ughur/29035817.html>. See also, BBC, *Taliban Territory: Life in Afghanistan under the Militants*, 8 June 2017, <http://www.bbc.com/news/world-asia-40171379>. While schools in Taliban controlled areas are "supposed to offer a wide range of classes, [...]. many subjects are forbidden and taught at a teacher's own risk—including music, culture and 'other things that Taliban consider evil'." Wall Street Journal, *Taliban Broaden their Reach in Villages across Afghanistan*, 8 May 2017, <https://www.wsj.com/articles/taliban-broaden-their-reach-in-villages-across-afghanistan-1494235804>.

the streets, and people are reportedly detained for shaving their beards or for using tobacco.<sup>423</sup> Women are reportedly only allowed to leave their homes when accompanied by their husbands or male family members, and only for a small number of authorized purposes such as visiting a doctor;<sup>424</sup> women and men who violate the rules have reportedly been punished by public lashings or have even been killed.<sup>425</sup>

In areas controlled by groups affiliated with Islamic State, a puritanical way of life is reportedly enforced with strict decrees and punitive actions.<sup>426</sup> Strict rules, including dress codes, and reduced freedom of movement have been reportedly applied to women.<sup>427</sup>

Based on the evidence presented above, UNHCR considers that persons perceived as contravening the AGEs' interpretation of Islamic principles, norms and values may, depending on the individual circumstances of the case, be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of non-State actors for reasons of religion, imputed political opinion, or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution.

## 7. Women with Certain Profiles or in Specific Circumstances<sup>428</sup>

Since 2001, the Government has taken a number of steps to improve the situation of women in the country,<sup>429</sup> including the adoption of measures to increase women's political participation<sup>430</sup> and the

<sup>423</sup> "As of late 2017, in areas of Afghanistan and Pakistan where the Taliban have regained the ability to exercise territorial control, morality police implement punishments for crimes the MPVPV [Ministry for the Promotion of Virtue and Prevention of Vice] enforced under the Taliban state. The Taliban operate shadow governments, and punish those who commit moral violations such as tobacco use and beard shaving through public beatings". A. Detrick, *Virtue and Vice: Morality Police and Social Control in Islamic Regimes*, December 2017, [https://calhoun.nps.edu/bitstream/handle/10945/56903/17Dec\\_Detrick\\_Amanda.pdf](https://calhoun.nps.edu/bitstream/handle/10945/56903/17Dec_Detrick_Amanda.pdf), p. 80. See also, Racked, *In Post-Taliban Kabul, Haircuts Are an Expression of Freedom*, 13 February 2018, <https://www.racked.com/2018/2/13/16974222/kabul-hair-salon-afghanistan-post-taliban>.

<sup>424</sup> For example, reports of Taliban "bann(ing) women from going to the local bazaar without a male guardian" have emerged since Taliban took control of Badakhshan province. Gandhara, *Taliban Increasing Presence in Remote Afghan Region Bordering China*, 12 February 2018, <https://gandhara.rferl.org/a/afghanistan-badakhshan-taliban-chian-ughur/29035817.html>.

<sup>425</sup> On 21 August 2017, the Taliban reportedly shot and killed a 25-year-old woman after she travelled in a shared taxi without a mahram (male guardian) in Faryab province. UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 10. AGEs reportedly continued to impose parallel justice structures and related punishments against women accused of committing "immoral" acts. In 2017, UNAMA documented four instances of such punishments, which led to the killing of four women. In 2016, UNAMA had recorded 10 such incidents that resulted in 10 women casualties (five deaths and five injured). UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 10.

<sup>426</sup> VOA News, *Child Soldiers Say under IS, It Was Normal to Kill Someone*, 1 February 2018, <https://www.voanews.com/a/child-soliders-recall-life-under-is/4234565.html>; Reuters, *Islamic State Seizes New Afghan Foothold after Luring Taliban Defectors*, 1 December 2017, <https://www.reuters.com/article/us-afghanistan-islamic-state/islamic-state-seizes-new-afghan-foothold-after-luring-taliban-defectors-idUSKBN1DV3G5>; LA Times, *When Islamic State Showed Up in a Corner of Afghanistan, 'Nothing Was Safe, Not Even the Cows'*, 3 June 2016, <http://www.latimes.com/world/asia/la-fg-afghanistan-daesh-adv-snap-story.html>.

<sup>427</sup> Reuters, *Islamic State Seizes New Afghan Foothold after Luring Taliban Defectors*, 1 December 2017, <https://www.reuters.com/article/us-afghanistan-islamic-state/islamic-state-seizes-new-afghan-foothold-after-luring-taliban-defectors-idUSKBN1DV3G5>.

<sup>428</sup> For further guidance on claims for international protection by women, 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*, 7 May 2002, HCR/GIP/02/01, <http://www.refworld.org/docid/3d36f1c64.html>; and UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women*, 5 November 2014, CEDAW/C/GC/32, <http://www.refworld.org/docid/54620fb54.html>.

<sup>429</sup> APPRO, *Women's Peace and Security in Afghanistan*, February 2016, <http://appro.org.af/wp-content/uploads/2017/03/314787439-Monitoring-Women-Peace-and-Security-A-Rapid-Assessment.pdf>, p. 65.

<sup>430</sup> "Since the ousting of the Taliban in 2001, and the adoption of the Afghan constitution in 2004, many gains have been made in public attitudes toward women's role in politics and leadership. More than 78,000 women have been appointed to government positions since 2001, and over 8,000 women currently hold government offices. However, many areas of progress for women have stagnated. The reality today is that Afghanistan continues to be one of the most dangerous countries in the world for women." The Asia Foundation, *In Afghanistan, Gender Not Always Indicator of Support for Women's Rights*, 13 December 2017, <https://asiafoundation.org/2017/12/13/afghanistan-gender-not-always-indicator-support-womens-rights/>. Little or no progress has been made in the provision of concrete opportunities for women to influence the political agenda at higher levels. In its 2018 World Report (covering events of 2017), HRW noted that, "A long-promised plan by the Afghan government to implement UN Security Council Resolution 1325, which calls for women's equal participation in issues surrounding peace and security, was further delayed during the year. The Kabul Process peace talks in June [2017] included only two women among 47 government and international representatives." HRW, *World Report 2018: Afghanistan*, 18 January 2018, <http://www.refworld.org/docid/5a61eeac4.html>. The presence of women in political roles is stronger than has previously been the case: for example, in 2015 women held 26.5 per cent (18 of 68) of the seats in the upper house (Mesherano Jirga) of the National Assembly of Afghanistan. Inter-Parliamentary Union, *Women in National Parliaments*, 1 April 2018, <http://archive.ipu.org/wmn-e/classif.htm>. The Afghan Constitution of 2004 provides that women are to be included in both houses of the National Assembly. Article 83 states that "at least two females shall be elected members of the House of the People [lower house] from each province." Similarly Article 84 establishes that fifty per cent of the members of the House of Elders (upper house) are women. Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>. These requirements are reiterated



establishment of a Ministry for Women's Affairs.<sup>431</sup> However, the incorporation of international standards for the protection of women's rights into national legislation has run into recurrent difficulties. The Law on Elimination of Violence against Women (EVAW law) was approved by presidential decree in 2009, but continued to be opposed by conservative Members of Parliament and other conservative activists.<sup>432</sup> The revised Penal Code of Afghanistan, which was adopted by presidential decree on 4 March 2017, initially incorporated all the provisions of the EVAW law, and strengthened the definition of rape.<sup>433</sup> However, in response to opposition from conservatives, in August 2017 President Ghani ordered the Ministry of Justice to remove the EVAW chapter from the new Penal Code.<sup>434</sup> While the new Penal Code entered into force in February 2018, a presidential decree dated 3 March 2018 clarified that the 2009 EVAW law continued to remain in force as a stand-alone law.<sup>435</sup>

in articles 51 and 54 of the Election Law of 2016. Afghanistan: *Election Law* (2016), 25 September 2016, <http://www.refworld.org/docid/5adf31924.html>. However, in December 2017, members of the Wolesi Jirga (lower house) rejected the nomination of Nargis Nehan, the only female ministerial candidate, for the new Constitutional Cabinet. AAN, *Afghanistan Has Now a Constitutional Cabinet: Eleven Minister Candidates Received Votes of Confidence*, 9 December 2017, <https://www.afghanistan-analysts.org/afghanistan-has-now-a-constitutional-cabinet-eleven-minister-candidates-received-votes-of-confidence/>; Pajhwok Afghan News, 'Misogynic Lawmakers Denied Trust Vote to Nehan', 4 December 2017, <https://www.pajhwok.com/en/2017/12/04/%E2%80%98misogynic-lawmakers-denied-trust-vote-nehana%E2%80%99>; Tolo News, *Nehan Rejected due to Discrimination, Say Women*, 5 December 2017, <https://www.tolonews.com/afghanistan/nehana-rejected-due-discrimination-say-women>; Khaama Press, *Afghan MPs Approve 11 Cabinet Picks, Rejects the Only Female Minister-Designate*, 4 December 2017, <https://www.khaama.com/afghan-mps-approve-11-cabinet-picks-rejects-only-female-minister-designate-03919/>; Tolo News, *MPs Approve 11 Ministers But Reject Female Candidate*, 4 December 2017, <https://www.tolonews.com/afghanistan/mps-approved-security-minister-ghani%E2%80%99s-cabinet>.

<sup>431</sup> The Ministry for Women's Affairs (MoWA) was established in 2001, shortly after the fall of the Taliban and in accordance with the Bonn Agreement. MoWA, *MoWA History*, undated, <http://mowa.gov.af/en/page/1331/1332/mowa-history>. For more information on the mandate and activities of the Ministry, see <http://mowa.gov.af/en/>. All of the 34 provinces have a Department of Women's Affairs (DoWA) which report to the MoWA. Women can present their complaints to the local DoWA or to the Department of *Huqooq*, which operates under the Ministry of Justice. Additionally, in 2018 the DoWAs in four provinces (Badakhshan, Balkh, Samangan and Takhar) offered the services of Gender Focal Points offering legal advice to women. The provinces of Kunduz, Sar-e Pol and Jawzjan are expected to roll out similar schemes in the future. See German Cooperation with Afghanistan, *About 100 Gender Focal Points in Afghan Provinces: Facilitating Women's Access to Justice*, 20 April 2018, <http://www.germancooperation-afghanistan.de/en/news/about-100-gender-focal-points-afghan-provinces-facilitating-women%E2%80%99s-access-justice>; UNAMA, *Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication*, April 2015, <http://www.refworld.org/docid/55814b3c4.html>, p. 14.

<sup>432</sup> The 2009 EVAW Law criminalizes various forms of violence against women. The text of the law in English is available at <http://www.refworld.org/docid/5486d1a34.html>. While the law was approved by President Karzai by decree in 2009, after which the law was enacted, it technically remains pending parliamentary approval. Women and Children's Legal Research Foundation, *Identifying the Causes and Solutions for Sexual Harassment against Women in Afghanistan*, 2015, <http://harassmap.af/wp-content/uploads/Identify%20the%20cause%20on%20sexual%20harassment%20women%20and%20children%20in%20afghanistan.pdf>, p. 28. The Constitution of Afghanistan guarantees equal rights to women and men; see Article 22 of the Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>. In addition, Afghanistan ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in 2003. The Government also adopted a *National Action Plan for the Women of Afghanistan* (NAPWA), 2008-2018, <http://mowa.gov.af/en/page/6686>, and, on 30 June 2015, a *National Action Plan on Security Council Resolution 1325 (2000) on Women and Peace and Security for 2015-2022*, [https://unama.unmissions.org/sites/default/files/wps-afghanistan-national-action-plan\\_1325\\_0.pdf](https://unama.unmissions.org/sites/default/files/wps-afghanistan-national-action-plan_1325_0.pdf).

<sup>433</sup> "The 2018 Penal Code originally included a specific chapter on the elimination of violence against women. This chapter incorporated the provisions criminalising the majority of the 22 acts set out in Article 5 of the EVAW Law, but also included new provisions prohibiting both the detention of women on charges of 'running away' and the practice of 'exchange marriage' or *badal* (when feuding families or clans exchange brides in settlement of disputes)." UNAMA, *Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women*, May 2018, <http://www.refworld.org/docid/5b1a749f4.html>, p. 16.

<sup>434</sup> HRW, *World Report 2018: Afghanistan*, 18 January 2018, <http://www.refworld.org/docid/5a61eac4.html>. "The final version of the 2018 Penal Code did not include any reference to criminal offences of violence against women (with the exception of rape), and required a later amendment to the Code in order to make EVAW Law crimes enforceable. This amendment was necessary since Articles 7 and 8 of the 2018 Penal Code explicitly prohibit the enforcement of any punishment not provided for in the Penal Code itself." UNAMA, *Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women*, May 2018, <http://www.refworld.org/docid/5b1a749f4.html>, p. 17.

<sup>435</sup> The text of the presidential decree is on file with UNHCR. "In early March 2018, the Cabinet of Ministers approved the amendment to the Penal Code, which would exclude the EVAW Law from being affected by the provisions of article 7(2) and 8 of the Penal Code. The amendment was issued shortly thereafter in a presidential decree on 3 March 2018." UNAMA, *Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women*, May 2018, <http://www.refworld.org/docid/5b1a749f4.html>, p. 17. See also, UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651-S/2017/1056, <http://www.refworld.org/docid/5a56465c4.html>, para 42; UNAMA, *UNAMA Welcomes Afghanistan's New Penal Code – Calls for Robust Framework to Protect Women Against Violence*, 22 February 2017, <https://unama.unmissions.org/unama-welcomes-afghanistan%E2%80%99s-new-penal-code-calls-robust-framework-protect-women-against-violence>. In addition, while a law on the elimination of harassment of women and girls was approved by the Lower House of Parliament (*Wolesi Jirga*) on 9 November 2016, women's rights activists argued that the law was "incomplete, replete with errors and largely unenforceable" and petitioned the President not to ratify the law. Medica Afghanistan, *Petition Not to Ratify the Anti-Sexual Harassment Law Dated 19 Akrib 1395 / 9 November 2016 Pursuant to the Afghanistan Constitution*, 19 February 2017, <http://www.medicafghanistan.org/medica/index.php/en/petition-not-to-ratify-the-anti-sexual-harassment-law-dated-19-akrab-1395-9-november-2016-pursuant-to-the-afghanistan-constitution/>. See also, Women and Children Legal Research Foundation, *Research Report on Role of EVAW Commissions in addressing Sexual Harassment*, December 2017, <http://harassmap.af/eng/wp-content/uploads/2017/12/Research-Report-on-Role-of-EVAW-Commissions-in-addressing-Sexual->



Overall, improvements in the situation of women and girls have reportedly remained marginal.<sup>436</sup> According to the Asia Foundation “limited access to education and health care, restrictions on freedom of movement, unjust punishment for ‘crimes of morality’, unequal participation in government, forced marriage, and violence” remain major challenges for women and girls in Afghanistan.<sup>437</sup> Rates of depression due to domestic violence and other human rights violations are reportedly on the rise among Afghan women,<sup>438</sup> with women reportedly committing 80 per cent of suicides in Afghanistan, while other women resort to self-immolations.<sup>439</sup>

The AIHRC noted that violence against women remains a “widespread, common and undeniable reality”,<sup>440</sup> with women in insecure provinces as well as in the rural areas of Afghanistan especially

[Harassment.pdf](#), pp. 7-8; AAN, *Harassment of Women in Afghanistan: A Hidden Phenomenon Addressed in Too Many Laws*, 2 April 2017, <https://www.afghanistan-analysts.org/harassment-of-women-in-afghanistan-a-hidden-phenomenon-addressed-in-too-many-laws/>; IWPR, *New Afghan Law Targets Sexual Harassment*, 8 March 2017, <https://iwpr.net/global-voices/new-afghan-law-targets-sexual-harassment>; UNSG, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 3 March 2017, A/71/826-S/2017/189, <http://www.refworld.org/docid/58c276634.html>, p. 25; Tolo News, *Senate Approves Anti-Harassment of Women and Children's Act*, 25 December 2016, <http://www.tolonews.com/afghanistan/senate-approves-anti-harassment-women-and-childrens-act>.

<sup>436</sup> “Despite some progress, women continued to face severe obstacles in participating in political, economic and social life owing to several factors, such as widespread violence, explicit restrictions imposed by anti-government elements and the existence of deep-rooted discriminatory social norms that discourage women from exercising their rights.” UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 11 January 2017, A/HRC/34/41, <http://www.refworld.org/docid/5a562b9d4.html>, para 48. See also, UNSG, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/72/392-S/2017/783, 15 September 2017, <http://www.refworld.org/docid/59c3a9f64.html>, para. 30; Center for Gender & Refugee Studies, University of California Hastings (CGRS), *Breaking Barriers: Challenges to Implementing Laws on Violence Against Women in Afghanistan and Tajikistan*, April 2016, [https://cgrs.uchastings.edu/sites/default/files/Afghanistan\\_Tajikistan\\_Full%20Report\\_Revised%204-5-2016\\_FINAL\\_0.pdf](https://cgrs.uchastings.edu/sites/default/files/Afghanistan_Tajikistan_Full%20Report_Revised%204-5-2016_FINAL_0.pdf), pp. 9-10.

<sup>437</sup> Asia Foundation, *Afghanistan in 2017: A Survey of the Afghan People*, 14 November 2017, [https://asiafoundation.org/wp-content/uploads/2017/11/2017\\_AfghanSurvey\\_report.pdf](https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf), p. 30.

<sup>438</sup> IWPR, *Depression Rampant among Afghan Women*, 12 February 2017, <https://iwpr.net/global-voices/depression-rampant-among-afghan-women>; IWPR, *Afghan Women Hit by Mental Health Crisis*, 12 May 2016, <https://iwpr.net/global-voices/afghan-women-hit-mental-health-crisis>.

<sup>439</sup> BBC, *Why Female Suicide in Afghanistan Is so Prevalent*, 1 July 2018, <https://www.bbc.com/news/world-asia-44370711>; Pajhwok Afghan News, *Suicide Cases among Daikundi Women on the Rise*, 16 November 2017, <https://www.pajhwok.com/en/2017/11/16/suicide-cases-among-daikundi-women-rise>; AA, *Around 3,000 Afghans Commit Suicide Every Year*, 17 September 2017, <http://aa.com.tr/en/asia-pacific/around-3-000-afghans-commit-suicide-every-year/912627>; Tolo News, *Up in Flames: Why Are Afghan Women Setting Themselves on Fire?*, 3 September 2017, <http://www.tolonews.com/index.php/opinion/flames-why-are-afghan-women-setting-themselves-fire>; The Guardian, *‘Oh God Please Let Me Die’: Treating Women Who Have Set Themselves on Fire in Afghanistan*, 26 June 2017, <https://www.theguardian.com/global-development-professionals-network/2017/jun/26/oh-god-please-let-me-die-treating-women-who-have-set-themselves-on-fire-in-afghanistan>; RAWA, *1000 Suicide Attempts in One Year in Afghan Province*, 3 May 2017, <http://www.rawa.org/temp/runews/2017/05/03/1000-suicide-attempts-in-one-year-in-afghan-province.html>; Tolo News, *Woman Sets Herself on Fire*, 7 March 2017, <http://www.tolonews.com/afghanistan/woman-sets-herself-fire>; The Prisma, *To Be Born a Woman to Burn in Hell*, 5 September 2016, <http://theprisma.co.uk/2016/09/05/to-be-born-a-women-to-burn-in-hell/>.

<sup>440</sup> AIHRC, *Press Release on Violence against Women: The Causes, Grounds, and Situation of Violence against Women in Afghanistan*, 25 November 2017, p. 2. See also, AIHRC, *Summary of the Report on Violence against Women: The Causes, Context, and Situation of Violence Against Women in Afghanistan*, 11 March 2018, <http://www.refworld.org/docid/5ab132774.html>, p. 1; Pajhwok Afghan News, *Violence Against Women 30pc up in Southeast*, 19 December 2017, <https://www.pajhwok.com/en/2017/12/19/violence-against-women-30pc-southeast>; Tolo News, *AGO Records Soaring Rates of Violence Against Women*, 28 November 2017, <http://www.tolonews.com/afghanistan/ago-records-soaring-rates-violence-against-women>; Afghan Times, *Sharp Rise In Violence Cases Against Women*, 26 November 2017, <http://afghanistantimes.af/sharp-rise-in-violence-cases-against-women/>; The Australian, *War on Women*, 2 September 2017, <http://www.theaustralian.com.au/life/weekend-australian-magazine/why-war-in-afghanistan-has-failed-to-liberate-women/news-story/a8444d36173c622950ff757cbb8b6872>; UNSG, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/71/932-S/2017/508, 15 June 2017, <http://www.refworld.org/docid/5a2563924.html>, para. 28; Amnesty International, *Report 2016/17: Afghanistan*, 22 February 2017, <http://www.refworld.org/docid/58b034294.html>; Telesur, *Afghan Women Face Unprecedented Levels of Violence: UN Report*, 11 February 2017, <https://www.telesurtv.net/english/news/Afghan-Women-Face-Unprecedented-Levels-of-Violence-UN-Report-20170211-0023.html>; Gandhara, *Violence Against Women on the Rise in Afghanistan*, 6 February 2017, <https://gandhara.rferl.org/a/afghanistan-violence-against-women/28284751.html>. “Gender-based violence is a pervasive problem in Afghanistan. It stems from complex inequalities and cultural practices which, when aligned with poverty and lack of awareness, subordinate women to men and prevent them from acting on or receiving support. Studies suggest that 87 percent of Afghan women experience at least one form of physical, sexual or psychological violence, and 62 percent experience multiple forms.” UNFPA Afghanistan, *Gender-Based Violence*, undated, <http://afghanistan.unfpa.org/en/node/1523>.

vulnerable to violence and abuse.<sup>441</sup> Impunity in relation to such violence is reportedly common.<sup>442</sup> Sexual harassment and deep-rooted discrimination against women is reported to remain endemic.<sup>443</sup>

Women are said to continue to face serious challenges to the full enjoyment of their economic, social and cultural rights.<sup>444</sup> Despite advances, poverty, illiteracy, and poor health care reportedly continue to affect women disproportionately.<sup>445</sup>

Observers have noted that the implementation of legislation to protect women's rights remains slow, including in particular the implementation of the EVAW law.<sup>446</sup> The law criminalizes 22 acts of violence and harmful traditional practices against women, including child marriage, forced marriage and acts of violence against women such as rape and domestic violence; it also specifies punishments

<sup>441</sup> "Burning/setting on fire, sexual harassment, murder, honor killing, forced prostitution, trafficking, forced addiction, sexual assault, forced pregnancy, buying and selling women under the pretext of marriage, forced abortion, husbands' polygamy, mutilations, beating and battering, deprivation of freedom of choosing spouse, denial of the right to education, prevention from working outside the home, denial of relative visit, prevention of political and civic activities, deprivation of the right to heritage, the deprivation of the right to private properties, forced engagement, non-provision of alimony, non-payment of Mahria, forced labor, insulting, humiliating, and negating relationship are the most important challenges for women in the villages and rural areas of the country, which have been registered and addressed as a result of continuous monitoring of the AIHRC over the past three years". AIHRC, *Human Rights Situation of Women and Girls Living in the Villages in Afghanistan*, 11 March 2018, <http://www.refworld.org/docid/5ab133694.html>, p. 18.

<sup>442</sup> According to the AIHRC, the "culture of impunity", is one of the most important underlying causes of violence against women in Afghanistan. AIHRC, *Press Release on Violence against Women: The Causes, Grounds, and Situation of Violence Against Women in Afghanistan*, 25 November 2017, p. 5. "Justice and redress for women remained low amid the continued prevalence of violence against women." UNSG, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/72/392-S/2017/783, 15 September 2017, <http://www.refworld.org/docid/59c3a9f64.html>, para. 30. See also, Guardian, 'I Can Have You Killed': Afghan Woman Fears Husband After US Denies Asylum, 9 August 2017, <https://www.theguardian.com/world/2017/aug/09/afghanistan-woman-husband-us-asylum-claim>; New York Times, *No Justice, 'No Value' for Women in a Lawless Afghan Province*, 8 July 2017, <https://www.nytimes.com/2017/07/08/world/asia/afghanistan-women-honor-killings.html>.

<sup>443</sup> According to UNICEF "[w]omen and girls in Afghanistan continue to face widespread discrimination and human rights abuses." UNICEF Afghanistan, *Gender Focus*, undated, <https://www.unicef.org/afghanistan/gender-focus>. See also, New York times, *In Afghanistan, 'I Feel Like a Divorced Woman Is Up for Grabs'*, 17 April 2017, <https://www.nytimes.com/2017/04/17/world/asia/afghan-women-divorce.html>; Tolo News, *Women's Rights Still Sadly Lacking in Afghanistan*, 11 April 2017, <http://www.tolonews.com/afghanistan/women%E2%80%99s-rights-still-sadly-lacking-afghanistan>; IWPR, *Afghanistan: The Shame of Having Daughters*, 30 January 2017, <https://iwpr.net/global-voices/afghanistan-shame-having-daughters>; UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 11 January 2017, A/HRC/34/41, <http://www.refworld.org/docid/5a562b9d4.html>, para. 48.

<sup>444</sup> According to IWPR, 56 per cent of Afghan women do not hold identity cards and are consequently denied access to a wide range of services, including access to basic facilities from medical care, education and banking to employment and voting. According to IWPR the most common reason for the lack of IDs is the denial of permission to apply for ID card by the woman's family. IWPR, *Afghan Women Denied Identity Cards*, 27 March 2017, <https://iwpr.net/global-voices/afghan-women-denied-identity-cards>. See also, AIHRC, *Press Release on Violence against Women: The Causes, Grounds, and Situation of Violence Against Women in Afghanistan*, 25 November 2017, p. 4; Foreign Policy, *Afghanistan Ranks Among the Worst Places for Girls to Get an Education*, 17 October 2017, <http://foreignpolicy.com/2017/10/17/afghanistan-ranks-worst-places-girls-to-get-an-education-africa>; Heinrich Boell Foundation, *Food Discrimination Against Women in Afghanistan*, 7 August 2017, <https://www.boell.de/en/2017/08/07/food-discrimination-against-women-afghanistan>. There are reports of families who bring up their daughters as sons, in part because of the higher social status of sons compared to daughters; however, once these children reach puberty, they usually must return to being girls. This practice is known as *Bacha Posh*. The News Minute, *Bacha Posh: An Afghan Social Tradition Where Girls are Raised as Boys*, 2 March 2018, <https://www.thenewsminute.com/article/bacha-posh-afghan-social-tradition-where-girls-are-raised-boys-77301>; National Geographic, *Inside the Lives of Girls Dressed as Boys in Afghanistan*, 2 March 2018, <https://www.nationalgeographic.com/photography/proof/2018/march/bacha-posh-gender-afghanistan/>.

<sup>445</sup> Asia Foundation, *A Survey of the Afghan People: Afghanistan in 2017*, 14 November 2017, [https://asiafoundation.org/wp-content/uploads/2017/11/2017\\_AfghanSurvey\\_report.pdf](https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf). "In spite of the demand for girls' education, harmful gender norms still keep many girls out of school. Harmful gender norms also account for many of the barriers to education having a disproportionate impact on girls." HRW, *"I Won't Be A Doctor, and One Day You'll Be Sick": Girls' Access to Education in Afghanistan*, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>. "In particular, the most vulnerable groups, such as women and children, are more likely to be exposed to malnutrition. Poverty is gendered and women are more likely than men to be poor [...] Just as women's access to education and health care has been limited by patriarchal norms and structures, so has women's access to nutrition and food been limited." Heinrich Böll Foundation, *Food Discrimination Against Women in Afghanistan*, 7 August 2017, <https://www.boell.de/en/2017/08/07/food-discrimination-against-women-afghanistan>.

<sup>446</sup> "Whilst article 79 of the constitution allows the president to enact laws through decrees in 'emergency situations' when the parliament is in recess, those decrees must be submitted to parliament for subsequent ratification [...] However, [the supporters of the EVAW law] failed to secure the law's ratification in parliament, where it met considerable conservative opposition. In particular, conservative members of parliament opposed provisions criminalizing underage marriage and certain forms of polygamy and wife beating, which they argued were contrary to Hanafi *fiqh*. They also thought the punishments for rape were too strict and worried that they would infringe on husbands' prerogatives of sexual access to their wives (even if the EVAW Law did not explicitly criminalize marital rape). As a result of its rejection in parliament, the law is currently of dubious standing to many, particularly more conservative legal officials who use the lack of parliamentary approval as a reason to ignore the law." CMI, *Adultery, Rape, and Escaping the House: The Protection and Policing of Female Sexuality in Afghanistan*, December 2017, <https://www.cmi.no/publications/6404-adultery-rape-and-escaping-the-house>, p. 9. Members of Parliament opposing the EVAW law have "continued their efforts to amend the law to remove provisions regulating the minimum age of marriage, prescribing punishments for domestic assault; and providing for women's shelters." HRW, *World Report 2017: Afghanistan*, 12 January 2017, <http://www.refworld.org/docid/587b586111.html>.

for perpetrators.<sup>447</sup> However, the authorities are reported to lack the will to implement the law, and reportedly do not enforce it in full, particularly in the rural areas.<sup>448</sup> Access to justice for women reportedly remains low.<sup>449</sup> The vast majority of cases, including instances of serious crimes against women, are still being mediated by traditional dispute resolution mechanisms rather than prosecuted as required by the law.<sup>450</sup> Reportedly, the ANP, prosecutors' offices as well as EVAW Law institutions refer numerous cases, including serious crimes, to *jirgas* and *shuras* for advice or resolution, thereby undermining the implementation of the EVAW law and reinforcing harmful traditional practices.<sup>451</sup> Decisions of these mechanisms place women and girls at risk of further victimization and ostracism.<sup>452</sup>

The Shi'ite Personal Status Law,<sup>453</sup> which regulates family law matters such as marriage, divorce and inheritance rights for members of the Shi'ite community, includes a number of provisions that discriminate against women, notably in relation to guardianship, inheritance, under-age marriages, and limitations on movements outside the home.<sup>454</sup>

<sup>447</sup> Law on Elimination of Violence against Women (2009), <http://www.refworld.org/docid/5486d1a34.html>.

<sup>448</sup> "[T]he Committee remains deeply concerned by the high prevalence of violence against women in the State party, in particular domestic violence, rape, battery, laceration, crimes committed in the name of so-called 'honour' and cases of stoning. It is concerned that the [EVAW] Law is not equally implemented in all provinces and that very few cases from rural or remote areas have been registered, those cases being frequently mediated through traditional dispute resolution mechanisms or undeclared by victims owing to familial and social pressure." UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>.

<sup>449</sup> UNSG, *The Situation in Afghanistan and Its Implications for International Peace and Security*, A/72/392–S/2017/783, 15 September 2017, <http://www.refworld.org/docid/59c3a9f64.html>, para. 30; AIHRC, *Summary of the Report on Violence Against Women: The Causes, Context, and Situation of Violence Against Women in Afghanistan*, 11 March 2018, <http://www.refworld.org/docid/5ab132774.html>, p. 5.

<sup>450</sup> Between 2015–2017 UNAMA documented and monitored 237 case of violence against women reported to EVAW Law institutions in 22 provinces. The majority of these cases were referred to the traditional dispute resolution mechanisms, in violation of the EVAW law. "UNAMA found that traditional dispute resolution mechanisms in all provinces of Afghanistan resolved criminal offences of violence against women, including murder, 'honour killings' and the five serious offences set out in Articles 17–21 of the EVAW law following direct referrals by families, referrals by EVAW Law institutions, and in some cases through subsequent participation of those EVAW institutions [...] Such mechanisms operate in an unofficial and unregulated capacity, their decisions in criminal cases are unlawful, and as such, are not subjected to any Government oversight or scrutiny." UNAMA, *Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women*, May 2018, <http://www.refworld.org/docid/5b1a749f4.html>, p. 27; see also HRW, *Afghan Government Ignoring Violence Against Women*, 30 May 2018, <https://www.hrw.org/news/2018/05/30/afghan-government-ignoring-violence-against-women>. "On March 12 [2017], the Attorney General's Office issued a report on prosecutions under the Elimination of Violence against Women (EVAW) law revealing that mediation remains the preferred route for most prosecutors, which women are often compelled to accept due to pressure from family and justice officials. Registered cases represent only a fraction of the actual crimes of violence against women." HRW, *World Report 2018: Afghanistan*, 18 January 2018, <http://www.refworld.org/docid/5a61eeac4.html>. "Prosecutors in some provinces [...] continued to be reluctant to use the EVAW law. Moreover, in cases in which prosecutors brought charges under the EVAW law, judges would sometimes replace those charges with others based on the penal code." US Department of State, *2016 Country Reports on Human Rights Practices: Afghanistan*, 3 March 2017, <http://www.refworld.org/docid/58ec8a7fa.html>. See also, Pajhwok Afghan News, *In Nuristan, Cases of Violence Against Women Addressed by Jirgas*, 6 January 2018, <https://www.pajhwok.com/en/2018/01/06/nuristan-cases-violence-against-women-addressed-jirgas>; Relief International and OCHA, *GBV Sector Assessment Results Report*, December 2017, <http://www.refworld.org/docid/5a81563b4.html>, p. 6; Tolo News, *Crimes Against Ghor Women Going Unsolved*, 19 April 2017, <http://www.tolonews.com/index.php/afghanistan/provincial/crimes-against-ghor-women-going-unsolved>; News Deeply, *Without IDs, Afghan Women Remain Invisible in the Justice System*, 9 March 2017, <https://www.newsdeeply.com/womenandgirls/community/2017/03/09/without-ids-afghan-women-remain-invisible-justice-system>.

<sup>451</sup> "UNAMA documented two different types of mediation procedures carried out by traditional dispute resolution mechanisms in relation to violence against women. Traditional mediators – in particular *Jirgas* convened by Anti-Government Elements – resolved wider community or family conflicts, through decisions that often resulted in acts of violence against women [...] Traditional mediators [...] also mediated criminal offences of violence against women such as beating by spouses, harassment, causing isolation and more [...] UNAMA emphasises that both types of procedures and decisions by traditional dispute resolution mechanisms – whether the mediation of criminal offences of violence against women or the mediation of wider disputes resulting in decisions which inflict abuse or violence to women – are unlawful and constitute human rights abuses. [...] UNAMA documented several instances where EVAW institutions collaborated with mediators in traditional dispute resolution mechanisms to pressurise survivors into accepting mediation and mediation decisions." UNAMA, *Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women*, May 2018, <http://www.refworld.org/docid/5b1a749f4.html>, pp. 27–28; see also, HRW, *Afghan Government Ignoring Violence Against Women*, 30 May 2018, <https://www.hrw.org/news/2018/05/30/afghan-government-ignoring-violence-against-women>. "As far as informal justice was concerned, the delegation noted that, unfortunately, some civil or even criminal cases were still addressed by elders or *Jirgas*." OHCHR, *Committee Against Torture Considers Report of Afghanistan*, 26 April 2017, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21537&LangID=E>.

<sup>452</sup> "[I]nnumerable cases have been recorded of authorized violence against women, such as public lashings and executions ordered by local *ulemas* and *jirgas* (informal community courts and local councils) attended and chaired by powerful male fundamentalists who defend religious decrees in all parts of Afghanistan." The Diplomat, *The Women in Afghanistan's Moral Prisons*, 8 March 2017, <https://thediplomat.com/2017/03/the-women-in-afghanistans-moral-prisons/>. See also, UNAMA, *Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women*, May 2018, <http://www.refworld.org/docid/5b1a749f4.html>, p. 28; HRW, *Afghan Government Ignoring Violence Against Women*, 30 May 2018, <https://www.hrw.org/news/2018/05/30/afghan-government-ignoring-violence-against-women>.

<sup>453</sup> Shi'ite Personal Status Law, March 2009, <http://www.refworld.org/docid/4a24ed5b2.html>. The law was adopted pursuant to Article 131 of the Constitution of Afghanistan.

<sup>454</sup> The controversial provision requiring a wife to provide for the sexual enjoyment of her husband was removed from the Law following domestic and international pressure. However, Afghan legal experts are of the view that Article 162 of the amended Law could be used by a husband



While the human rights concerns identified in this section affect women and girls across the country, the situation in areas under the effective control of AGEs is reported to be of particular concern.<sup>455</sup> In areas under their control, AGEs are reported to continue to impose severe restrictions on women's fundamental rights, including freedom of movement, political participation, access to healthcare and access to education.<sup>456</sup> Moreover, in areas under the effective control of AGEs women are likely to face particular difficulties in accessing justice and obtaining effective remedies for any violations of their rights, with the parallel justice structures operated by AGEs in areas under their control reportedly routinely violating women's rights.<sup>457</sup>

### a) Sexual and Gender-Based Violence

Sexual and gender-based violence against women in Afghanistan remains widespread: the number of reported cases is on the rise, but the actual number of cases is thought to be far higher than the number of reported cases.<sup>458</sup> In March 2018, the AIHRC named violence against women as "one of the most

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to effectively deny maintenance to a wife if she refuses him what he perceives as his conjugal rights; see UN Committee on Economic, Social and Cultural Rights (CESCR), *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Afghanistan*, E/C.12/AFG/CO/2-4, 7 June 2010, <http://www.refworld.org/docid/4c1732dc2.html>. Other concerns have also been raised. "[The Committee] is concerned that despite the amendments to the Shia Personal Status Law, discriminatory provisions remain, such as the requirement of the husband's authorization for his wife to leave home". Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding Observations on the Combined Initial and Second Periodic Reports of Afghanistan*, 23 July 2013, CEDAW/C/AFG/CO/1-2, <http://www.refworld.org/docid/51ff5ac94.html>, para. 42. "The Shiite Personal Status law recognizes marriages for boys and girls 'at puberty' but it also refers to marriage as permissible 'prior to the mentioned ages' by a guardian before the court. This provision removes the power of the court to rule against early marriage, rendering the law ineffective." UNICEF, *Children and Women in Afghanistan: A Situation Analysis 2014*, November 2014, <http://www.refworld.org/docid/5a2eb4e14.html>, pp. 38-39. See also, NRC/IDMC, *Strengthening Displaced Women's Housing, Land and Property Rights in Afghanistan*, November 2014, <http://www.refworld.org/docid/5486c4684.html>, pp. 47-48.

<sup>455</sup> "Securing women's rights still remain a challenge. This is particularly the case in the areas controlled under the [armed opposition groups] AOGs, where women are more restricted from accessing education, work, and other social activities." Asia Foundation, *Life under Armed Opposition Groups in Afghanistan*, 15 November 2017, <https://asiafoundation.org/2017/11/15/life-armed-opposition-groups-afghanistan>.

<sup>456</sup> "In Taliban-controlled areas, women are prohibited from working, attending school, or leaving their homes unless accompanied by a close male relative, and are forced to wear the burqa [...] women often are denied access to medical attention due to the lack of female doctors." USCIRF, *Annual Report 2017 (Tier 2 Countries): Afghanistan*, 26 April 2017, <http://www.refworld.org/docid/59072f4429.html>. See also, Relief International and OCHA, *GBV Sector Assessment Results Report*, December 2017, <http://www.refworld.org/docid/5a81563b4.html>, p. 4; IWPR, *Girls Denied Education in Afghan Province*, 24 November 2017, ARR 581, <http://www.refworld.org/docid/5a1bf7874.html>; UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 13; Ministry of Foreign Affairs of the Netherlands, *Country of Origin Report on Afghanistan*, November 2016, <http://www.refworld.org/docid/5a60d67d4.html>, p. 80.

<sup>457</sup> UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, pp. 12, 44; UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 11 January 2017, A/HRC/34/41, <http://www.refworld.org/docid/5a562b9d4.html>, para. 44, Amnesty International, *Amnesty International Report 2016/17: Afghanistan*, 22 February 2017, <http://www.refworld.org/docid/58b034294.html>. For further discussion of the parallel justice structures operated by the Taliban, see Section II.C.1.c.

<sup>458</sup> "UNAMA notes the widespread under-reporting of violence against women cases to the formal justice system [...] In Afghanistan, the underlying cultural norm of viewing sexual and domestic violence as 'private family matters' contributes to under-reporting. Studies have shown that Afghan women in general are less likely than men to report violence outside of their families." UNAMA, *Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women*, May 2018, <http://www.refworld.org/docid/5b1a749f4.html>, p. 25. The number cases of violence against women recorded by the AIHRC rose from 2,046 cases in 2016 to 4,340 cases in 2017. AIHRC, *Summary of the Report on Violence Against Women: The Causes, Context, and Situation of Violence Against Women in Afghanistan*, 11 March 2018, <http://www.refworld.org/docid/5ab132774.html>, p. 1. The actual number of cases is thought to be far higher: "Chronic instability, combined with impunity, discriminatory cultural practices, and access constraints contribute to the underreporting of sexual violence across Afghanistan." UNSC, *Report of the Secretary-General on Conflict-Related Sexual Violence*, 15 April 2017, S/2017/249, <http://www.refworld.org/docid/5a4fa3374.html>, para 16. See also, Pajhwok Afghan News, *Above 1500 Violence Against Women Cases Recorded in Northeast*, 9 March 2018, <https://www.pajhwok.com/en/2018/03/09/above-1500-violence-against-women-cases-recorded-northeast>; The Outlook Afghanistan, *Afghanistan: Violence Against Women*, 19 February 2018, [http://www.outlookafghanistan.net/topics.php?post\\_id=20221](http://www.outlookafghanistan.net/topics.php?post_id=20221); Gandhara, *Violence Against Women on the Rise in Afghanistan*, 6 February 2017, <https://gandhara.rferl.org/a/afghanistan-violence-against-women/28284751.html>; The Kabul Times, *Increasing Violence Against Women Concerning*, 23 January 2018, <http://thekabultimes.gov.af/index.php/opinions/social/16128-increasing-violence-against-women-concerning.html>. "[T]he Committee remains deeply concerned by the high prevalence of violence against women in the State party, in particular domestic violence, rape, battery, laceration, crimes committed in the name of so-called 'honour' and cases of stoning." UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 37. Out of the 1,530 women interviewed by AIHRC in 2017, 1307 women stated that they had been harassed, representing 85.4 per cent of the total number of interviewees. AIHRC, *Summary Report Survey of Harassment of Women and Children in Afghanistan*, 11 March 2018, <http://www.refworld.org/docid/5ab132f74.html>, p. 1. A study published in December 2017 found that 90 per cent of the 346 women and girls interviewed had experienced sexual harassment in public places, 91 per cent in educational environments, and 87 per cent at work. Women and Children Legal Research Foundation, *Research Report on Role of EAW Commissions in addressing Sexual Harassment*, December 2017, <http://harassmap.af/eng/wp-content/uploads/2017/12/Research-Report-on-Role-of-EAW-Commissions-in-addressing-Sexual-Harassment.pdf>, p. v.



serious human rights challenges in Afghanistan.”<sup>459</sup> Such violence includes “honour killings”,<sup>460</sup> abductions, rape, sexual harassment, forced abortions and domestic violence.<sup>461</sup>

As sexual acts committed outside marriage are widely seen in Afghan society to dishonour families, victims of rape outside marriage are at risk of ostracism, forced abortions, imprisonment, or even death.<sup>462</sup> Societal taboos and fear of stigmatization and reprisals, including at the hands of their own community and family members, have been found to deter survivors from reporting sexual and gender-based violence.<sup>463</sup>

The new Penal Code of Afghanistan, which entered into force in February 2018, criminalizes non-consensual “virginity tests”.<sup>464</sup> However, despite the criminalization, the practice of “virginity testing” women who are accused of adultery or who are victims of sexual crimes, including victims of rape and sexual assault, reportedly remains prevalent in Afghanistan.<sup>465</sup> The practice has been described as

<sup>459</sup> AIHRC, *Summary of the Report on Violence Against Women: The Causes, Context, and Situation of Violence Against Women in Afghanistan*, 11 March 2018, <http://www.refworld.org/docid/5ab132774.html>, p. 1.

<sup>460</sup> “UNAMA documented 280 cases of murder and “honour killings” of women from January 2016 to December 2017. Of these, 50 cases resulted in the conviction and imprisonment of the perpetrator, representing 18 per cent of the cases documented. As in previous years, the vast majority of murder and “honour killing” cases involving women did not reach prosecution and the perpetrators are still at large. UNAMA found that in more than one third of cases documented over the two-year period, the police did not forward the cases to prosecutors. UNAMA’s interviews with traditional mediators suggest informal mediators resolved some of these cases.” UNAMA, *Injustice and Impunity: Mediation of Criminal Offences of Violence Against Women*, May 2018, <http://www.refworld.org/docid/5b1a749f4.html>, pp. 21-22.

<sup>461</sup> In 2017 AIHRC recorded 277 murders of women, of which 136 were ‘honour killings’; 1,420 cases of physical violence; 228 cases of sexual violence; 1317 cases of verbal violence; 749 cases of economic violence; and 749 cases of other types of violence, including forced marriages, forced engagements, polygamy, denial of access to education, denial of access to healthcare, selling and buying of women under the pretext of marriage and trafficking. AIHRC, *Summary of the Report on Violence Against Women: The Causes, Context, and Situation of Violence Against Women in Afghanistan*, 11 March 2018, <http://www.refworld.org/docid/5ab132774.html>. See also, Afghanistan Ministry of Women Affairs, *Fifth Report on Implementation of EVAW Law, March 2016 – March 2017*, January 2018, <http://mowa.gov.af/Content/files/Englisg.pdf>, p. 17; Women and Children Legal Research Foundation, *Research Report on Role of EVAW Commissions in Addressing Sexual Harassment*, December 2017, <http://harassmap.af/eng/wp-content/uploads/2017/12/Research-Report-on-Role-of-EVAW-Commissions-in-addressing-Sexual-Harassment.pdf>, pp. 3-4; Newsweek, *Rape, Underage Sex, Forced Marriage, Abuse. That’s the Plight of Too Many Afghan Girls*, 26 December 2017, <http://www.newsweek.com/rape-underage-sex-abuse-forced-marriage-thats-plight-too-many-afghan-girls-758341>; New York Times, *Brought Together by Pain, 3 Girls Forced into Marriage Have New Dreams*, 6 October 2017, <https://www.nytimes.com/2017/10/06/world/asia/afghanistan-child-brides-marriage.html>; New York Times, *Years after Acid Attack, an Afghan Story of Survival Takes a Dark Turn*, 13 August 2017, <https://www.nytimes.com/2017/08/13/world/asia/afghanistan-womens-rights-acid-attack.html>; AIHRC, *Press Release: On Recent Awful Incidents in the Country*, 4 July 2017, [http://www.aihrc.org.af/home/press\\_release/6436#](http://www.aihrc.org.af/home/press_release/6436#); France 24, *The Place in Afghanistan Where It’s “Easy To Kill Women”*, 13 April 2017, <http://observers.france24.com/en/20170413-place-afghanistan-where-it%E2%80%99%E2%80%9CEasy-kill-women%E2%80%9D>.

<sup>462</sup> Pajhwok News reports that in 2017 “nearly 40 women were killed in the name of honor and other issues.” Pajhwok Afghan News, *Nearly 40 Women Murdered in the East This Year: Officials*, 10 December 2017, <https://www.pajhwok.com/en/2017/12/10/nearly-40-women-murdered-east-year-officials>. “Any misbehavior or sexual improprieties (adultery, abduction, rape) by women are considered as serious violations of the Pashtunwali code, and can be killed by male relatives to preserve the honor of the family.” Austrian Country of Origin Information Department (Bundesamts für Fremdenwesen und Asyl (BFA)), *AfPak: Principals of the Tribal & Clan Structure*, 5 April 2017, [https://coi.easo.europa.eu/administration/austria/PLIB/ANALY\\_AfPak\\_tribal\\_and\\_clan\\_structure\\_2017\\_04\\_05.pdf](https://coi.easo.europa.eu/administration/austria/PLIB/ANALY_AfPak_tribal_and_clan_structure_2017_04_05.pdf), p. 51. “So-called “honour killings” are not uncommon in conservative Afghanistan and relations between men and women outside marriage are strictly controlled under local and Islamic practices, with violations often punishable by death.” The Express Tribune, *In ‘Honour Killing’, Mob Lynches Afghan Couple for Eloping*, 12 February 2017, <https://tribune.com.pk/story/1324630/mob-lynches-afghan-couple-eloping-honour-killing/>. “Occurrences of honor killings are widespread, notably in the countryside and rural areas, and often go unreported or unsolved due to cultural factors and the silencing of victims.” Gender Concerns International, *The Situation of Women in Afghanistan*, undated, <http://www.genderconcerns.org/country-in-focus/afghanistan/the-situation-of-women-in-afghanistan>. See also, New York Minute Magazine, *Afghanistan’s Honor Killings Must End*, 17 July 2017, <http://www.newyorkminutemag.com/afghanistans-honor-killings-must-end/>; RFE/RL, *Young Afghan Lovers Lynched By Armed Mob In Latest Horrific ‘Honor’ Killing*, 16 February 2017, <https://www.rferl.org/a/afghanistan-honor-killing-fateha-lynched/28314022.html>. Article 398 of the Afghan Penal Code of 1976 exempted perpetrators of honour killings “from punishment for laceration and murder”, and instead imposed a term of imprisonment of no longer than two years. This article was however removed in the revised Penal Code of 2017. Afghanistan, *Penal Code*, 22 September 1976, <http://www.refworld.org/docid/4c58395a2.html>. An unofficial translation of the 2017 Penal Code is on record with UNHCR. See also IWPR, *Afghanistan’s Domestic Violence Loophole*, 16 January 2017, <https://iwpr.net/global-voices/afghanistans-domestic-violence-loophole>.

<sup>463</sup> A 2017 report by Relief International and OCHA on gender-based violence (GBV) found that in many cases when women report such violence, the victims’ testimonies are not believed, which contributes to victims’ reluctance to report incidents of GBV. Relief International and OCHA, *GBV Sector Assessment Results Report*, December 2017, <http://www.refworld.org/docid/5a81563b4.html>, pp. 6-8. The report also found that in some cases “not only the victims [of GBV] have to bear the shame and social consequences of sexual violence [...], but sometimes they are forced to marry their aggressor, likely starting a life of violence and abuse”. Ibid., p. 7.

<sup>464</sup> Art. 640 of the 2017 Penal Code criminalises virginity tests “committed by force, threat or intimidation” making it punishable with “medium imprisonment”. Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR). See also T. Wimpelmann, *Adultery, Rape, and Escaping the House: The Protection and Policing of Female Sexuality in Afghanistan*, December 2017, <https://www.cmi.no/publications/file/6404-adultery-rape-and-escaping-the-house.pdf>, p. 10.

<sup>465</sup> “While noting the delegation’s statement that the practice of virginity tests is part of the local culture and has no legal ground, the Committee remains deeply concerned that the conduct of such a practice is routinely required by police officers and prosecutors for women fleeing domestic violence and consequently suspected of moral crimes, such as adultery.” UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.htm>. “In the

“sexual assault and torture”.<sup>466</sup> The new Penal Code also criminalizes *zina* (sexual intercourse between an unmarried couple).<sup>467</sup> Article 636 of the new Penal Code also contains a “clearer and more comprehensive definition of rape, which does not proceed from *zina*”.<sup>468</sup>

Men responsible for domestic violence or forced marriages reportedly almost always enjoy impunity.<sup>469</sup> In addition, since women are usually economically dependent on the perpetrators of domestic violence, many women are effectively prevented from raising complaints; they have few options but to continue to live in abusive situations.<sup>470</sup>

Access to justice for women seeking to report violence is further hampered by the fact that women police officers constitute less than two per cent of all police officers in the country,<sup>471</sup> due to widespread stigmatization of women joining the police force.<sup>472</sup> Additionally, women police officers are reportedly

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course of our forensic capacity building work in Afghanistan, we learned that the Legal Medicine Directorate and some hospitals routinely performs “virginity tests” in cases where women and girls are suspected of adultery (*zena*) under article 427(1) of Afghanistan’s penal code, attempted adultery (*qasd zena*), or running away from home (*faraar az khana*). These examinations are purportedly undertaken to establish whether a woman has had sexual intercourse or can be considered a ‘virgin’.” Afghanistan Forensic Science Organization, *Virginity Testing*, undated, <http://fso.org.af/en/virginity-testing/>. See also, BBC, *The Shame of Afghanistan's Virginity Tests*, 29 December 2017, <http://www.bbc.com/news/world-asia-42112827>; HRW, *Raped, then Assaulted by the Afghan Justice System*, 13 December 2017, <https://www.hrw.org/news/2017/12/13/raped-then-assaulted-afghan-justice-system>; IWPR, *Afghanistan: The High Price of Virginity*, 11 January 2017, <https://iwpr.net/global-voices/afghanistan-high-price-virginity>; Medium, *Virginity Testing is Still Present in Afghanistan*, 11 January 2017, <https://medium.com/@sunnycom/virginity-testing-in-afghanistan-is-still-present-e5ef538fe83a>; Global Citizen, *The Humiliating Test Women Must Undergo in Afghanistan After Sexual Assault*, 9 January 2017, <https://www.globalcitizen.org/en/content/the-humiliating-test-women-must-undergo-in-afghani/>; New York Times, *Despite Ban, Invasive Virginity Tests Remain Prevalent in Afghanistan*, 6 January 2017, <https://nylive.nytimes.com/womenintheworld/2017/01/08/invasive-virginity-tests-still-happening-in-afghanistan-despite-ban>.

<sup>466</sup> AIHRC, *Forced Gynecological Exams as Sexual Harassment and Human Rights Violation*, 5 December 2015, <http://www.refworld.org/docid/5694bedf4.html>, p. 13; Afghanistan Forensic Science Organization (AFSO), *Virginity Testing*, undated, <http://fso.org.af/en/virginity-testing/>. See also HRW, UN: *WHO Condemns 'Virginity Tests'*, 1 December 2014, <https://www.hrw.org/news/2014/12/01/un-who-condemns-virginity-tests>.

<sup>467</sup> Art. 644 of the new Penal Code criminalizes *zina*, making it punishable with “medium imprisonment of more than two years” if the perpetrator is married and “up to two years” if the perpetrator is unmarried. Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR).

<sup>468</sup> T. Wimpelmann, *Adultery, Rape, and Escaping the House: The Protection and Policing of Female Sexuality in Afghanistan*, December 2017, <https://www.cmi.no/publications/file/6404-adultery-rape-and-escaping-the-house.pdf>, p. 10.

<sup>469</sup> “[T]he risk of incrimination for *zina* seems to serve as a strong deterrence against reporting a case of rape, especially in the absence of family support. It is rare for women to independently approach authorities with a claim, perhaps with the exception of instances where a rape has led to pregnancy.” T. Wimpelmann, *Adultery, Rape, and Escaping the House: The Protection and Policing of Female Sexuality in Afghanistan*, CMI Working Paper Number 9, December 2017, <https://www.cmi.no/publications/file/6404-adultery-rape-and-escaping-the-house.pdf>, p. 12. “A culture of impunity had thus effectively encouraged sexual abuse and other forms of violence [...] nearly 600 instances of so-called honour killings had been registered with the [Afghanistan Independent Human Rights] Commission over the last five years. Most perpetrators had either evaded justice or received a lenient sentence at trial [...] the real figure was likely to be much higher, because of the culture of shame surrounding such cases.” IWPR, *Afghanistan's Domestic Violence Loophole*, 16 January 2017, <https://iwpr.net/global-voices/afghanistans-domestic-violence-loophole>. United States Department of State, *2016 Country Reports on Human Rights Practices - Afghanistan*, 3 March 2017, <http://www.refworld.org/docid/58ec8a7fa.html>; AIHRC, *Elimination of Violence against Women 1394*, 30 November 2015, <http://www.refworld.org/docid/5694bfa04.html>; UNAMA, *Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication*, April 2015, <http://www.refworld.org/docid/55814b3c4.html>, p. 29. See also for example NYT, *Rebelling against Abuse, Afghan Women See Signs of Change*, 27 May 2014, <http://www.nytimes.com/2014/05/28/world/asia/rebelling-against-abuse-afghan-women-see-signs-of-change.html>. As also noted in Section III.A.8 on “Women and men perceived as contravening social mores”, the authorities in some instances seek to justify the detention of women as a “protective measure” against further abuse or retaliation by family members.

<sup>470</sup> “Women who are economically dependent on the violent family members, never report the abuse. Few Afghan women that do seek help avoid going to the formal court system and prefer more traditional ways of solving the conflict, which outcomes in most cases end for the man’s benefit.” Associazione Diritti e Frontiere, *Under Warlords’ Rule Solidarity Party of Afghanistan Celebrates International Women’s Day*, 15 May 2018, <https://www.a-dif.org/2018/05/15/under-warlords-rule-solidarity-party-of-afghanistan-celebrates-international-womens-day/>. See also, IWPR, *Afghanistan's Domestic Violence Loophole*, 16 January 2017, <https://iwpr.net/global-voices/afghanistans-domestic-violence-loophole>.

<sup>471</sup> “The limited presence of women in the Afghan National Police (1.8 per cent), contributes to the underreporting of sexual violence.” UN Security Council, *Report of the Secretary-General on Conflict-Related Sexual Violence*, 15 April 2017, S/2017/249, <http://www.refworld.org/docid/5a6216834.html>, para. 17. See also, LA Times, *In Afghanistan, An Elite Female Police Officer Battles Cultural Taboos As Well As The Taliban*, 3 May 2017, <http://www.latimes.com/world/la-fg-afghanistan-female-police-2017-story.html>; UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 11 January 2017, A/HRC/34/41, <http://www.refworld.org/docid/5a562b9d4.html>, para 50.

<sup>472</sup> AIHRC, *Situation of Women Employed in Defense and Security Sectors*, 9 December 2017, <http://www.refworld.org/docid/5a4f76654.html>, p. 12. “Across Afghanistan, the police role is perceived as bringing shame to an individual and her family. Often families forbid a wife or daughter from participating. Policewomen reported not wearing their uniforms to and from work in fear of harassment. For some, the role has been a death sentence such as the six policewomen murdered in Eastern Afghanistan in 2013”. E-International Relations, *The Role of Policewomen in Ending Gender Violence in Afghanistan*, 3 August 2017, <http://www.e-ir.info/2017/08/03/the-role-of-policewomen-in-ending-gender-violence-in-afghanistan>.

themselves at risk of sexual harassment and assault in the workplace, including rape by male colleagues.<sup>473</sup> They are also reported to be at risk of violent attacks by AGEs.<sup>474</sup>

Impunity for acts of sexual violence is further reported to persist due to the fact that in some areas of the country, alleged rapists are powerful commanders or members of armed groups or criminal gangs, or have links to such groups or influential individuals who protect them from arrest and prosecution.<sup>475</sup>

### *b) Harmful Traditional Practices*

Harmful traditional practices continue to be pervasive in Afghanistan,<sup>476</sup> occurring in varying degrees in both rural and urban communities throughout the country, and among all ethnic groups.<sup>477</sup> Rooted in discriminatory views about the role and position of women in Afghan society, harmful traditional practices disproportionately affect women and girls. Such practices include various forms of forced

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<sup>473</sup> AIHRC, *Situation of Women Employed in Defense and Security Sectors*, 9 December 2017, <http://www.refworld.org/docid/5a4f76654.html>, pp. 18-25; Ariana News, *AIHRC Voices Concern about Harassment of Women in Afghan Police*, 20 April 2017, <https://ariananews.af/aihrc-voices-concern-about-harassment-of-women-in-afghan-police>; UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 11 January 2017, A/HRC/34/41, <http://www.refworld.org/docid/5a562b9d4.html>, para 50.

<sup>474</sup> AIHRC, *Situation of Women Employed in Defense and Security Sectors*, 9 December 2017, <http://www.refworld.org/docid/5a4f76654.html>, p. 12; UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 18.

<sup>475</sup> “Corruption and the misuse of authority means the people who murder or rape women and have connections to a [militia] commander, a lawyer or a judge are not punished [...] They know that they are free from punishment and so feel free to murder and rape with impunity.” IWPR, *Afghanistan’s Domestic Violence Loophole*, 16 January 2017, <https://iwpr.net/global-voices/afghanistans-domestic-violence-loophole>.

<sup>476</sup> “A staggering 87% of Afghan women experience violence, mostly at the hands of the family members and people who claim to love them the most. This violence includes: linked to early and forced marriages – including *baad* (the exchange of girls for dispute resolution) and *baadal* (exchange marriages); so-called honor crimes; rapes and killings of women; sexual harassment in the workplace and in public spaces; and self-immolation and self-harm linked to experiences of violence.” Kabul Times, *Woman, Who Has No Peace*, 4 December 2017, <http://thekabultimes.gov.af/index.php/opinions/social/15661-woman-who-has-no-peace.html>.

<sup>477</sup> Specific concerns have been expressed in relation to the Shi’ite Personal Status Law. The law was adopted pursuant to Article 131 of the Constitution of Afghanistan and regulates family law matters (e.g. marriage, divorce and inheritance rights) of the Shi’ite community in Afghanistan: Shi’ite Personal Status Law, March 2009, <http://www.refworld.org/docid/4a24ed5b2.html>. While the law was welcomed by some prominent Shi’ites and Shi’ite groups for officially recognizing Shi’ite jurisprudence, the law in its initial form was the subject of domestic and international criticism for its failure to protect women’s rights. The criticisms led to amendments of the law, but the law retains some of the contentious provisions, including discriminatory provisions regarding guardianship, inheritance, under-age marriages, and limitations on movements outside the home. 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 CESCR, *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Afghanistan*, E/C.12/AFG/CO/2-4, 7 June 2010, <http://www.refworld.org/docid/4c1732dc2.html>. The UN High Commissioner for Human Rights denounced the law as legitimizing harmful traditional and customary practices that disadvantage women and called for its repeal; UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Afghanistan and on the Achievements of Technical Assistance in the Field of Human Rights*, A/HRC/13/62, 11 January 2010, <http://www.refworld.org/docid/4bc2c8d62.html>, paras 4 and 21-23.



marriages,<sup>478</sup> including child marriages;<sup>479</sup> forced isolation in the home; and “honour killings”.<sup>480</sup> Coerced forms of marriage in Afghanistan include:

- (i) “sale” marriage, where women and girls are sold for a fixed quantity of goods or cash, or to settle a family debt;<sup>481</sup>
- (ii) *baad*, 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;<sup>482</sup>

<sup>478</sup> “Forced marriage of adult women [...] occurs with some frequency in Afghanistan”. HRW, “*I Won’t Be a Doctor, and One Day You’ll Be Sick*”: Girls’ Access to Education in Afghanistan, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, p. 52. The Asia Foundation found in its 2017 survey that 11.8 per cent of respondents identified forced marriages/dowry as the most serious problem facing women in Afghanistan. Asia Foundation, *Afghanistan in 2017: A Survey of the Afghan People*, 2017, [https://asiafoundation.org/wp-content/uploads/2017/11/2017\\_AfghanSurvey\\_report.pdf](https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf), p. 6. See also, Newsweek, *Rape, Underage Sex, Forced Marriage, Abuse. That’s the Plight of too Many Afghan Girls*, 29 December 2017, <http://www.newsweek.com/rape-underage-sex-abuse-forced-marriage-thats-plight-too-many-afghan-girls-758341>; New York Times, *Brought Together by Pain, 3 Girls Forced into Marriage Have New Dreams*, 6 October 2017, <https://www.nytimes.com/2017/10/06/world/asia/afghanistan-child-brides-marriage.html>; Pajhwok Afghan News, *Forced and Early Marriages: A Form of Trafficking in Persons*, 29 March 2017, <https://www.pajhwok.com/en/2017/03/29/forced-and-early-marriages-form-trafficking-persons>; Pajhwok Afghan News, *Forced Marriage: A Cultural Dimension Of Human Trafficking*, 1 March 2017, <https://www.pajhwok.com/en/2017/03/01/forced-marriage-cultural-dimension-human-trafficking>; Tahir Justice Center, *Forced Marriage Overseas: Afghanistan*, undated, <http://preventforcedmarriage.org/forced-marriage-overseas-afghanistan/>.

<sup>479</sup> According to UNICEF statistics, 9 per cent of Afghan children are married by the age of 15 and 35 per cent by the age of 18. UNICEF, *Child Marriage Database*, November 2017, [https://data.unicef.org/wp-content/uploads/2015/12/Child-marriage-database\\_Nov-2017.xlsx](https://data.unicef.org/wp-content/uploads/2015/12/Child-marriage-database_Nov-2017.xlsx). “Under Afghan law, the minimum age of marriage for girls is 16, or 15 with the permission of the girl’s father or a judge, while boys must wait until they are 18 to marry. The law’s different treatment of males and females violates international law on child marriage. In practice the law is rarely enforced, so even earlier marriages are likely.” HRW, “*I Won’t Be a Doctor, and One Day You’ll Be Sick*”: Girls’ Access to Education in Afghanistan, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, p. 52. According to Save the Children, “up to 80% of marriages were forced marriages on girls”. Additionally, “most of child marriages are arranged by the parents. Marriages subsequent to an exchange are the second type of child marriages [...] The third typology is marriages organized in exchange for money. The forth type is marriages as a result of the influence and power of the husband followed by giving the girls into *baad* and the marrying girls to pay family debts.” Save the Children, *Knowledge, Attitudes and Practices on Violence and Harmful Practices Against Children in Afghanistan: A Baseline Study*, August 2017, <http://www.refworld.org/docid/5a5dd34a4.html>, p. 9. “Forced child marriage, where a minor has not genuinely given his/her free and informed consent to enter the marriage and has been coerced into accepting the union, is a prevalent phenomenon in Afghanistan. In most cases, young Afghan girls are married off to much older men, ‘in exchange’ for money to the girls’ family. [...] TiP High Commission official confirmed that forced marriages have increased in Helmand [...] Civil society leader Khuda-i-Noor Khanzada said they also have received many such complaints of forced marriages”. Pajhwok Afghan News, 1 March 2017, <https://www.pajhwok.com/en/2017/03/01/forced-marriage-cultural-dimension-human-trafficking>. The Afghan Analysts Network reports that “although article 70 of the civil law specifies the minimum age for marriage is 18 years of age for men and 16 for women, girls under the age of 15 make up three per cent of all married women according to Afghanistan’s periodic report under the Convention on the Elimination of All Forms of Discrimination against Women. Article 28 of the law on the Elimination of Violence against Women states that those who force girls to marry under the age of 15 should be imprisoned for at least two years and the same article states that the marriage of an underage girl can be cancelled at the request of the girl. However, the implementation of these laws is difficult given Afghanistan’s traditional society. This is particularly true when the economies of entire families depend on underage marriages.” AAN, *The Bride Price: The Afghan Tradition of Paying for Wives*, 25 October 2016, <https://www.afghanistan-analysts.org/the-bride-price-the-afghan-tradition-of-paying-for-wives/>. The Juvenile Code of 2005 fails to address the issue of child marriage; see, UNICEF, *Children and Women in Afghanistan: A Situation Analysis 2014*, November 2014, [http://www.unicef.org/afghanistan/SitAn\\_-\\_Long\\_Report\\_-\\_small\\_size\\_.pdf](http://www.unicef.org/afghanistan/SitAn_-_Long_Report_-_small_size_.pdf), p. 39.

<sup>480</sup> “In Afghanistan, women and girls are considered to embody family honor, and they often pay the price if they are perceived to have offended custom, tradition, or honor. Female rape victims in Afghanistan are deemed to have brought shame on their family and community and risk double victimization through honor killings. Similarly, women suspected of having sexual relations outside of marriage (*zina*) are widely perceived to bring shame on their families and also risk being the subject of an honor killing, either on the initiative of male family members or at the direction of local councils comprised of male elders.” CGRS, *Breaking Barriers: Challenges to Implementing Laws on Violence against Women in Afghanistan and Tajikistan*, April 2016, [https://cgrs.uchastings.edu/sites/default/files/Afghanistan\\_Tajikistan\\_Full%20Report\\_Revised%204-5-2016\\_FINAL\\_0.pdf](https://cgrs.uchastings.edu/sites/default/files/Afghanistan_Tajikistan_Full%20Report_Revised%204-5-2016_FINAL_0.pdf), p. 14.

<sup>481</sup> “High bride prices can lead to debt for grooms and their families and early marriage to unsuitable men for the daughters of poor men; fathers of many daughters, however, may benefit from the practice. [...] Bride price also drives child marriage in Afghanistan [...] Getting a high bride price was a major reason given by parents for marrying their girls off young. Other economic factors also counted, including giving girls in lieu of debts and exchanging girls, so that neither family had to pay the bride price.” AAN, *The Bride Price: The Afghan Tradition of Paying for Wives*, 25 October 2016, <https://www.afghanistan-analysts.org/the-bride-price-the-afghan-tradition-of-paying-for-wives/>. See also IWPR, *Afghanistan: Betrothed in the Womb*, 22 March 2017, <https://iwpr.net/global-voices/afghanistan-betrothed-womb>. Opium-farming families are reported to sell their children to settle debts with opium traffickers. US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>. “Children are given opium to keep them quiet, sent out to beg, turned over to orphanages or sold into marriage to pay for drugs.” Washington Post, *Opium Use Booms in Afghanistan, Creating a ‘Silent Tsunami’ of Addicted Women*, 19 June 2017, [https://www.washingtonpost.com/world/asia\\_pacific/opium-use-booms-in-afghanistan-creating-a-silent-tsunami-of-addicted-women/2017/06/19/6c5b16f2-3985-11e7-a59b-26e0451a96fd\\_story.html](https://www.washingtonpost.com/world/asia_pacific/opium-use-booms-in-afghanistan-creating-a-silent-tsunami-of-addicted-women/2017/06/19/6c5b16f2-3985-11e7-a59b-26e0451a96fd_story.html).

<sup>482</sup> “When families in some parts of Afghanistan fall out over serious matters, one way of avoiding an escalating blood feud is for the offending party to hand over a woman to the other side. Known as “*baad*”, the custom involves an arranged marriage between the woman and someone from the injured family [...] *Baad* is an ancient tradition in Afghanistan, dating back to the days when no central legal authority existed, and conflicts were settled through the tribal system. [...] When a man kills, rapes, or has sexual relations with someone other than his wife, a local council can step in to mediate. Lesser offences can usually be settled by the exchange of money, perhaps a few sheep or a cow. But the standard penalty for a serious crime is for the offender’s family to part with a girl, who is given to the victim’s family. While face is saved, the woman, or often a young girl, finds herself forced into marriage, and her in-laws often take out lingering resentments on her. Campaigners say the practice is a major cause of domestic violence.” IWPR, *Hope for Afghan Women Traded to End Feuds*, 17 January 2017, <https://iwpr.net/global-voices/hope-afghan-women-traded-end-feuds>. “*Baad*, or the giving of a girl to another family to settle a dispute, is a



- (iii) *baadal*, an agreement between two families on “exchanging” daughters through marriage, often with a view to minimize marriage costs;<sup>483</sup>
- (iv) the coercion of widows into marrying a man from their deceased husband’s family.<sup>484</sup>

Economic insecurity and ongoing conflict, related displacement, loss of assets and the impoverishment of the family perpetuate the problem of child and forced marriages, with the practice often seen as the only means of survival for the girl and her family.<sup>485</sup>

The EVAW law criminalizes several harmful traditional practices, including the buying and selling of women for marriage, offering women for dispute resolution under *baad*, and child and forced marriages.

### c) Summary

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

- a) Survivors and those at risk of sexual and gender-based violence;
- b) Survivors and those at risk of harmful traditional practices; and
- c) Women perceived as contravening social mores (see Section III.A.8).

Depending on the individual circumstances of the case, they may be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of State or non-State actors for reasons of their membership of a particular social group, their religion, their (imputed) political opinion, or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution where the actors of persecution are non-State actors.

## 8. Women and Men Who Are Perceived as Contravening Social Mores<sup>486</sup>

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

common practice, particularly in the more remote and rural areas of Afghanistan. Girls who are given in *baad* often face a lot of violence and hostility from their new families. A survivor of *baad* from Nangarhar told AAN: “From the day a girl is given as *baad*, she is given into slavery and is never treated like a normal member of the family. She is often abused and beaten by the in-laws.” AAN, *Reality Check: No Justice for Women in Ghor Province*, 4 December 2016, <https://www.afghanistan-analysts.org/reality-check-no-justice-for-women-in-ghor-province>.

<sup>483</sup> “*Baddal* refers to the exchange of daughters in marriage between families. This is often, but not always, a form of forced marriage, and may have economic implications (e.g., there is generally no bride price involved).” Asia Foundation, *Afghanistan in 2017: A Survey of the Afghan People*, 14 November 2017, [https://asiafoundation.org/wp-content/uploads/2017/11/2017\\_AfghanSurvey\\_report.pdf](https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf), p. 140.

<sup>484</sup> According to the *Pashtunwali* code if a man dies, his wife is part of the inheritance. “She [the widow] must be married to her brother-in-law, or her husband *Tarboor* (cousin). Such a woman is called *Kunda* (widow).” Austrian Country of Origin Information Department (*Bundesamts für Fremdenwesen und Asyl*), *AfPak: Principals of the Tribal & Clan Structure 2017 04 05.pdf*, 5 April 2017, [https://coi.easo.europa.eu/administration/austria/PLib/ANALY\\_AfPak\\_tribal\\_and\\_clan\\_structure\\_2017\\_04\\_05.pdf](https://coi.easo.europa.eu/administration/austria/PLib/ANALY_AfPak_tribal_and_clan_structure_2017_04_05.pdf), p. 48. Widows who reject such marriages are likely to lose custody of their children, due to discriminatory provisions in the Afghan Civil Code on child custody. They may also be at risk of sexual and gender-based violence at the hands of the deceased husband’s male relatives. See UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2015*, August 2015, <http://www.refworld.org/docid/55c1bdc4d.html>, p. 18. Widows who run away from home to avoid the forced marriage or to keep their children may be prosecuted for “moral crimes” or could be at risk of “honour killings”; see also Section III.A.8.

<sup>485</sup> “Child marriages are usually aimed at strengthening ties with rival families and tribes, as part of deals or to settle debts and disputes. Poor families often end up selling daughters for large dowries from wealthy people and the husbands are usually much older. The decisions to sell off girls for marriage are made by men, and wives, mothers, sisters and the girls themselves having little or no say.” UNFPA Afghanistan, *Child Marriage*, undated, <http://afghanistan.unfpa.org/node/15233>. “Being out of school puts girls at heightened risk of child marriage. Afghan government data indicates that girls who did not study are three times as likely to marry before age 18 as girls who completed secondary education or higher. And that lack of access to education is a major driver of child marriage. [...] Poverty both keeps many girls out of school and encourages child marriage.” HRW, “*I Won’t Be a Doctor, and One Day You’ll Be Sick*”: *Girls’ Access to Education in Afghanistan*, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, pp. 53-54. “Child and forced marriage are outlawed but remain common in Afghanistan, particularly among poor families eager for dowries.” Reuters, *Invisible Taliban Child Brides, Widows Trapped as Sex Slaves*, 23 August 2017, <https://www.reuters.com/article/us-afghanistan-rights-women/invisible-taliban-child-brides-widows-trapped-as-sex-slaves-idUSKCN1B31PL>.

<sup>486</sup> For analysis of the situation of individuals who are perceived as contravening AGEs’ interpretation of Islamic principles, norms and values, see Section III.A.6. For analysis of the specific situation of individuals of diverse sexual orientations and/or gender identities, see Section III.A.12. For analysis of the situation of women in the public sphere, see Section III.A.1.i. For more information on the situation of women, see Section III.A.7.

marginalize them.<sup>487</sup> Women who are perceived as transgressing social norms continue to face social stigma, general discrimination and threats to their safety, particularly in rural areas and in areas under the control of AGEs.<sup>488</sup> Such norms include strict dress code,<sup>489</sup> as well as requirements that restrict women's freedom of movement, such as the requirement to be accompanied by a male relative chaperone when appearing in public.<sup>490</sup>

Women without male support and protection, including widows and divorced women,<sup>491</sup> are at particular risk.<sup>492</sup> They generally lack the means of survival, given existing social norms imposing restrictions on women living alone, including limitations on their freedom of movement and on their ability to earn a living.<sup>493</sup>

<sup>487</sup> "Women and girls in Afghanistan continue to face severe and persistent discrimination, violence, street harassment, forced and child marriage, severe restrictions on working and studying outside the home and limited access to justice." Bertelsmann Stiftung, *BTI 2018: Country Report Afghanistan*, 2018, <https://www.bti-project.org/en/reports/country-reports/detail/itc/AFG/>. See also USCIRF, *Annual Report 2018 (Tier 2 Countries): Afghanistan*, 25 April 2018, [http://www.uscifr.gov/sites/default/files/Tier2\\_AFGHANISTAN.pdf](http://www.uscifr.gov/sites/default/files/Tier2_AFGHANISTAN.pdf), p. 4; UN General Assembly, *The Situation of Human Rights in Afghanistan: Report of the United Nations High Commissioner for Human Rights*, 21 February 2018, Advance Edited Version, A/HRC/37/45, <http://www.refworld.org/docid/5a562b9d4.html>, para. 55; RFE/RL, *Hundreds of Women March in Kabul for International Women's Day*, 8 March 2018, <https://www.rferl.org/a/afghanistan-womens-day-kabul-march-rights-29086799.html>; Reuters, *Afghanistan's Female Lawyers Risk Danger to Help Women Branded 'Cheap and Filthy'*, 4 July 2017, <https://www.reuters.com/article/us-afghanistan-women-lawyers/afghanistans-female-lawyers-risk-danger-to-help-women-branded-cheap-and-filthy-idUSKBN19POL4>; Tolo News, *Women's Rights Still Sadly Lacking in Afghanistan*, 11 April 2017, <http://www.tolonews.com/afghanistan/women%E2%80%99s-rights-still-sadly-lacking-afghanistan>; IWPR, *Afghanistan: The Shame of Having Daughters*, 20 January 2017, <https://iwpr.net/global-voices/afghanistan-shame-having-daughters>; UN Women Asia and the Pacific, *UN Women Afghanistan*, undated, <http://asiapacific.unwomen.org/en/countries/afghanistan>.

<sup>488</sup> Daily Times, *Afghan Woman: Sold Like a Goat, Treated like a Dog*, 2 January 2017, <https://dailytimes.com.pk/37158/afghan-woman-sold-like-a-goat-treated-like-a-dog>; Gandhara, *Violence Against Women on the Rise in Afghanistan*, 6 February 2017, <https://gandhara.rferl.org/a/afghanistan-violence-against-women/28284751.html>; Independent, *Woman Beheaded in Afghanistan 'For Going out in City Without her Husband'*, 28 December 2016, <http://www.independent.co.uk/news/world/asia/afghanistan-woman-beheaded-shopping-without-husband-a7498711.html>; Agencia EFE, *Afghanistan Has No Place for Female Sporting Heroes*, 24 November 2016, <https://www.efe.com/efe/english/sports/afghanistan-has-no-place-for-female-sporting-heroes/50000266-3106220>; Khaama Press, *Taliban Publicly Execute 19-Year-Old Girl in North of Afghanistan*, 2 August 2016, <https://www.khaama.com/taliban-publicly-execute-19-year-old-girl-in-north-of-afghanistan-01624>.

<sup>489</sup> "Women in Afghanistan adhere to stringent societal restrictions on their dress, appearance and behaviour, particularly in public [...] adopting coverings with the burqa in public is not a woman's choice but an imposition by religious and customary attitudes toward women's public role." EASO, *Country of Origin Information Report: Afghanistan Individuals targeted under societal and legal norms*, December 2017, <http://www.refworld.org/docid/5a38ce314.html>, p. 36. See also RFE/RL, *Afghan Singer Aryana Sayeed Vows the Show Will Go On, Despite Threats*, 17 August 2017, <https://www.rferl.org/a/afghan-singer-aryana-sayeed-kabul-charity-concert-threats/28682592.html>.

<sup>490</sup> In August 2017, a woman was reportedly shot dead in Fayrab province by a member of the Taliban because she was travelling in a shared taxi without a mahram (male guardian). UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 10. "[S]ocio-cultural norms, which do not allow women to interact with men, travel without a mahram, or own land, among many other restrictions, curtail women's access to a host of resources and services." AREU, *Women in Agriculture in Afghanistan*, <https://areu.org.af/wp-content/uploads/2017/07/1707-Women-in-Agriculture-in-Afghanistan.pdf>, p. 2. "Women's outings to public places (anywhere outside the house: the street, the bazaar, or the houses of relatives) are [...] subject to permission (ijaze) by elders, husbands, or male relatives [...] Unaccompanied women who move around at leisure or without legitimate reasons are suspect and seen as potentially threatening to the social order." T. Wimpelmann, *The Pitfalls of Protection: Gender, Violence, and Power in Afghanistan* (California: University of California Press), 2017, p. 110. "In Afghanistan, it is customary for women – including single women – to be accompanied outside the home by a male family member (husband or male relative), known as a mahram. [...] The male relative protects them against harassment from other men among other things. Without a mahram, women are seen as 'fair game'." Netherlands Ministry of Foreign Affairs, *Country of Origin Report on Afghanistan*, November 2016, <http://www.refworld.org/docid/5a60d67d4.html>, pp. 82-83. See also US Department of State, *2016 Country Reports on Human Rights Practices: Afghanistan*, 3 March 2017, <http://www.refworld.org/docid/58ec8a7fa.html>; Landinfo, *Afghanistan: The Security Situation in Nangarhar Province*, 13 October 2016, <http://www.refworld.org/docid/5a6af7d24.html>, p. 17.

<sup>491</sup> See sources quoted in ACCORD, *Query Response on Afghanistan: Rights of Single Mothers (Widows and Divorced Women): Legislation and Practices*, 2 June 2017, <https://www.ecoi.net/en/document/1406983.html>; see also, New York Times, *In Afghanistan, 'I Feel Like a Divorced Woman Is Up For Grabs'*, 17 April 2017, <https://www.nytimes.com/2017/04/17/world/asia/afghan-women-divorce.html>.

<sup>492</sup> "In Afghanistan, women and those without male protection in particular are subjected to widespread harassment and discrimination. Widowed and single mothers are considered to be 'like a pot with no lid' or to put in another way, morally loose." IGUACU, *Women of War - Behind the Frontlines in Afghanistan*, 29 November 2017, <https://weariguacu.org/blog/post/women-of-war-in-afghanistan>. "Unfortunately, in Afghanistan, and even in Kabul, a woman without a man in the house is considered immoral or available [...] Single mothers endure serious harassment, abuse and threats, usually coming from neighbors and shop owners." TED Ideas, *A Rare, Intimate Look at the Lives of Single Mothers in Afghanistan*, 27 October 2017, <https://ideas.ted.com/a-rare-intimate-look-at-the-lives-of-single-mothers-in-afghanistan>. Women who are unaccompanied by a male relative are not commonly accepted by Afghan society, particularly women such as widows, who are reportedly seen as a "burden" or "immoral". The Daily Mail, *Afghanistan's 'Hill of Widows' Live in a World Apart*, 23 June 2017, <http://www.dailymail.co.uk/wires/afp/article-4631438/Afghanistans-hill-widows-live-world-apart.html>.

<sup>493</sup> Japan Times, *War Widows in Afghanistan Pay a Heavy Price for their Husbands' Sacrifice*, 4 December 2017, <https://www.japantimes.co.jp/news/2017/12/04/world/war-widows-afghanistan-pay-heavy-price-husbands-sacrifice>; Al Jazeera, *Unemployed Afghan Widows Forced to Beg*, 11 August 2017, <http://www.aljazeera.com/video/news/2017/08/unemployed-afghan-widows-forced-beg-170811104814085.html>; The Globe and Mail, *Single Mothers of Afghanistan*, 12 May 2017, <https://www.theglobeandmail.com/news/world/mothers-day-single-mothers-afghanistan/article34969069/>; Free Women Writers, *What Life Is Like for Afghan Widows*, 23 January 2017, <https://www.freewomenwriters.org/life-afghan-widows-afghanistan>.

Punishment for breaches of customary or Sharia law is reported to disproportionately affect women and girls,<sup>494</sup> including detention on the ground of perceived “moral crimes”,<sup>495</sup> such as being improperly unaccompanied,<sup>496</sup> refusing marriage,<sup>497</sup> or “running away from home”<sup>498</sup> (including in situations of domestic violence).<sup>499</sup> A significant proportion of the girls and women detained in the country have

<sup>494</sup> The Netherlands: Ministry of Foreign Affairs, *Country of Origin Report on Afghanistan*, November 2016, <http://www.refworld.org/docid/5a60d67d4.html>, p. 83.

<sup>495</sup> “The Afghan state is frequently arresting and prosecuting women and girls for so called “moral crimes” such as *zina* and attempted *zina*. The judicial process is characterized by a lack of rule of law and it happens that persons are charged with moral crimes not codified by law.” Migrationsverket (Swedish Migration Agency), *Temarapport Afghanistan: Hedersproblematik och moralbrott*, 19 January 2018, <https://lifos.migrationsverket.se/dokument?documentAttachmentId=45400>, pp. 4-5. “Women can [...] be imprisoned under the loose category of moral crimes, which encompasses actions such as running away from home, and face prison sentences of up to five years if convicted of adultery.” IWPR, *Afghanistan's Domestic Violence Loophole*, 16 January 2017, <http://www.refworld.org/docid/587e35c14.html>. In June 2017, the UN Committee against Torture stated that it was “seriously concerned by the sentences still imposed by *jirga* courts and other forms of dispute resolution systems on the Afghan population, in particular on women, notably for so-called ‘moral crimes’, including the death sentence and corporal punishment, that amount to torture or cruel, inhuman or degrading treatment or punishment.” UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para 39. See also The Diplomat, *The Women in Afghanistan's Moral Prisons*, 8 March 2017, <https://thediplomat.com/2017/03/the-women-in-afghanistans-moral-prisons/>.

<sup>496</sup> “In some parts of the country, a woman who appeared to be travelling alone or in the company of an unrelated male could be apprehended by the police and arrested. Typically, she would be subject to a forced “virginity” test. If she was unmarried and failed the test, she would be charged with *zina* as well as with running away.” T. Wimpelmann, *Adultery, Rape, and Escaping the House: The Protection and Policing of Female Sexuality in Afghanistan*, CMI Working Paper Number 9, December 2017, <https://www.cmi.no/publications/file/6404-adultery-rape-and-escaping-the-house.pdf>, p. 8. “Authorities sometimes treated male and female victims [of trafficking] as criminals simply for being unchaperoned or for having committed moral crimes”. US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>. “Improper accompaniment” is considered a crime according to Hanafi jurisprudence; see UNAMA, *Arbitrary Detention in Afghanistan: A Call for Action, Volume I - Overview and Recommendations*, January 2009, <http://www.refworld.org/docid/49d07f272.html>, p. 7.

<sup>497</sup> “Victims of crimes such as forced marriage or rape may also risk being considered to be an offender in the eyes of the law when seeking help, despite it being legal to leave a situation of abuse.” Migrationsverket (Swedish Migration Agency), *Temarapport Afghanistan: Hedersproblematik och moralbrott*, 19 January 2018, <https://lifos.migrationsverket.se/dokument?documentAttachmentId=45400>, p. 5. See also, New York Times, *Years After Acid Attack, an Afghan Story of Survival Takes a Dark Turn*, 13 August 2017, <https://www.nytimes.com/2017/08/13/world/asia/afghanistan-womens-rights-acid-attack.html>; Khaama Press, *Taliban Kill Pregnant Woman, Execute Another Girl for Rejecting Marriage Proposal*, 2 February 2017, <https://www.khaama.com/taliban-kill-pregnant-woman-execute-another-girl-for-rejecting-marriage-proposal-02791>.

<sup>498</sup> “Afghan women who run away from home or refuse to get married are commonly accused of “moral crimes”, a vague concept that does not exist in formal law.” IWPR, *Afghanistan: Women Seek Refuge in Safe Houses*, 20 April 2017, <http://www.refworld.org/docid/59130b044.html>. UNAMA has noted that, “Running away is not a crime under the law, and both the Supreme Court and the Attorney General’s Office issued directives to this effect.” Since running away from home is not a crime under the Penal Code or Sharia Law, it lacks a precise definition. It is understood to mean the action of running away, with no intent to return home, abandoning family members without the permission of parents or legal custodians. UNAMA, *Still a Long Way to Go: Implementation of the Law on Elimination of Violence Against Women in Afghanistan*, December 2012, <http://www.refworld.org/docid/50c72e0d2.html>, pp. 3-4. See also, UN Women, *UN Women in Afghanistan Welcomes Government Statements Confirming that “Running Away” Is Not a Crime under Afghan Law*, 3 October 2012, <http://www.unwomen.org/2012/10/un-women-in-afghanistan-welcomes-government-statements-confirming-that-running-away-is-not-a-crime-under-afghan-law/>; AIHRC, *Report on the Situation of Economic and Social Rights in Afghanistan - IV*, December 2009, <http://www.refworld.org/docid/4b3b2df72.html>, p. 58. In its response to the UN Human Rights Council, the Afghan delegation confirmed that “running away from home” is not a crime, unless crimes were associated with that act. UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Afghanistan*, 4 April 2014, A/HRC/26/4, <http://www.refworld.org/docid/539064f14.html>, para. 130.

<sup>499</sup> “Women who seek help to escape violence often face indifference or criminal sanctions for committing moral crimes.” Bertelsmann Stiftung, *BTI 2018: Country Report Afghanistan*, 2018, <https://www.bti-project.org/en/reports/country-reports/detail/itc/AFG/>. In June 2017 the UN Committee against Torture stated that it “remain[ed] deeply concerned that the conduct of [virginity testing] is routinely required by police officers and prosecutors for women fleeing domestic violence and consequently suspected of moral crimes, such as adultery.” UN Committee against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para 37. In August 2010, the High Council of the Supreme Court instructed prosecutors on how to handle “runaway” cases, by invoking article 130 of the Constitution (Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>). According to the instruction, courts should assess whether women who have run away are single or married, the cause and motive for running away and the place to which the woman has run. If a woman has run away to escape harassment by family members and goes to a relative’s house, the house of a legitimate mahram (unmarriageable kin) or if she seeks help from the authorities, then this shall not be regarded as a crime under Sharia law. However, according to the instruction, if a woman goes to a stranger’s house, even if it is to escape ill-treatment at home, she exposes herself to crimes such as “adultery and other associated offences”, which are considered illegal under Sharia law. UNAMA, *Still a Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan*, December 2012, <http://www.refworld.org/docid/50c72e0d2.html>, p. 22. A copy of the Supreme Court decree (in Dari), dated 1 August 2010, is on record with UNHCR. UNAMA noted that while the instruction was initially viewed as a way to stop the common practice of arresting girls who had run away by qualifying that a woman who flees to a relative’s house or a justice institution should not be arrested, in practice the instruction was in fact used to legitimize a traditional practice that restricts women’s freedom of movement. *Ibid.*, pp. 22-23. Later instructions on the correct handling of “runaway” cases have been issued by the Attorney General’s Office, which requested units for the elimination of violence against women to issue instructions to all prosecution offices not to press charges against women for “running away” or “attempted *zina*” (“attempted adultery”), as these are not actual codified crimes under Afghan law. In December 2012 the Supreme Court sent a letter to the Attorney General’s Office stating that running away from home to escape domestic violence and seeking assistance from justice institutions, legal aid organizations or relatives was not a crime and should not be prosecuted. UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, para. 38. In December 2015 the Supreme Court issued a



been charged with “moral crimes”.<sup>500</sup> Female prisoners are reportedly often subjected to physical violence as well as sexual harassment and abuse.<sup>501</sup> Since accusations of adultery and other “moral crimes” may elicit violence or “honour killings”,<sup>502</sup> in some instances the authorities are reported to have sought to justify the detention of women accused of such acts as a protective measure.<sup>503</sup>

Men who are perceived to be acting contrary to prevailing customs may also be at risk of ill-treatment, particularly in situations of accusations of adultery and sexual relations outside of marriage.<sup>504</sup>

In areas under the effective control of the Taliban and other AGEs, women and men accused of immoral behaviour risk being tried by these AGEs’ parallel justice structures and being given harsh sentences, including lashings and death.<sup>505</sup>

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decision “banning the imprisonment of women for running away from their families, [but] the ban was limited to cases in which the women went to a medical provider, the police, or the house of a close male relative.” HRW, *World Report 2017: Afghanistan*, 12 January 2017, <http://www.refworld.org/docid/587b586111.html>. “[T]here is a particularly troubling relationship between the criminalization of various forms of female transgressions—*zina*, attempted *zina*, and running away—and a lack of protection against the form of sexual violence by far most prevalent in Afghanistan—forced marriage.” T. Wimpelmann, *Adultery, Rape, and Escaping the House: The Protection and Policing of Female Sexuality in Afghanistan*, CMI Working Paper Number 9, December 2017, <https://www.cmi.no/publications/file/6404-adultery-rape-and-escaping-the-house.pdf>, p. 12.

<sup>500</sup> In March 2017 there were reportedly “420 women serving prison sentences in Afghanistan, either for murder or for ‘moral crimes’”, while a further 410 women had been charged and were under investigation. IWPR, *Afghanistan: Female Detainees Face Sexual Abuse*, 28 March 2017, <https://iwpr.net/global-voices/afghanistan-female-detainees-face-sexual-abuse>. “The majority of women and girls in Afghan prisons are detained or have been convicted of violations of customary or Shari’a law, or ‘moral crimes’.” UNAMA, *Treatment of Conflict-Related Detainees: Implementation of Afghanistan’s National Plan on the Elimination of Torture*, April 2017, <http://www.refworld.org/docid/5909d15e4.html>, p. 6, note 10. “[A] large percentage of female prisoners are imprisoned for ‘moral crimes’, including running away from abusive relationships.” Australian Government: Department of Foreign Affairs and Trade, *Country Information Report: Afghanistan*, 18 September 2017, <http://dfat.gov.au/about-us/publications/Documents/country-information-report-afghanistan.pdf>, pp. 29-30. “The vast majority of women in prison are accused of moral crimes and were therefore forced to undergo virginity tests”. Civil Society and Human Rights Network, *Shadow Report to the Committee Against Torture on the Occasion of the Examination of the Second Periodic Report of Afghanistan at its 60th Session*, March 2017, [https://www.ecoi.net/en/file/local/1400873/1930\\_1496217729\\_int-cat-css-afg-27015-e.pdf](https://www.ecoi.net/en/file/local/1400873/1930_1496217729_int-cat-css-afg-27015-e.pdf), p. 6. In May 2015, the Special Rapporteur on violence against women reported that 428 women, or 58 per cent of all women imprisoned across Afghanistan, were detained on “moral crimes” charges. UN Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Addendum: Mission to Afghanistan*, 12 May 2015, A/HRC/29/27/Add.3, <http://www.refworld.org/docid/5583f8224.html>, para. 23.

<sup>501</sup> IWPR, *Afghanistan: Female Detainees Face Sexual Abuse*, 18 March 2017, <https://iwpr.net/global-voices/afghanistan-female-detainees-face-sexual-abuse>; Reuters, *Most Afghan Women Serve Sentences in Elders’ Homes, Not Prisons*, 11 October 2016, <https://www.reuters.com/article/us-afghanistan-women-prisons/most-afghan-women-serve-sentences-in-elders-homes-not-prisons-idUSKCN12A2KR>.

<sup>502</sup> See for example RFE/RL, *Mob Beats Afghan Woman for Alleged Affair*, 2 February 2018, <https://www.rferl.org/a/afghanistan-women-brutally-beaten-affair/29015213.html>; Tolo News, *Father Kills Daughter and her Male Friend*, 2 July 2017, <http://www.tolonews.com/afghanistan/father-kills-daughter-and-her-male-friend>; The Observers, *The Place in Afghanistan Where It’s ‘Easy To Kill Women’*, 13 April 2017, <http://observers.france24.com/en/20170413-place-afghanistan-where-it%E2%80%99%E2%80%9CEasy-kill-women%E2%80%9D>; RFE, *Young Afghan Lovers Lynched by Armed Mob in Latest Horrifying ‘Honour’ Killing*, 16 February 2017, <https://www.rferl.org/a/afghanistan-honor-killing-fateha-lynched/28314022.html>. For more information about the prevalence of “honour killings” in Afghanistan, see Section III.A.7.

<sup>503</sup> “When protection is offered to women, it is under a patriarchal guise. We see that scores of women are kept in ‘protective’ detention, where they are detained in order to ensure their protection from threats, such as honour crimes, but also to ensure that they will testify against the perpetrator in court. Such detention has been reported as continuing for up to 14 years.” Penal Reform International, *Eliminating Violence Against Women in the Criminal Justice System*, 21 November 2017, <https://www.penalreform.org/blog/eliminating-violence-women-criminal-justice-system>. See also, The Diplomat, *The Women in Afghanistan’s Moral Prisons*, 8 March 2017, <https://thediplomat.com/2017/03/the-women-in-afghanistans-moral-prisons>.

<sup>504</sup> Khaama, Press, *Taliban Stones Woman to Death, Whips Man over Adultery in Badakhshan*, 9 March 2017, <https://www.khaama.com/taliban-stones-woman-to-death-whips-man-over-adultery-in-badakhshan-02360>; New York Times, *Mob Kills Eloped Lovers after Storming Afghan Police Station*, 13 February 2017, <https://www.nytimes.com/2017/02/13/world/asia/nuristan-province-afghanistan-honor-killings.html>.

<sup>505</sup> “From January to November 2017, UNAMA/OHCHR documented four incidents of parallel justice punishment by anti-government elements on accusations of moral crimes, such as eloping and committing or attempting to commit *zina* (having sex outside of marriage), which led to the execution of four women, including one by stoning and lashing.” UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, para 49. “Anti-Government Elements [...] continued to impose parallel justice structure punishments on women alleged to have behaved “immorally”. In one case, Anti-Government Elements severely beat a woman in her home in Darah-i-Suf Payin district, Samangan province, after accusing her of adultery and prostitution. In another case, in Wardoj district, Badakhshan province, Anti-Government Elements publically stoned a woman to death after deeming her guilty of adultery [...] [Other] examples of parallel justice structure punishments included the Taliban execution of two men in Farah province by shooting them to death after finding them guilty of kidnapping [...] and the amputation of a 15-year-old boy’s right hand and left foot after Anti-Government Elements found him guilty of burglary in Herat province.” UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, pp.12, 44; see also, Deutsche Welle, *The Disturbing Trend of Taliban Justice in Afghanistan*, 15 March 2017, <http://www.dw.com/en/the-disturbing-trend-of-taliban-justice-in-afghanistan/a-37950678>. For further information about public executions of women accused of immoral behaviour by the Taliban, see the discussion on honour killings in Section III.A.7.



In light of the foregoing, UNHCR considers that persons perceived as contravening social mores may, depending on the individual circumstances of the case, be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of State or non-State actors for reasons of religion, their imputed political opinion, membership of a particular social group, or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution where the actors of persecution are non-State actors.

### ***9. Individuals with Disabilities, Including in Particular Mental Disabilities, and Individuals Suffering from Mental Illnesses***

Persons with disabilities, including in particular persons with mental disabilities, and persons suffering from mental illnesses are reportedly subjected to ill-treatment by members of society, including their own family members, on the grounds that their illness or disability is a punishment for sins committed by the persons affected or by their parents.<sup>506</sup> Persons with disabilities face discrimination and limitations in access to employment, education and to adequate health care.<sup>507</sup>

UNHCR considers that depending on the individual circumstances of the case, persons with disabilities, including in particular persons with mental disabilities, and persons suffering from mental illnesses may be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of non-State actors for reasons of membership of a particular social group or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution.

<sup>506</sup> The Kabul Times, *Disabled People and Their Challenges in Afghanistan*, 6 December 2017, <http://thekabultimes.gov.af/index.php/opinions/social/15685-disabled-people-their-challenges-in-afghanistan.html>. “Returnees suffering from mental health disorders can sometimes be abandoned by their families: shame is often associated with mental health troubles as disorders are thought to be the result of demons (djinn) that have taken over an individual. As a result, some families chase the family member suffering from mental health issues or lead him to be chained in front of a shrine. Others are left to beg in the streets. In such circumstances, returnees become extremely vulnerable, as not only do they suffer from mental health issues; they are also unable to provide for themselves. They then become prey for drug traffic, prostitution, human smugglers, warlords or the Taliban.” Dr. Anicée Van Engeland, written Expert Opinion, 11 June 2017, in Asylos, *COI Compilation - Afghanistan: Situation of Young Male 'Westernised' Returnees to Kabul*, August 2017, <https://asylos.eu/wp-content/uploads/2017/08/AFG2017-05-Afghanistan-Situation-of-young-male-Westernised-returnees-to-Kabul-1.pdf>. According to the Asia Foundation, persons with disabilities “face a severe social stigma. When you ask Afghans how they perceive those who are blind, for example, some will say they see them as an incomplete person or blindness a “punishment from God.” This stigma makes it challenging for them to overcome obstacles and contribute to their family’s welfare.” Asia Foundation, *Overcoming Stigma Against Disabilities in Afghanistan*, 2 November 2016, <https://asiafoundation.org/2016/11/02/overcoming-stigma-disabilities-afghanistan/>. “[A]ncient superstitions prevail, with many across Afghanistan still attributing mental illnesses to being possessed by demons. An afflicted person can be locked up in a cage or left chained at a shrine for days on end.” AP News, *After Years of War, Afghans Wary to Talk of Mental Health*, 18 August 2016, <https://apnews.com/14df828eb00b4adfa48123751f089186>. See also, NPR, *Afghanistan's Lone Psychiatric Hospital Reveals Mental Health Crisis Fueled by War*, 14 February 2018, <https://www.npr.org/2018/02/14/585494599/afghanistans-lone-psychiatric-hospital-reveals-mental-health-crisis-fueled-by-war>; BBC World Service, *Assignment: Madness of War*, 11 February 2018, <https://www.bbc.co.uk/programmes/w3csvgp02>.

<sup>507</sup> For a detailed description on the human rights situation of persons with disabilities, including education, employment, and health care see: Afghanistan Independent Human Rights Commission (AIHRC), *Human Rights Situation of Person with Disabilities In 1394- 1395*, 10 December 2017, <http://www.aihrc.org.af/media/files/human%20rights%20situation%20of%20%20pwda%20for%20pdf.pdf>. Research by the AIHRC showed that many persons with disabilities do not have an identity certificate, which is necessary to attain citizenship and access to social services. Reportedly, 75.8 per cent of the 944 interviewees reported not having an ID card. *Ibid.*, pp. 11-12. 55.2 per cent of interviewed persons with disabilities were illiterate. *Ibid.*, p. 9. “Concerning the problems of PwDs [persons with disabilities], while the Law on the Rights and Privileges of PwDs has provided for the employment of 3% of PwDs in government departments, but unfortunately, no people with disability has, so far, been employed in government departments.” *Ibid.*, p. 19. For further information on reasons for unemployment see *ibid.*, pp. 23-24. See also, National Public Radio, *Afghanistan's Lone Psychiatric Hospital Reveals Mental Health Crisis Fuelled By War*, 14 February 2018, <https://www.npr.org/2018/02/14/585494599/afghanistans-lone-psychiatric-hospital-reveals-mental-health-crisis-fueled-by-war>; BBC, *[Video] Inside Afghanistan's Only High Security Mental Institution*, 8 February 2018, <http://www.bbc.com/news/av/world-asia-42980461/inside-afghanistan-s-only-high-security-mental-institution>; The Lancet: Global Health, *Assessment of Progress Towards Universal Health Coverage for People With Disabilities in Afghanistan: a Multilevel Analysis of Repeated Cross-Sectional Surveys*, August 2017, [http://www.thelancet.com/journals/langlo/article/PIIS2214-109X\(17\)30251-6/fulltext](http://www.thelancet.com/journals/langlo/article/PIIS2214-109X(17)30251-6/fulltext); Washington University in St. Louis, *Study in Lancet: Afghans With Disabilities Lack Access to Quality Health Care*, 14 July 2017, <https://source.wustl.edu/2017/07/afghans-disabilities-dont-access-quality-health-care/>; The Embassy of Afghanistan & Afghan Disability Rights Conference, *Final Report, Afghan Disability Rights Conference, From Policy to Programming*, 23 & 24 May 2017, [https://www.afghanembassy.us/contents/2017/05/documents/Afghan-Disability-Rights-Conference-Report\\_final.pdf](https://www.afghanembassy.us/contents/2017/05/documents/Afghan-Disability-Rights-Conference-Report_final.pdf), p. 6; IWPR, *Afghanistan: Fighting for Disability Rights, Disabled People Say They Face Social Prejudice and Government Inaction*, 6 April 2017, <https://iwpr.net/global-voices/afghanistan-fighting-disability-rights>.

## 10. Children with Certain Profiles or in Specific Circumstances<sup>508</sup>

Children may fall within a number of the other risk profiles contained in these guidelines.<sup>509</sup> Children may, however, also be at risk of child-specific forms of persecution, including under-age recruitment, child trafficking, kidnapping, bonded or hazardous child labour, domestic violence against children, forced and/or underage marriage, child prostitution and child pornography and the systematic denial of education.<sup>510</sup>

### a) Bonded or Hazardous Child Labour

Under the Labour Law children younger than 14 are prohibited from working under any circumstance. Children of 15 years and older are permitted to engage in “light work”, but may not be employed in work activities likely to threaten their health or cause disability.<sup>511</sup> The 2017 Law to Combat Crimes of Trafficking in Persons and Smuggling of Migrants defines the offence of trafficking as possession of a child for the purpose of ‘exploitation’, which includes forced labour, begging and enslavement.<sup>512</sup> The 2017 Penal Code criminalizes the recruitment of children in hard physical, unhealthy or underground labour.<sup>513</sup>

Despite such legislative protections, child labour reportedly remains widespread.<sup>514</sup> Manifestations of child labour in Afghanistan are reported to include the worst forms of child labour, such as debt bondage and other forms of forced labour,<sup>515</sup> the use of children in illicit activities including the drug trade, as well as the use of children in prostitution.<sup>516</sup> Children are reportedly also engaged in hazardous work

<sup>508</sup> For guidance on claims for international protection by 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*, 22 December 2009, HCR/GIP/09/08, <http://www.refworld.org/docid/4b2f4f6d2.html>; see also UN Committee on the Rights of the Child (CRC), *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, <http://www.refworld.org/docid/42dd174b4.html>.

<sup>509</sup> See in particular the profiles for men of fighting age and children in the context of underage and forced recruitment (Section III.A.3); civilians suspected of supporting AGEs (Section III.A.4); members of minority religious groups and persons perceived as contravening Sharia law (Section III.A.5); persons perceived as contravening AGEs’ interpretation of Islamic principles, norms and values (Section III.A.6); women (Section III.A.7); survivors of trafficking and individuals at risk of trafficking (Section III.A.11); individuals of diverse sexual orientations and gender identities (Section III.A.12); members of minority ethnic groups (Section III.A.13); and individuals involved in blood feuds (Section III.A.14).

<sup>510</sup> In compliance with the Convention on the Rights of the Child, which Afghanistan ratified in 1994, The Juvenile Code of 2005 recognizes international standards on child protection and emphasizes children’s right to proper care, guidance, protection and the opportunity for social reintegration. It increased the age of criminal responsibility from 7 to 12 years and laid out alternatives to detention. However, UNICEF notes that while the Code was developed to protect the interests of children, it fails to redress the situation of children who are victims of sexual abuse, exploitation or forced marriage. See UNICEF, *Children and Women in Afghanistan: A Situation Analysis 2014*, November 2014, [http://www.unicef.org/afghanistan/SitAn\\_-\\_Long\\_Report\\_-\\_small\\_size\\_.pdf](http://www.unicef.org/afghanistan/SitAn_-_Long_Report_-_small_size_.pdf), p. 39.

<sup>511</sup> Afghanistan, *Labour Law*, 15 January 2007, <http://www.refworld.org/docid/5b0691664.html>, Articles 13 and 120. Afghanistan has also ratified two key international treaties related to child labor: International Labour Organization (ILO) Convention No. 182 on the Worst Forms of Child Labor, and Convention No. 138 on the Minimum Age of Employment: [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102945](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102945).

<sup>512</sup> Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Article 510. See also, US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>. See also Section III.A.11.

<sup>513</sup> Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Article 613. In 2016 the President’s cabinet began drafting a Child Protection Act to address some of the worst forms of child labour. US Department of Labor, *2016 Findings on the Worst Forms of Child Labor: Afghanistan*, 30 September 2017, <http://www.refworld.org/docid/5a00215c0.html>, p. 4. See also Section III.A.11.

<sup>514</sup> Save the Children, *Knowledge, Attitudes and Practices on Violence and Harmful Practices Against Children in Afghanistan: A Baseline Study*, August 2017, <http://www.refworld.org/docid/5a5dd34a4.html>, pp. 3, 8. “[M]ore than 73 per cent of child workers had their first work experience between the ages of 5 and 11, according to our previous research. [...] Reports suggests that child labour in Afghanistan increased by 50 per cent in a decade before 2009, with at least 60,000 working in Kabul alone. Given the rapid growth of the population in the capital since 2009, including internally displaced, the number is perhaps much higher today.” The National, *Afghans Need to Stand up for the Rights of Street Working Children*, 12 April 2017, <https://www.thenational.ae/opinion/afghans-need-to-stand-up-for-the-rights-of-street-working-children-1.84117>. In February 2014, the Ministry of Labor, Social Affairs, Martyrs and Disabled released a list of hazardous jobs and/or working conditions prohibited for children, such as mining, agricultural production, begging and garbage collection; work in blast furnaces, waste-processing plants, and large slaughterhouses; work with hospital waste; drug-related work, such as processing of narcotics; working for more than 4 hours in the carpet sector; security guard services; bonded labour and work related to war. US Department of Labor, *2014 Findings on the Worst Forms of Child Labor: Afghanistan*, 30 September 2015, <http://www.refworld.org/docid/560e3e180.html>, p. 3.

<sup>515</sup> US Department of Labor, *2016 Findings on the Worst Forms of Child Labor: Afghanistan*, 30 September 2017, <http://www.refworld.org/docid/5a00215c0.html>, p. 1; US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>.

<sup>516</sup> For further analysis on the use of children in illicit activities, including the drug trade and child prostitution, see Section III.A.11.

likely to harm their health, safety or morals, such as working in coal mines or brick kilns.<sup>517</sup> Many child labourers are reportedly victims of sexual assault, abuse and violence.<sup>518</sup> Poor institutional capacity reportedly remains a serious impediment to effective enforcement of the Labour Law, including inadequate resources for inspections and the enforcement of sanctions for violations.<sup>519</sup>

Street children are reported to be among the most exposed and vulnerable groups in Afghanistan, with little or no access to government services; poverty and food shortages are reported to be key reasons for families to send their children on to the streets to beg for food and money.<sup>520</sup>

#### b) Violence against Children, including Sexual and Gender-Based Violence<sup>521</sup>

Child abuse is reported to be widespread;<sup>522</sup> common forms of abuse include physical violence, sexual abuse, abandonment and general neglect.<sup>523</sup> Some forms of domestic violence against children is reported to take place in the name of discipline.<sup>524</sup> While most child victims of sexual abuse, particularly girls, are reported to be abused by family members,<sup>525</sup> boys and girls were also reported to be at risk of sexual violence at the hands of local police and pro-government forces, AGEs and ordinary members of society.<sup>526</sup> Despite government action against the practice, young boys reportedly continue to be at risk of *bacha bazi*, a practice in which boys are kept by powerful figures, who make them dance in female clothes for male audiences, and who use them for sexual exploitation.<sup>527</sup> Impunity for sexual

<sup>517</sup> “According to Khair Mohammad Akhtarzada, the deputy governor of Samangan, more than 1,000 of some 5,000 people working in these mines [in the Dara-e Suf district of Samangan province] are underage. He said that the government only controlled four out of the hundreds of mines currently operational in the region.” IWPR, *Child Labour in Afghan Coal Mines*, 5 April 2017, <https://iwpr.net/global-voices/child-labour-afghan-coal-mines>. See also, IWPR, *Afghanistan’s Modern Day Slave Labourers*, 24 January 2017, <https://iwpr.net/global-voices/afghanistans-modern-day-slave-labourers>; Mail Online, *Held in Bonded Labour, Afghan Returnee Children Make Bricks for a Living*, 2 November 2016, <http://www.dailymail.co.uk/wires/reuters/article-3897816/Held-bonded-labour-Afghan-returnee-children-make-bricks-living.html>. See also Section III.A.11.

<sup>518</sup> According to an investigation by the Afghan Human Rights Research and Advocacy Organisation, between four and five children out of every ten child labourers working in districts in Balkh province had suffered abuse. IWPR, *Afghan Child Labourers Exposed to Abuse*, 5 December 2017, <https://iwpr.net/global-voices/afghan-child-labourers-exposed-abuse>.

<sup>519</sup> US Department of Labor, *2016 Findings on the Worst Forms of Child Labor: Afghanistan*, 30 September 2017, <http://www.refworld.org/docid/5a00215c0.html>.

<sup>520</sup> Daily Outlook, *Winter – The Hell of the Poor*, 19 December 2017, [http://outlookafghanistan.net/topics.php?post\\_id=19697](http://outlookafghanistan.net/topics.php?post_id=19697); Afghanistan Times, *Invisible Afghan Children*, 31 July 2017, <http://afghanistantimes.af/invisible-afghan-children/>; IWPR, *Afghanistan’s Child Beggars: Impoverished Parents and Organised Gangs Routinely Exploit Children for Profit*, 27 February 2017, <https://iwpr.net/global-voices/afghanistans-child-beggars>.

<sup>521</sup> For further analysis on the situation of girls subject to harmful traditional practices and sexual and gender-based violence, see Section III.A.7.

<sup>522</sup> Save the Children concluded from a 2017 study that sexual abuse against children is very likely underreported. Save the Children, *Knowledge, Attitudes and Practices on Violence and Harmful Practices Against Children in Afghanistan: A Baseline Study*, August 2017, <http://www.refworld.org/docid/5a5dd34a4.html>, p. 47.

<sup>523</sup> Article 612 of the 2017 Penal Code criminalizes the act of beating a child, as well as physically or mentally disciplining a child, and the mistreatment of a child. Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Article 612.

<sup>524</sup> IWPR, *Afghan Boys Still Beaten at School: Ban on Corporal Punishment Continues to Be Widely Ignored*, 15 March 2018, <https://iwpr.net/global-voices/afghan-boys-still-beaten-school>; Save the Children, *Save the Children Calls for End to Corporal Punishment in Afghanistan After Death of a High School Student*, 8 November 2017, <https://www.savethechildren.net/article/save-children-calls-end-corporal-punishment-afghanistan-after-death-high-school-student>; IWPR, *Afghanistan: Spare the Rod, Spoil the Child: Children Face Routine Beatings Both at Home and at School*, 27 March 2017, <https://iwpr.net/global-voices/afghanistan-spare-rod-spoil-child>.

<sup>525</sup> Save the Children, *Knowledge, Attitudes and Practices on Violence and Harmful Practices Against Children in Afghanistan: A Baseline Study*, August 2017, <http://www.refworld.org/docid/5a5dd34a4.html>, p. 27; AIHRC, *Summary Report Survey of Harassment of Women and Children in Afghanistan*, 11 March 2018, <http://www.aihrc.org.af/media/files/Research%20Reports/summary%20report%20on%20harassment%20of%20women.pdf>, p. 4; IWPR, *Afghanistan: The High Price of Virginity*, 11 January 2017, ARR 563, <http://www.refworld.org/docid/587783564.html>.

<sup>526</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 13. See also, IWPR, *Afghan Child Labourers Exposed to Abuse*, 5 December 2017, <https://iwpr.net/global-voices/afghan-child-labourers-exposed-abuse>; IWPR, *Afghanistan: Insurgents Prey on Teenage Boys*, 31 July 2017, <https://iwpr.net/global-voices/afghanistan-insurgents-prey-teenage-boys>; US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>; SIGAR, *Child Sexual Assault in Afghanistan: Implementation of the Leahy Laws and Reports of Assault by Afghan Security Forces*, June 2017, <https://www.sigar.mil/pdf/inspections/SIGAR%2017-47-IP.pdf>; IWPR, *Boys Sold for Sex in Afghan Province*, 2 March 2017, <http://www.refworld.org/docid/58bd641b4.html>; UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 11 January 2017, A/HRC/34/41, <http://www.refworld.org/docid/5a562b9d4.html>, para. 32; UNSG, *Children and Armed Conflict*, 24 August 2017, A/72/361–S/2017/821, <http://www.refworld.org/docid/59db4a194.html>, para. 27.

<sup>527</sup> The practice of *Bacha Bazi* is criminalized by the 2017 revised Penal Code which entered into force on 15 February 2018. Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Chapter Five: “Leading Children to Moral perversions” (Articles 653–667). See also, UNAMA, *UNAMA Welcomes Afghanistan’s New Penal Code – Calls for Robust Framework to Protect Women Against Violence*, 22 February 2017, <https://unama.unmissions.org/unama-welcomes-afghanistan%E2%80%99s-new-penal-code-calls-robust-framework-protect-women-against-violence>; UNAMA, *Afghanistan: Annual Report*

abuse of children is reported to remain a problem: most abusers are not arrested, and there are reports of children raped with impunity by security officials and police officers.<sup>528</sup> Some children who are prosecuted for “moral crimes” are reported to be survivors of abuse rather than perpetrators of crimes; having reported instances of sexual abuse, they are perceived to have brought shame on their family and to be in need of punishment.<sup>529</sup>

### c) *Systematic Denial of Access to Education*

Children are reported to face significant obstacles to access to education. Concerns have been expressed about the fact that official government statistics for school attendance may significantly overestimate the number of children attending school in the country,<sup>530</sup> as well as about the quality of education on offer.<sup>531</sup> School attendance by girls continued to be substantially lower than for boys, with girls in rural areas most likely to be out of school.<sup>532</sup> High levels of insecurity are a major factor in hampering access

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on the Protection of Civilians in Armed Conflict 2017, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 13, footnote 58; UNSG, *Children and Armed Conflict*, 24 August 2017, A/72/361–S/2017/821, <http://www.refworld.org/docid/59db4a194.html>, para. 22. According to the US Department of State, some government and security officials reportedly engaged in the practice of *bacha baazi*. The US Department of State also reported that some victims of this practice were referred to juvenile rehabilitation centres on criminal charges. US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>. See also, UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 35; IWPR, *Afghanistan: Insurgents Prey on Teenage Boys*, 31 July 2017, <https://iwpr.net/global-voices/afghanistan-insurgents-prey-teenage-boys>.

<sup>528</sup> SIGAR, *Child Sexual Assault in Afghanistan: Implementation of the Leahy Laws and Reports of Assault by Afghan Security Forces*, June 2017, <https://www.sigar.mil/pdf/inspections/SIGAR%2017-47-IP.pdf>; AIHRC, *Summary Report Survey of Harassment of Women and Children in Afghanistan*, 11 March 2018, <http://www.aihrc.org.af/media/files/Research%20Reports/summary%20report%20on%20harassment%20of%20women.pdf>, pp. 5-6. IWPR quotes Saleh Mohammad Khaliq, Balkh's director of information and culture, as saying, “Due to the fact that that powerful people who break the law are not prosecuted and punished, and because of the inability of the judicial services to implement the law, pederasty and sex with young boys has increased in Afghanistan.” Balkh police chief Syed Kamal Sadat reportedly stated that “powerful local officials also had a record of supporting and defending such criminals, going as far as preventing police officers from arresting them and even sheltering suspects in their own homes. [...] Even when perpetrators are brought to justice, their victims face a troubled future. There have been many cases in which the boys themselves have been prosecuted, and experts say that the psychological effects of abuse are long-lasting.” IWPR, *Boys Sold for Sex in Afghan Province*, 2 March 2017, <http://www.refworld.org/docid/58bd641b4.html>.

<sup>529</sup> IWPR, *Afghanistan: The High Price of Virginity*, 11 January 2017, ARR 563, <http://www.refworld.org/docid/587783564.html>.

<sup>530</sup> HRW, “*I Won't Be a Doctor, and One Day You'll Be Sick*” - *Girls' Access to Education in Afghanistan*, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, pp. 7-8, 37-40; AAN, *A Success Story Marred by Ghost Numbers: Afghanistan's Inconsistent Education Statistics*, 13 March 2017, <https://www.afghanistan-analysts.org/a-success-story-marred-by-ghost-numbers-afghanistans-inconsistent-education-statistics/>. The Ministry of Education (MOE) “counts students who have been absent for up to three years as enrolled because it says they might return to school. The MOE acknowledged a large number of children are out of school, but is unaware of how many, who or where they are, or their backgrounds.” SIGAR, *Quarterly Report to the United States Congress*, 30 July 2016, <https://www.sigar.mil/pdf/quarterlyreports/2016-07-30qr.pdf>, p. 185.

<sup>531</sup> HRW, “*I Won't Be a Doctor, and One Day You'll Be Sick*” - *Girls' Access to Education in Afghanistan*, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, pp. 87-90.

<sup>532</sup> IWPR, *Girls Denied Education in Afghan Province: Locals Complain that Minimal Resources and Poor Security Are Excluding Female Students*, 24 November 2017, <https://iwpr.net/global-voices/girls-denied-education-afghan-province>. “Analysis by the World Bank shows wide variation from province to province in the ratio of girls versus boys attending school, with the proportion of students who are girls falling in some provinces, such as Kandahar and Paktia. These disparities are mirrored in literacy statistics. In Afghanistan, only 37 percent of adolescent girls are literate, compared to 66 percent of adolescent boys. Among adult women, 19 percent are literate compared to 49 percent of adult men.” HRW, “*I Won't Be a Doctor, and One Day You'll Be Sick*” - *Girls' Access to Education in Afghanistan*, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, p. 8; see also p. 40. “Harmful gender norms mean that, in many families, boys' education is prioritized over girls', or girls' education is seen as wholly undesirable or acceptable only for a few years before puberty.” *Ibid.*, p. 12. The World Bank analysis is based on the Afghanistan Living Conditions Survey 2013-2014, 2011-2012, and on the Risk and Vulnerability assessment 2007-2008. World Bank, *Afghanistan Poverty Status Update, Progress at Risk*, 14 February 2017, <https://openknowledge.worldbank.org/handle/10986/26668>, p. 29. UNICEF reported in 2015 that 42.7 per cent (equal to 4.2 million children) of primary school-age children were out of school. UNICEF, *Educate All Girls and Boys in South Asia*, August 2015, [http://www.unicef.org/education/files/EducateAllGirlsandBoys-UNICEF\\_ROSA.pdf](http://www.unicef.org/education/files/EducateAllGirlsandBoys-UNICEF_ROSA.pdf), pp. 6, 8.



to education, especially for girls.<sup>533</sup> The reported use of schools for military purposes by both AGEs and pro-government forces poses further concerns.<sup>534</sup>

AGEs are also reported to continue to carry out direct attacks against schools, teachers and students,<sup>535</sup> especially in relation to education for girls.<sup>536</sup> While the majority of reported attacks are attributed to the Taliban, groups affiliated to ISIS are also reported to forcibly close and attack schools and to threaten and intimidate teachers.<sup>537</sup> Threats of crime and abuses by criminal gangs, such as kidnappings,

<sup>533</sup> IWPR, *Girls Denied Education in Afghan Province: Locals Complain that Minimal Resources and Poor Security are Excluding Female Students*, 24 November 2017, <https://iwpr.net/global-voices/girls-denied-education-afghan-province>; HRW, “*I Won’t Be a Doctor, and One Day You’ll Be Sick*” - Girls’ Access to Education in Afghanistan, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, pp. 13, 17. “More than 400,000 children in Afghanistan – over 1,100 per day – are expected to drop out of school this year due to growing instability and a spike in forced returns from Pakistan. Save the Children analysis has shown. The stark projection comes on the first day of the new school year in Afghanistan, when almost a third of all children across the country – 3.7 million – are unable to go to school, leaving them at increased risk of child labor, recruitment by armed groups, trafficking, early marriage and other forms of exploitation.” Save the Children, *More Than 1,100 Afghan Children a Day Expected to Drop out of School in 2017, Putting Them at Risk of Exploitation, Save the Children Warns*, 23 March 2017, <http://www.savethechildren.org/site/apps/nlnet/content2.aspx?c=8rKLIXMGIpI4E&b=9506655&ct=14988181&notoc=1>. See also, IWPR, *School Closures Hit Afghan Province: A Lack of Security in Districts Means that Boys and Girls Can Simply Not Learn*, 27 February 2017, <https://iwpr.net/global-voices/school-closures-hit-afghan-province>

<sup>534</sup> “Both the ANSF and the Taliban continued to occupy or use schools for military purposes in contested areas, affecting the access to education of thousands of children, especially girls.” HRW, *World Report 2018: Afghanistan*, 18 January 2018, <http://www.refworld.org/docid/5a61eeac4.html>. “While the decrease in the number of security incidents affecting educational facilities and personnel is encouraging, it is unacceptable that schools continue to be used by armed forces and groups.” UNSG, *The Situation in Afghanistan and its Implications for International Peace and Security*, 15 December 2017, A/72/651–S/2017/1056, <http://www.refworld.org/docid/5a56465e4.html>, para. 62. “Both government security forces and Taliban fighters sometimes occupy schools, driving students away and making the school a military target.” HRW, “*I Won’t Be a Doctor, and One Day You’ll Be Sick*” - Girls’ Access to Education in Afghanistan, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, p. 17. “Verified attacks on schools and education personnel decreased to 77 incidents [in 2016], compared with 132 in 2015. Intensive fighting between the Afghan National Defence and Security Forces and the Taliban led to schools being hit in crossfire.” UNSG, *Children and Armed Conflict*, 24 August 2017, A/72/361–S/2017/821, <http://www.refworld.org/docid/59db4a194.html>, p. 5, para. 28. “In a positive development, in 2016 the Ministry of Education promulgated two directives instructing the Afghan National Defence and Security Forces to stop using schools for military purposes.” *Ibid*, para. 30. See also, VOA News, *Afghan Schools Used as Military Bases by Government, Taliban*, 26 January 2017, <https://www.voanews.com/a/afghanistan-schools-used-as-military-by-government-taliban/3694992.html>; UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 11 January 2017, A/HRC/34/41, <http://www.refworld.org/docid/5a562b9d4.html>, para. 28; HRW, “*Education on the Front Lines*” - Military Use of Schools in Afghanistan’s Baghlan Province, 17 August 2016, <http://www.refworld.org/docid/57b874d74.html>, p. 2. The militarization of schools in situations of conflict can amount to persecution within Article 1(A)(2) of the 1951 Convention. See UNHCR, *Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence; Roundtable 13 and 14 September 2012, Cape Town, South Africa*, 20 December 2012, <http://www.refworld.org/docid/50d32e5e2.html>, para. 11; and see also UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)(2) and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <http://www.refworld.org/docid/4b2f4f6d2.html>, para. 36.

<sup>535</sup> IWPR, *Taliban Impose Changes on Afghan Curriculum - Courses on Islamic Subjects Replace Lessons on Culture and Counter-Terrorism*, 13 January 2018, <https://www.ecoi.net/en/document/1422229.html>. The UN Secretary-General reported that in 2016, 77 attacks against schools were verified. “Of the verified incidents, 51 were attributed to the Taliban, 7 to ISIL-KP and 12 to undetermined armed groups; 23 incidents directly targeted girls’ education; 4 incidents were attributed to the Afghan National Defence and Security Forces (3 to the Afghan National Army, 1 undetermined); and 1 incident was jointly attributed to the Afghan National Army and the Taliban.” UNSG, *Children and Armed Conflict*, 24 August 2017, A/72/361–S/2017/821, <http://www.refworld.org/docid/59db4a194.html>, para. 28. In July 2017, a senior education official was killed in the Tagab district of central Kapisa province by a relative who was a member of the Taliban. Pajhwok Afghan News, *Taliban Gun Down Kapisa Education Official*, 1 July 2017, <https://www.pajhwok.com/en/2017/07/01/taliban-gun-down-kapisa-education-official>; Khaama Press, *Kapisa Education Official Shot Dead by Own Brother Affiliated with Taliban*, 1 July 2017, <https://www.khaama.com/kapisa-education-official-shot-dead-by-own-brother-affiliated-with-taliban-03054>. On 25 May 2017, a teacher was killed and nine pupils were injured in north-eastern Kunduz when a grenade hit launched by Taliban insurgents hit a school. Germany: Federal Office for Migration and Asylum, *Information Centre Asylum and Migration Briefing Notes*, 29 May 2017, <http://www.refworld.org/docid/5942468e4.html>. In 2016, 1000 schools were reportedly closed in Afghanistan, with 300 schools destroyed between August and October 2016 by the Taliban. Theirworld, *1000 Schools in Afghanistan Closed as Taliban Strike at Education*, 30 November 2016, <http://theirworld.org/news/security-risks-force-1000-afghan-schools-to-close>. The Taliban are listed as a party to the conflict responsible for specific grave violations against children in the UN Secretary-General’s Report on Children and Armed Conflict for 2015. The violations include recruitment and use of children, killing and maiming of children, and attacks against schools and/or hospitals. UNSG, *Children and Armed Conflict: Report of the Secretary-General*, 5 June 2015, A/69/926–S/2015/409, <http://www.refworld.org/docid/557abf904.html>, p. 48.

<sup>536</sup> In November 2017, HRW reported attacks and intimidation (including acid attacks, kidnappings and “night letters” threatening students and teachers) by the Taliban in Nangarhar Province. HRW, *War Is Driving Girls out of School*, 27 November 2017, <https://www.hrw.org/news/2017/11/27/war-driving-girls-out-school>. “The Taliban and other armed groups sometimes target girls’ schools, female students and their teachers for attack.” HRW, “*I Won’t Be a Doctor, and One Day You’ll Be Sick*” - Girls’ Access to Education in Afghanistan, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, p. 17. In February 2017 AGEs issued verbal threats directly to girls’ schools in several villages in Farah district, Farah province, resulting in the closure of six schools for 10 days. UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 13. See also, UNSG, *Children and Armed Conflict*, 24 August 2017, A/72/361–S/2017/821, <http://www.refworld.org/docid/59db4a194.html>, para. 28; Afghanistan Times, *Negotiating with the Taliban for Girl’s Education*, 27 June 2017, <http://afghanistantimes.af/negotiating-with-the-taliban-for-girls%E2%80%B2-education/>.

<sup>537</sup> “Halima Sadaf, a member of Jawzjan provincial council, said that the number of schools closed in the province is more than 70, adding the militant group would even behead those who try to study individually. He added that more than 30,000 students cannot attend schools due to

acid attacks and sexual harassment, reportedly cause parents to keep children, especially girls, at home.<sup>538</sup> Other reported obstacles to girls' education in particular include poverty, early and forced marriage, lack of family support, lack of female teachers, lack of sanitation facilities, lack of access to identity documents and long distances to the nearest school.<sup>539</sup>

#### d) Abductions, Punishments and Reprisals by the ANDSF and AGEs

The ANDSF and AGEs are reported to abduct children for various purposes, including reprisals and punishment of the victim's family members.<sup>540</sup> Children are also reported to be abducted and/or killed on the basis of accusations of having assisted the opposing party.<sup>541</sup>

#### e) Summary

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

- a) Children from areas where either AGEs or elements of the ANSF use underage recruitment;<sup>542</sup>
- b) Survivors and those at risk of harmful traditional practices, including child marriage and forced marriage;<sup>543</sup>
- c) Children from social milieus where bonded or hazardous child labour is practised;
- d) Survivors and those at risk of violence against children (including sexual and gender-based violence), including children from social milieus where such violence is practised;
- e) School-age children, particularly girls;<sup>544</sup> and

the ban. Azizi said that only four schools that are located in the areas under government control are open." 1TV News Afghanistan, *Daesh Closes Dozens of Schools in North Afghanistan: Local Officials*, 9 December 2017, <http://www.1tvnews.af/en/news/afghanistan/32477-daesh-closes-dozens-of-schools-in-north-afghanistan--local-officials>. According to officials in Jawzjan province, Islamic State burnt down a girl's school and destroyed 11 other schools in Darzab district. The group reportedly warned locals not to send their daughters to school. They also reportedly sent out announcements where they said schools in Darzab must be closed. Tolo News, *Daesh Threatens to Replace Curriculum in Jawzjan's District*, 5 July 2017, <https://www.tolonews.com/afghanistan/daesh-threatens-replace-curriculum-jawzjan%E2%80%99s-district>. See also, UNSG, *Children and Armed Conflict*, 24 August 2017, A/72/361-S/2017/821, <http://www.refworld.org/docid/59db4a194.html>, para. 28. In 2017 HRW reported ISIS-affiliated attacks on teaching personnel. HRW, *"I Won't Be a Doctor, and One Day You'll Be Sick" - Girls' Access to Education in Afghanistan*, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, p. 69; see also, Huffington Post, *'Hopeless': Children under Attack in Afghanistan*, 19 April 2016 (updated 6 December 2017), [https://www.huffingtonpost.com/beth-murphy/hopeless-children-under-attack-in-afghanistan\\_b\\_9721470.html](https://www.huffingtonpost.com/beth-murphy/hopeless-children-under-attack-in-afghanistan_b_9721470.html). See also Section III.A.1.a.

<sup>538</sup> HRW, *"I Won't Be a Doctor, and One Day You'll Be Sick" - Girls' Access to Education in Afghanistan*, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, p. 17; AIHRC, *Summary Report Survey of Harassment of Women and Children in Afghanistan*, 11 March 2018, <http://www.aihrc.org.af/media/files/Research%20Reports/summary%20report%20on%20harassment%20of%20women.pdf>, p. 4.

<sup>539</sup> IWPR, *Girls Denied Education in Afghan Province: Locals Complain that Minimal Resources and Poor Security Are Excluding Female Students*, 24 November 2017, <https://iwpr.net/global-voices/girls-denied-education-afghan-province>; HRW, *"I Won't Be a Doctor, and One Day You'll Be Sick" - Girls' Access to Education in Afghanistan*, 17 October 2017, <http://www.refworld.org/docid/59e5af3e4.html>, pp. 12, 17, 20-22, 25. "Afghanistan's government provides fewer schools for girls than boys at both the primary and secondary levels. In half the country's provinces, fewer than 20 percent of teachers are female – a major barrier for the many girls whose families will not accept their being taught by a man, especially as they become adolescents. Many children live too far from a school to attend, which particularly affects girls. About 41 percent of schools have no buildings, and many lack boundary walls, water, and toilets – disproportionately affecting girls." HRW, *Afghanistan: Girls Struggle for an Education*, 17 October 2017, <https://www.hrw.org/news/2017/10/17/afghanistan-girls-struggle-education>. See also, HRW, *"Education on the Front Lines" - Military Use of Schools in Afghanistan's Baghlan Province*, 17 August 2016, <http://www.refworld.org/docid/57b874d74.html>, p. 2. For further information on the practice of early and forced marriage in Afghanistan, see Section III.A.7.

<sup>540</sup> "UNAMA documented 18 incidents involving the abduction of 42 children (40 boys and two girls) by Anti Government-Elements. For instance, on 2 November [2017], in Bilchiragh district, Faryab province, Taliban abducted four boys, aged between four and 10 years, to force their fathers, both commanders of pro-government armed groups, to withdraw from the area and stop fighting. In addition, UNAMA attributed the abduction of one boy, on 25 March, in Samagan province, to a pro-Government armed group." UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, pp. 12-13.

<sup>541</sup> UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 11 January 2017, A/HRC/34/41, <http://www.refworld.org/docid/5a562b9d4.html>, paras 31, 32. On 1 January 2017, in Sholgareh district, Balkh province, pro-Government armed group member shot dead a civilian boy as he returned from taking food to an injured AGE fighter. UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 60.

<sup>542</sup> For further analysis on the issue of under-age recruitment, see Section III.A.3.

<sup>543</sup> For further analysis on the issue of harmful traditional practices, see Section III.A.7.b.

<sup>544</sup> For further guidance 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*, 22 December 2009,

- f) Children against whose parents the ANSF or AGEs are seeking to exact reprisals, and children who are accused by the ANSF or AGEs or having assisted the opposing party.

Depending on the individual circumstances of the case, they may be in need of international protection on the basis of a well-founded fear of persecution at the hands of State or non-State actors for reasons of their membership of a particular social group, their religion, their (imputed) political opinion, or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution where the actors of persecution are non-State actors.

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.<sup>545</sup>

## ***11. Survivors of Trafficking or Bonded Labour and Persons at Risk of Being Trafficked or of Bonded Labour***

Afghan men, women and children are reported to be trafficked for forced labour, sexual exploitation, and in the case of girls also for forced marriage.<sup>546</sup> Afghans who fall victim to trafficking are reportedly trafficked within Afghanistan and to the Middle East, Europe, and South Asia, with trafficking within Afghanistan reportedly more prevalent than transnational trafficking.<sup>547</sup> The majority of Afghans who fall victim to trafficking are reported to be children. They may be trafficked for the purposes of labour exploitation, in sectors of the economy such as agriculture, brick making, mining, construction, carpet weaving, domestic work and services industries. They may also be exploited in illicit sectors of the economy, such as drug smuggling and production, other criminal activities, forced combat and other forms of violence, and begging.<sup>548</sup> Children may also be trafficked for the purposes of sexual exploitation and forced marriage.<sup>549</sup> Children have also reportedly been trafficked for the purposes of being recruited, trained and used in military operations by the Taliban, including being trained as suicide bombers.<sup>550</sup> Afghan women, girls and boys are reported to be especially vulnerable to trafficking for sexual exploitation; in the case of boys this includes the practice of *bacha bazi*, where powerful men use young boys for social and sexual entertainment.<sup>551</sup> Children are reportedly sometimes sold by their

<http://www.refworld.org/docid/4b2f4f6d2.html>, paras 34-36; UNHCR, *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, <http://www.refworld.org/docid/3d36f23f4.html>.

<sup>545</sup> UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <http://www.refworld.org/docid/4b2f4f6d2.html>.

<sup>546</sup> US Department of Labor, *2016 Findings on the Worst Forms of Child Labor: Afghanistan*, 30 September 2017, <http://www.refworld.org/docid/5a00215c0.html>; US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>.

<sup>547</sup> US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>.

<sup>548</sup> US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>; Tolo News, *Concerns Rise over Human Trafficking Increase*, 31 October 2017, <https://www.tolonews.com/afghanistan/concerns-rise-over-human-trafficking-increase>; IWPR, *Child Labour in Afghan Coal Mines - Underage Workers Routinely Endure Hot, Dusty and Dangerous Conditions*, 5 April 2017, <https://www.ecoi.net/en/document/1397959.html>; IWPR, *Afghanistan's Child Beggars: Impoverished Parents and Organised Gangs Routinely Exploit Children for Profit*, 27 February 2017, <https://iwpr.net/global-voices/afghanistans-child-beggars>. For more detailed information on hazardous child labour in Afghanistan see: HRW, *"They Bear All the Pain" - Hazardous Child Labor in Afghanistan*, 13 July 2016, <http://www.refworld.org/docid/57878e374.html>.

<sup>549</sup> US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>; Pajhwok Afghan News, *Forced and Early Marriages: A Form of Trafficking in Person*, 29 March 2017, <https://www.pajhwok.com/en/2017/03/29/forced-and-early-marriages-form-trafficking-persons>; Pajhwok Afghan News, *Forced Marriage: a Cultural Dimension of Human Trafficking*, 1 March 2017, <https://www.pajhwok.com/en/2017/03/01/forced-marriage-cultural-dimension-human-trafficking>; Pajhwok Afghan News, *Standing up Against Slavery as a Form of Trafficking*, 25 February 2017, <https://www.pajhwok.com/en/2017/02/25/standing-against-slavery-form-trafficking>.

<sup>550</sup> AP News, *Young Afghans Trafficked to Study Under Taliban*, 1 August 2017, <https://www.apnews.com/590be9a02ef14617b6cacebba036c827/Officials:-Young-Afghans-trafficked-to-study-under-Taliban>; RFE/RL, *Afghan Police: Children Kidnapped to Be Suicide Bombers for Taliban*, 10 July 2017, <https://www.rferl.org/a/afghan-police-children-kidnapped-by-taliban-to-be-suicide-bombers/28606744.html>.

<sup>551</sup> "Bacha bazi is a practice where boys and intersex children are kept usually by wealthy or powerful men, including military and political leaders, for entertainment, particularly dancing and sexual activities. It is considered a harmful practice and violates a number of human rights, including the prohibition of sexual abuse and exploitation of children, sale of children, human trafficking, forced labor and slavery, recruitment and use of children, and confinement and the right to education." UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 13, footnote 58. The revised Penal Code, which entered into force on 15 February 2018, criminalizes the practice of *bacha bazi* and imposes prison sentences of up to three years. Afghanistan,



families for financial gain or to settle debts.<sup>552</sup> Afghan women and men are reportedly trafficked abroad and subjected to forced labour and debt bondage, including in domestic servitude and in agricultural and construction sectors.<sup>553</sup> Some Afghan families, including children, are reported to be trapped in cycles of bonded labour, including in brick-making factories.<sup>554</sup>

In January 2017 a new law on human trafficking was enacted, which criminalizes human trafficking and exploitation, smuggling of migrants and expressly criminalizes *bacha bazi*.<sup>555</sup> The provisions of this law have been reinforced through incorporation of the offences of human trafficking and exploitation, including *bacha bazi*,<sup>556</sup> and the smuggling of immigrants,<sup>557</sup> into the revised Penal Code of 2017. The 2017 Penal Code also criminalizes the recruitment of children in hard physical, unhealthy and underground labour.<sup>558</sup> In addition, the 2009 Law on Elimination of Violence against Women (EVAW law) criminalizes the selling, purchasing or facilitation of purchasing or selling of a woman for the purpose of marriage.<sup>559</sup> However, as noted above, the criminal provisions of the EVAW law were not incorporated into the 2017 Penal Code.<sup>560</sup>

Efforts to enforce the legal framework on trafficking have reportedly been hampered by a lack of awareness and understanding of trafficking among law enforcement and judicial officials;<sup>561</sup> corruption and lack of political will to hold perpetrators accountable; and accusations against government employees of complicity in human trafficking.<sup>562</sup>

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*Penal Code*, published in Official Gazette No. 1260, 15 May 2017, Chapter Five, Articles 653-667. (English unofficial translation on record with UNHCR.) Nevertheless, the UN Committee Against Torture noted that, "The Committee remains deeply concerned that, the new legal framework notwithstanding, the practice may remain widespread in Afghanistan, including among State officials, as evidenced by the involvement of Shah Mirza Panjsheri in a *bacha baazi* case." UN CAT, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 37. According to reports from the US embassy in Kabul, in 2016 the President's Cabinet began drafting a Child Protection Act to address some of the worst forms of child labour, including *bacha bazi*. US Department of Labor, *2016 Findings on the Worst Forms of Child Labor: Afghanistan*, 30 September 2017, <http://www.refworld.org/docid/5a00215c0.html>. See also, US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>; IWPR, *Afghanistan: Insurgents Prey on Teenage Boys*, 31 July 2017, <https://iwpr.net/global-voices/afghanistan-insurgents-prey-teenage-boys>; IWPR, *Boys Sold for Sex in Afghan Province*, 2 March 2017, <http://www.refworld.org/docid/58bd641b4.html>; The Express Tribune, *Kabul to Set Penalties for Subculture of Boy Sex Slaves*, 22 February 2017, <https://tribune.com.pk/story/1335200/kabul-set-penalties-subculture-boy-sex-slaves/>; France: Office français de protection des réfugiés et apatrides (OFPRA), *Afghanistan : La pratique du bachabazi*, 14 November 2016, <http://www.refworld.org/docid/59317cfd4.html>. See also Section III.A.10, *Children with Specific Profiles or in Specific Circumstances*.

<sup>552</sup> US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>; US Department of Labor, *2016 Findings on the Worst Forms of Child Labor: Afghanistan*, 30 September 2017, <http://www.refworld.org/docid/5a00215c0.html>. "Child marriages are usually aimed at strengthening ties with rival families and tribes, as part of deals or to settle debts and disputes. Poor families often end up selling daughters for large dowries from wealthy people and the husbands are usually much older. The decisions to sell off girls for marriage are made by men, and wives, mothers, sisters and the girls themselves having little or no say." UNFPA Afghanistan, *Child Marriage*, undated, <http://afghanistan.unfpa.org/node/15233>.

<sup>553</sup> US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>.

<sup>554</sup> Daily Outlook Afghanistan, *Many Bonded Child Laborers Work in Takhar Salt Mine*, 28 December 2017, [http://www.outlookafghanistan.net/national\\_detail.php?post\\_id=19767](http://www.outlookafghanistan.net/national_detail.php?post_id=19767); US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>; US Department of State, *2016 Country Reports on Human Rights Practices: Afghanistan*, 3 March 2017, <http://www.refworld.org/docid/58ec8a7fa.html>; IWPR, *Afghanistan's Modern Day Slave Labourers*, 24 January 2017, <https://iwpr.net/global-voices/afghanistans-modern-day-slave-labourers>; Mail Online, *Held in Bonded Labour, Afghan Returnee Children Make Bricks for a Living*, 2 November 2016, <http://www.dailymail.co.uk/wires/reuters/article-3897816/Held-bonded-labour-Afghan-returnee-children-make-bricks-living.html>; HRW, *"They Bear All the Pain" - Hazardous Child Labor in Afghanistan*, 13 July 2016, <http://www.refworld.org/docid/57878e374.html>, pp. 8-13.

<sup>555</sup> Afghanistan, *Law to Combat Crimes of Trafficking in Persons and Smuggling of Migrants*, 2017, Articles 3, 11, 20-23. (English unofficial translation on record with UNHCR.) The 2017 law repealed the 2008 *Law Countering Abduction and Human Trafficking/Smuggling*. See also, US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>. Forced labour is prohibited under Article 49 of the Constitution, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>.

<sup>556</sup> Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017, Articles 510-512, 516, 518. (English unofficial translation on record with UNHCR.) See also, US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>.

<sup>557</sup> Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017, Articles 521-528. (English unofficial translation on record with UNHCR).

<sup>558</sup> *Ibid.*, Article 613.

<sup>559</sup> Afghanistan, *Law of 2009 on Elimination of Violence against Women (EVAW)*, 1 August 2009, <http://www.refworld.org/docid/5486d1a34.html>, Article 24.

<sup>560</sup> See Section III.A.7: "Women with Certain Profiles or in Specific Circumstances".

<sup>561</sup> Ambiguity around the Dari term for trafficking has reportedly led to confusion around trafficking concepts and undermined the effectiveness of the law. US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>.

<sup>562</sup> US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>; UN CAT, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2,



The Government also reportedly arrested, imprisoned or otherwise punished persons who had fallen victim to trafficking, penalizing such persons for crimes such as prostitution or “moral crimes”.<sup>563</sup>

In light of the foregoing, UNHCR considers that people, especially women and children, in particular socio-economic circumstances that create vulnerabilities to trafficking or bonded labour, may be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of State or non-State actors for reasons of their membership of a particular social group or other relevant Convention grounds, depending on the individual circumstances of the case, combined with a general inability of the State to provide protection from such persecution where the actors of persecution are non-State actors. Individuals falling into the risk profile include survivors of trafficking or bonded labour who may be in a position of heightened vulnerability to being re-trafficked or being re-subjected to bonded labour.<sup>564</sup>

In addition, UNHCR considers that individuals who have already fallen victim to trafficking may be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of the State for reasons of their membership of a particular social group or other relevant Convention grounds, depending on the individual circumstances of the case.

## 12. Individuals of Diverse Sexual Orientations and/or Gender Identities

Consensual same-sex sexual acts are illegal in Afghanistan and are punishable by imprisonment of up to two years under the new Afghan Penal Code.<sup>565</sup> Under Sharia law, the maximum sentence for same-sex relations is the death penalty,<sup>566</sup> but no death sentences for same-sex relations are reported to have been passed by the judiciary since the fall of the Taliban.<sup>567</sup>

<http://www.refworld.org/docid/596f4f754.html>, para. 37. For a detailed review on the rule of law in Afghanistan see: USIP, *Rule of Law, Governance and Human Rights in Afghanistan 2002-2016*, 29 August 2017, <https://www.usip.org/sites/default/files/PW130-Rule-of-Law-Governance-and-Human-Rights-in-Afghanistan-2002-to-2016.pdf>.

<sup>563</sup> US Department of Labor, *2016 Findings on the Worst Forms of Child Labor: Afghanistan*, 30 September 2017, <http://www.refworld.org/docid/5a00215c0.html>; US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>; UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 37; SIGAR, *Child Sexual Assault in Afghanistan: Implementation of the Leahy Laws and Reports of Assault by Afghan Security Forces*, June 2017, <https://www.sigar.mil/pdf/inspections/SIGAR%2017-47-IP.pdf>, p. 19; IWPR, *Boys Sold for Sex in Afghan Province*, 2 March 2017, <http://www.refworld.org/docid/58bd641b4.html>; IWPR, *Afghanistan: The High Price of Virginity*, 11 January 2017, <http://www.refworld.org/docid/587783564.html>; HRW, *Afghanistan: End 'Moral Crimes' Charges, 'Virginity' Tests*, 25 May 2016, <http://www.refworld.org/docid/574696bb4.html>. See also Section III.A.7.a: “Women with Certain Profiles or in Specific Circumstances: Sexual and Gender-Based Violence”.

<sup>564</sup> 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*, 7 April 2006, HCR/GIP/06/07, <http://www.refworld.org/docid/443679fa4.html>.

<sup>565</sup> Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR), Articles 646 and 647. During the Universal Periodic Review for Afghanistan in 2014, Afghanistan did not accept a recommendation from Norway to “ensure non-discrimination on the basis of sexual orientation and gender identity and repeal the provisions of the penal code which criminalise sexual relations between consenting adults of the same sex.” See UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Afghanistan*, 4 April 2014, <http://www.refworld.org/docid/539064f14.html>; UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Afghanistan Addendum*, 16 June 2014, <http://www.refworld.org/docid/5671934a4.html>. It should be noted that in certain segments of Afghan society, sexual acts between men are reportedly not uncommon. However, men are reported to make a distinction between engaging in sexual acts with other men and feeling love for another man, the latter of which is considered a sin in Islam and punishable under Sharia law. See, for example, Afghanistan Human Terrain Team, *Pashtun Sexuality: Research Update and Findings (Unclassified)*, 2009, <http://info.publicintelligence.net/HTT-PashtunSexuality.pdf>; Shivananda Khan, *Everybody Knows, But Nobody Knows: Desk Review of Current Literature on HIV and Male-Male Sexualities, Behaviours and Sexual Exploitation in Afghanistan* (London: Naz Foundation International), September 2008, [http://www.aidsdatahub.org/dmdocuments/Everybody\\_knows\\_but\\_nobody\\_knows\\_Afghan\\_Review.pdf.pdf](http://www.aidsdatahub.org/dmdocuments/Everybody_knows_but_nobody_knows_Afghan_Review.pdf.pdf), pp. 22, 29; and S. Khan, *Rapid Assessment of Male Vulnerabilities to HIV and Sexual Exploitation in Afghanistan* (London: Naz Foundation International), 30 March 2009, [http://www.aidsdatahub.org/dmdocuments/Rapid\\_Assessment\\_of\\_Male\\_Vulnerabilities\\_to\\_HIV\\_and\\_Sexual\\_Exploitation\\_in\\_Afghanistan\\_2009.pdf.pdf](http://www.aidsdatahub.org/dmdocuments/Rapid_Assessment_of_Male_Vulnerabilities_to_HIV_and_Sexual_Exploitation_in_Afghanistan_2009.pdf.pdf), pp. 17, 63.

<sup>566</sup> International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), *State-Sponsored Homophobia: A World Survey of Laws Prohibiting Same Sex Activity between Consenting Adults*, May 2017, [http://ilga.org/downloads/2017/ILGA\\_State\\_Sponsored\\_Homophobia\\_2017\\_WEB.pdf](http://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf), p. 121.

<sup>567</sup> “Under Sharia, or Islamic law, the punishment for sex outside marriage could be a death sentence. Because the evidentiary requirements of this law are difficult to meet, this punishment hasn’t been applied by Afghan courts since 2001.” HRW, *Afghan LGBT Asylum Seekers in UK among Most Vulnerable*, 26 February 2017, <https://www.hrw.org/news/2017/02/26/afghan-lgbt-asylum-seekers-uk-among-most-vulnerable>.

Social taboos around homosexuality remain strong.<sup>568</sup> Reportedly, gay men and boys, and those perceived to be gay, have limited access to health services and are being dismissed from their jobs because of their sexual orientation.<sup>569</sup> Individuals of diverse sexual orientations and gender identities (SOGI) are reported to face discrimination and violence, including at the hands of the authorities, family and community members, as well as AGEs.<sup>570</sup> Overall, “homophobic views and violence against LGBT groups in Afghanistan are pervasive”.<sup>571</sup> The police reportedly fail to provide protection to individuals of diverse SOGI; instead there are reports of police officers subjecting individuals of diverse SOGI to harassment, violence (including rape), and arrest and detention on the basis of their real or perceived sexual orientation.<sup>572</sup> Organizations devoted to protecting the freedom of individuals of diverse SOGI reportedly remain underground as they cannot be legally registered.<sup>573</sup>

Given the pervading social taboos related to same-sex relations, there is little information available on the treatment of individuals of diverse SOGI in Afghanistan. What little information there is pertains to gay men; the situation of lesbians and of bisexual individuals is largely undocumented. Similarly, little

<sup>568</sup> “Homosexuality is a taboo topic in Afghanistan, a socially and religiously conservative country. Many consider homosexuality un-Islamic and immoral, and gay men can be imprisoned by the state or killed by their family members in so-called honor killings”. RFE/RL, *‘Fake Life’: Being Gay in Afghanistan*, 12 December 2017, <https://www.rferl.org/a/afghanistan-being-gay-fake-life/28731934.html>. “The Director of the [SOGI] organization, [...] stated that: ‘Killing of homosexuals is common in Afghanistan and is increasing day by day’, he further stated that he has heard of cases from reliable sources that ‘men are being lured into dating and are being killed’. However, you never hear about it because it is highly taboo.” Open Democracy, *‘I Am Not Safe’: On the Run as a Gay Man in Afghanistan*, 3 March 2017, <https://www.opendemocracy.net/5050/ritu-mahendru/i-am-not-safe-on-run-as-gay-man-in-afghanistan>. “[H]omosexual acts are utterly taboo in Afghan society, as well as being illegal under both Sharia and Afghan law. Homosexuality is generally categorised as a form of deviance and associated with prostitution and pedophilia.” IWPR, *Boys Sold for Sex in Afghan Province*, 2 March 2017, <https://iwpr.net/global-voices/boys-sold-sex-afghan-province>. See also, BBC, *Afghanistan LGBT Community Living under Threat of Death*, 7 October 2016, <http://www.bbc.com/news/world-asia-36884732>.

<sup>569</sup> “There are credible reports of individuals being dismissed from their jobs, disowned by their families, restricted from accessing health services, being robbed, pressed for sexual favours, or raped because of suspicions that they are homosexual.” Australian Government: Department of Foreign Affairs and Trade, *Country Information Report: Afghanistan*, 18 September 2017, <http://dfat.gov.au/about-us/publications/Documents/country-information-report-afghanistan.pdf>, p. 22. See also, The Diplomat, *Defying Holy Orders: Afghanistan’s LGBT Community*, 30 January 2017, <https://thediplomat.com/2017/01/defying-holy-orders-afghanistans-lgbt-community/>; Open Democracy, *‘I Am Not Safe’: On the Run as a Gay Man in Afghanistan*, 3 March 2017, <https://www.opendemocracy.net/5050/ritu-mahendru/i-am-not-safe-on-run-as-gay-man-in-afghanistan>; BBC, *Afghanistan LGBT Community Living under Threat of Death*, 7 October 2016, <http://www.bbc.com/news/world-asia-36884732>.

<sup>570</sup> “Members of the LGBT community in Afghanistan can only hope to escape abuse if they deny and suppress their sexual identities, marry as arranged by their families, have sex only with spouses, have children, and never have a sexual relationship outside that norm. But if they do, they risk arrest, prosecution, and violence from their families, the larger community and the government.” HRW, *Afghan LGBT Asylum Seekers in UK among Most Vulnerable*, 26 February 2017, <https://www.hrw.org/news/2017/02/26/afghan-lgbt-asylum-seekers-uk-among-most-vulnerable>. “Kabul’s underground LGBT network faces daily discrimination, intimidation, and abuse, including from authorities.” The Diplomat, *Defying Holy Orders: Afghanistan’s LGBT Community*, 30 January 2017, <https://thediplomat.com/2017/01/defying-holy-orders-afghanistans-lgbt-community/>. “Persons identifying as LGBT, and who are open about their sexuality or gender identity, are likely to be ostracised by their family and may face becoming a victim of an ‘honour’ killing. LGBT people also face violence, assault, rape, and arrest.” Rutgers, *Fact Sheet: Sexual and Reproductive Health and Rights in Afghanistan*, December 2016, <https://www.rutgers.nl/sites/rutgersnl/files/PDF/Factsheet%20Afghanistan%20Eng.pdf>, p. 2. See also, Open Democracy, *‘I Am Not Safe’: On the Run as a Gay Man in Afghanistan*, 3 March 2017, <https://www.opendemocracy.net/5050/ritu-mahendru/i-am-not-safe-on-run-as-gay-man-in-afghanistan>; BBC, *Afghanistan LGBT Community Living under Threat of Death*, 7 October 2016, <http://www.bbc.com/news/world-asia-36884732>; RAWA News, *Afghanistan: While Pedophilia Is Culturally Sanctioned, LGBT Adults Fear for Their Lives*, 11 November 2016, <http://www.rawa.org/temp/runews/2016/11/11/afghanistan-while-pedophilia-is-culturally-sanctioned-lgbt-adults-fear-for-their-lives.html>; AP News, *Fear, Secrecy and Danger a Way of Life for Afghan Gays*, 5 November 2016, <https://apnews.com/456fa1a71d004d539edce40eff6efb46/fear-secrecy-and-danger-way-life-afghan-gays>.

<sup>571</sup> Open Democracy, *‘I Am Not Safe’: On the Run as a Gay Man in Afghanistan*, 3 March 2017, <https://www.opendemocracy.net/5050/ritu-mahendru/i-am-not-safe-on-run-as-gay-man-in-afghanistan>.

<sup>572</sup> “[T]here have been frequent credible reports that individuals perceived to be homosexual (almost exclusively males) have continuing difficulties with the police, including harassment and/or arrest (usually on spurious charges) [...] LGBTI individuals face a high risk of official discrimination, including by entrapment, arrest, harassment and mistreatment by police.” Australian Government: Department of Foreign Affairs and Trade, *Country Information Report: Afghanistan*, 18 September 2017, <http://dfat.gov.au/about-us/publications/Documents/country-information-report-afghanistan.pdf>, p. 22. “There is no legal protection for LGBT (lesbian, gay, bisexual and transgender) people, who face societal disapproval and abuse by police.” Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>.

<sup>573</sup> “No organisations publicly advocate improved rights for lesbian, gay, bisexual, transgender or intersex (LGBTI) people.” Australian Government: Department of Foreign Affairs and Trade, *Country Information Report: Afghanistan*, 18 September 2017, <http://dfat.gov.au/about-us/publications/Documents/country-information-report-afghanistan.pdf>, p. 22. “Despite the fact that so far no organisation among NGOs is openly and publicly providing support to LGBT community, if persons belong to this community, particularly women, contact organisations working on women’s health and protection, they receive such services. Often the sexual orientation and identity of the person is kept confidential within the organisation to protect both the person as well as the organisation from public reactions.” Independent Chief Inspector of Borders and Immigration, *Inspection of Country of Origin Information - November 2016 Report*, February 2017, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/614322/Inspection-of-Country-of-Origin-Information\\_November-2016.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/614322/Inspection-of-Country-of-Origin-Information_November-2016.pdf), p. 31. See also, Open Democracy, *‘I Am Not Safe’: On the Run as a Gay Man in Afghanistan*, 3 March 2017, <https://www.opendemocracy.net/5050/ritu-mahendru/i-am-not-safe-on-run-as-gay-man-in-afghanistan>.

is known about the situation of transgender individuals in Afghanistan.<sup>574</sup> The absence of information should not be taken to mean that there is no risk for individuals of diverse SOGI.

In light of the criminalization of same-sex relations, as well as the strong social taboos, UNHCR considers that individuals of diverse sexual orientations and/or gender identities are likely to be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of State or non-State actors for reasons of their membership of a particular social group, since they do not, or are perceived not to conform to prevailing legal, religious and social norms. They may also be in need of international protection on other relevant Convention grounds. Individuals who are perceived to be of diverse sexual orientations and/or gender identities are similarly likely to be in need of international refugee protection on the same grounds.

It should be borne in mind that individuals of diverse sexual orientations and/or gender identities cannot be expected to change or conceal their identity in order to avoid persecution.<sup>575</sup> Furthermore, the existence of significant criminal sanctions for same-sex relations is a bar to State protection for individuals of diverse sexual identities, including where persecutory acts are perpetrated by non-State actors such as family or community members.<sup>576</sup>

### 13. Members of (Minority) Ethnic Groups

The population of Afghanistan comprises a number of different ethnic groups, which have traditionally maintained a large measure of autonomy vis-à-vis the central Government.<sup>577</sup> As a result of a variety of historical population movements, both forced and voluntary, some members of ethnic groups now

<sup>574</sup> Reports describe lesbian and transgender Afghans living in fear. See for example, InfoMigrants, 'Had I Stayed in Afghanistan, I Would Have Been Killed', 22 February 2018, <http://www.infomigrants.net/en/post/7714/had-i-stayed-in-afghanistan-i-would-have-been-killed>; KBR, *Living A Double Life as a Transgender Woman In Afghanistan*, 6 March 2017, <http://kbr.id/english/03-2017/living-a-double-life-as-a-transgender-woman-in-afghanistan/89024.html>; Huffington Post, *Transgender Refugees in Pakistan Fear Death Upon Return Home to Afghanistan*, 26 January 2017, [https://www.huffingtonpost.com/entry/transgender-refugees-afghanistan-pakistan\\_us\\_5887d4e9e4b0441a8f7194b7](https://www.huffingtonpost.com/entry/transgender-refugees-afghanistan-pakistan_us_5887d4e9e4b0441a8f7194b7); BBC, *Afghanistan LGBT Community Living under Threat of Death*, 7 October 2016, <http://www.bbc.com/news/world-asia-36884732>. "The situation of gender division and the oppression of women are obstacles for all genders, but especially lesbian women, to find spaces to live freely." Swedish International Development Cooperation (SIDA), *The Rights of LGBTI Persons in Afghanistan*, November 2014, <https://www.sida.se/globalassets/sida/eng/partners/human-rights-based-approach/lgbti/rights-of-lgbt-persons-afghanistan.pdf>, p. 1.

<sup>575</sup> See for example, Court of Justice of the European Union, *X, Y, Z v Minister voor Immigratie en Asiel*, C-199/12 to C-201/12, 7 November 2013, <http://www.refworld.org/docid/527b94b14.html>.

<sup>576</sup> For further guidance on applications for refugee status from individuals of diverse sexual orientations and/or gender identities, see UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, <http://www.refworld.org/docid/50348afc2.html>. See also Court of Justice of the European Union, *A, B, C v. Staatssecretaris van Veiligheid en Justitie*, C-148/13 to C-150/13, 2 December 2014, <http://www.refworld.org/docid/547d943da.html>.

<sup>577</sup> 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). Ethnicity, religion, occupation, and gender have historically offered to Afghans a range of bases upon which they may seek to identify with their fellows, and while some of these are effectively ascriptive – that is, unchangeable, or changeable only at enormous social cost – the relative emphasis given to one over another is frequently a matter of strategic choice. (...) Afghanistan is first of all a multiethnic country." As noted by William Maley in the quote above, no population census has been conducted in the country since the partial census 1979, which itself was not completed due to the Soviet invasion. Based on an extrapolation of the data from the 1979 census, the current population of Afghanistan is estimated at 34.1 million. See US Central Intelligence Agency, *CIA Factbook: Afghanistan*, <https://www.cia.gov/library/publications/the-world-factbook/geos/af.html>. The CIA Factbook notes that "current statistical data on the sensitive subject of ethnicity in Afghanistan is not available, and ethnicity data from small samples of respondents to opinion polls are not a reliable alternative". *Ibid*. See also, Asia Foundation, *Afghanistan in 2017: A Survey of the Afghan People*, November 2017, [https://asiafoundation.org/wp-content/uploads/2017/11/2017\\_AfghanSurvey\\_report.pdf](https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf), p. 200; Swedish Committee for Afghanistan, *The Afghan Population*, 22 August 2016, <https://swedishcommittee.org/afghanistan/population>; Civil-Military Fusion Centre, *Afghanistan Ethnic Groups: A Brief Investigation*, August 2011, <http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation>. A detailed map showing the geographic distribution of Afghanistan's ethnic groups can be found in Congressional Research Service, *Afghanistan: Post-Taliban Governance, Security, and U.S. Policy*, 13 December 2017, <https://fas.org/srgp/crs/row/RL30588.pdf>, p. 74, Figure 2: "Map of Afghan Ethnicities". The Constitution of Afghanistan provides that, "The nation of Afghanistan shall be comprised of Pashtun, Tajik, Hazara, Uzbek, Turkman, Baluch, Pachaie, Nuristani, Ayrnaq, Arab, Qirghiz, Qizilbash, Gujur, Brahui and other tribes." Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>, Article 4.



reside outside areas where they traditionally represented a majority.<sup>578</sup> Consequently, individuals belonging to one of the largest ethnic groups nationwide may in fact constitute a minority ethnic group in their area of residence, and may accordingly face discrimination or ill-treatment in their home area due to their ethnicity.<sup>579</sup> Conversely, a member of an ethnic group or clan constituting a minority at the national level may not face any discrimination on the grounds of ethnicity in areas where this ethnic group or clan represents the local majority.

It should also be noted that the various ethnic groups are not necessarily homogenous communities. Among Pashtuns, for example, strong rivalries between different sub-groupings may be a cause of tensions and conflicts.<sup>580</sup>

It should also be noted that ethnicity and religion are often inextricably linked, especially in the case of the Hazara ethnic group which is predominantly Shi'ite. As a result, it is not always possible to distinguish between religion and ethnicity as the primary element behind certain incidents or tensions.<sup>581</sup> Similarly, since political allegiance is often guided by ethnicity, (imputed) political opinion and ethnicity may be inextricably-linked elements in conflicts and tensions between different groups.<sup>582</sup>

Ethnic divisions in Afghanistan remain strong. The Peoples under Threat Index compiled by Minority Rights Group International lists Afghanistan as the fifth most dangerous country in the world for ethnic minorities, especially because of targeted attacks against individuals based on their ethnicity and religion. The index refers specifically to the Hazaras, Pashtuns, Tajiks, Uzbeks, Turkmen and Baluchis as ethnic groups at risk in Afghanistan.<sup>583</sup>

<sup>578</sup> As an example, Abdur Rahman Khan (who ruled Afghanistan between 1880 and 1901) transported troublesome Pashtuns of the Durrani and Ghilzai tribes to Uzbek- and Tajik-populated areas in the north, where their dispersion amongst non-Pashtun groups made them dependent on Rahman's central government. Rahman also enrolled tens of thousands of Pashtun warriors in a Muslim jihad against Shi'ite Hazaras in the Hazarajat and against animist tribes in Kafiristan (today's Nuristan). The Pashtun warriors were rewarded with plunder and land grants in the regions they conquered. A second wave of Pashtun migration into settled Tajik, Uzbek and Hazara areas followed in the second quarter of the 20<sup>th</sup> century, when the government transported thousands of landless Pashtun Ghilzai families to the north, depriving the northern minorities of valuable agricultural and pasture land that they had occupied for centuries. See, for example, Peter Tomsen, *The Wars of Afghanistan*, New York: Public Affairs, 2011, pp. 42, 53, 80.

<sup>579</sup> An example are the Pashtuns in northern Afghanistan, the descendants of Pashtuns who were relocated by the government in the nineteenth and twentieth centuries to areas traditionally settled by Uzbeks and Tajiks. Following the fall of the Taliban in 2001, large numbers of Pashtuns from northern Afghanistan, who constitute an ethnic minority there, were forcibly displaced due to ethnic violence directed against them due to their (perceived) association with the Taliban regime. For some of the displaced reclaiming land and property has remained a challenge. IDMC, *Afghanistan: Durable Solutions Far From Reach Amid Escalating Conflict*, 16 April 2012, <http://www.refworld.org/docid/511e50cd2.html>; Minority Rights Group International, *Pashtuns*, undated; <http://minorityrights.org/minorities/pashtuns/>; HRW, *Paying for the Taliban's Crimes: Abuses Against Ethnic Pashtuns in Northern Afghanistan*, 9 April 2002, <http://www.refworld.org/docid/3cb2ad007.html>. See also CORI, *Afghanistan: COI Relating to Pashtuns*, 20 January 2015, <http://www.refworld.org/docid/54f9c87e4.html>; CORI, *Afghanistan: The Situation of Pashtuns in Areas of Afghanistan Where They Form a Minority*, 20 January 2015, <http://www.refworld.org/docid/559a8aad4.html>; Secure Livelihoods Research Consortium (Adam Pain), *Livelihoods, Basic Services and Social Protection in Afghanistan*, July 2012, <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7718.pdf>, p. 4.

<sup>580</sup> See for example Minority Rights Group International, *Afghanistan: Pashtuns*, undated, <http://minorityrights.org/minorities/pashtuns/>; CORI, *Afghanistan: COI Relating to Pashtuns*, 20 January 2015, <http://www.refworld.org/docid/54f9c87e4.html>; Civil-Military Fusion Centre, *Afghanistan Ethnic Groups: A Brief Investigation*, August 2011, <http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation>; Tribal Analysis Center, *Pashtun Tribal Dynamics*, October 2009, <http://www.tribalanalysiscenter.com/PDF-TAC/Pashtun%20Tribal%20Dynamics.pdf>.

<sup>581</sup> See for example, Reuters, *Who Is an Afghan? Row Over ID Cards Fuels Ethnic Tension*, 8 February 2018, <https://www.reuters.com/article/us-afghanistan-politics/who-is-an-afghan-row-over-id-cards-fuels-ethnic-tension-idUSKBN1FS1Y0>; US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>; Civil-Military Fusion Centre, *Afghanistan Ethnic Groups: A Brief Investigation*, August 2011, <http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation>.

<sup>582</sup> See, for example, Z. Warren, *First I Am my Tribe: An Investigation of Ethnic Identity in a National Sample of Afghans*, 1 December 2015, [https://repository.library.georgetown.edu/bitstream/handle/10822/1040764/Warren\\_georgetown\\_0076D\\_13167.pdf?sequence=1](https://repository.library.georgetown.edu/bitstream/handle/10822/1040764/Warren_georgetown_0076D_13167.pdf?sequence=1), pp. 25, 27-30; Congressional Research Service, *Afghanistan: Politics, Elections, and Government Performance*, 12 January 2015, <http://www.fas.org/sgp/crs/row/RS21922.pdf>, p. 2; ICG, *Afghanistan's Political Transition*, 16 October 2014, <http://www.refworld.org/docid/543f9dfc4.html>, p. 26. Further analysis of corresponding risk profiles can be found in Sections III.A.1 and III.A.5.

<sup>583</sup> Minority Rights Group International, *Peoples under Threat 2017*, 19 July 2017, <http://minorityrights.org/wp-content/uploads/2017/07/Peoples-under-Threat-2017.pdf>, p. 5. It should be noted that not all observers agree on the classification of certain violent incidents as being ethnically motivated. Thus the Congressional Research Service states, "There have been few incidents of ethnic-based violence since the fall of the Taliban, but clashes sometimes do result from jealousies and historic disputes between the different ethnic communities. All ethnic groups are represented at all levels of the central government and each group has a large measure of control over how government programs are implemented in their geographic regions. Although Afghanistan's President has the power to appoint provincial and district governors, in practice there is an informal understanding not to appoint governors of a different ethnicity than the majority of residents



The Constitution guarantees “equality among all ethnic groups and tribes”.<sup>584</sup> However, members of certain ethnic groups have complained of discrimination by the State, including in the form of unequal access to local government jobs and healthcare in areas where they were in the minority.<sup>585</sup>

#### a) Kuchis

Nomadic people, or Kuchis as they are commonly known in Afghanistan, form a marginalized group.<sup>586</sup> While the majority of Kuchis are ethnic Pashtuns,<sup>587</sup> the Kuchis are “a social rather than ethnic grouping, although they also have some of the characteristics of a distinct ethnic group”.<sup>588</sup> Since the fall of the Taliban regime in 2001, human development indicators for Kuchis are reported to have stayed behind those of other ethnic groups; they are among the poorest people in Afghanistan.<sup>589</sup> Traditionally the Kuchis are nomads, but the majority of Kuchis have now reportedly settled in towns, villages or on the outskirts of larger urban settlements,<sup>590</sup> which has reportedly led to increased tensions between the

of particular provinces.” Congressional Research Service, *Afghanistan: Politics, Elections, and Government Performance*, 12 January 2015, <http://www.fas.org/sgp/crs/row/RS21922.pdf>, p. 2.

<sup>584</sup> Article 6 of the Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>.

<sup>585</sup> According to a national inquiry undertaken by the AIHRC in 2017, 63 per cent of respondents reported having experienced ethnic discrimination at health centres. AIHRC, *National Inquiry Report Situation of the Right to Access Quality Health Services*, April 2017, <http://www.aihrc.org.af/media/files/Research%20Reports/english/health%20report%201.pdf>, pp. 7, 29, 38, 40. See also, Reuters, *Leaked Memo Fuels Accusations of Ethnic Bias in Afghan Government*, 21 September 2017, <https://www.reuters.com/article/us-afghanistan-politics/leaked-memo-fuels-accusations-of-ethnic-bias-in-afghan-government-idUSKCN1BW15U>; News in Asia, *Ethno-Religious Conflict Has Plagued Afghanistan for Long*, 24 July 2016, <https://newsin.asia/ethno-religious-conflict-has-plagued-afghanistan-for-long/>; Minority Rights Group International, *Afghanistan: Governance*, undated, <http://minorityrights.org/country/afghanistan/>; Nahid Suleman, *Ethnic Discrimination in Afghanistan*, undated, [http://www.intermedia.org.pk/pdf/pak\\_afghan/Nahid\\_Suleman\\_Ethnic\\_Discrimination\\_in\\_Afghanistan.pdf](http://www.intermedia.org.pk/pdf/pak_afghan/Nahid_Suleman_Ethnic_Discrimination_in_Afghanistan.pdf).

<sup>586</sup> In recognition of this fact, ten seats in the lower house of the national assembly are reserved for Kuchis and two seats in the upper house. AAN, *New Building, Old MPs: A Guide to the Afghan Parliament*, 4 February 2016, <https://www.afghanistan-analysts.org/new-building-old-mps-a-guide-to-the-afghan-parliament/>. AREU notes that, “The provision for Kuchi has been hotly contested among parliamentarians since the 2005 elections.” AREU, *The A to Z Guide to Assistance in Afghanistan*, 2015, <http://www.refworld.org/docid/5507ebe94.html>, p. 76. See also, RFE/RL, *Kuchi Nomads: Struggling and Stateless in War-Torn Lands*, 9 February 2016, <https://www.rferl.org/a/afghanistan-pakistan-kuchis/27539195.html>. There are no reliable statistics for the total number of Kuchis in Afghanistan. Minority Rights Group International estimates the total number of Kuchis in Afghanistan to be approximately 30,000. Minority Rights Group International, *Afghanistan: Kuchis*, undated, <http://minorityrights.org/minorities/kuchis/>. Other estimates vary from 800,000 to 2.4 million. See: Reuters, *Afghan Nomads Trapped, Hungry as Pakistan Blocks Access to Grazing Land*, 19 February 2018, <https://www.reuters.com/article/us-afghanistan-conflict-migration/afghan-nomads-trapped-hungry-as-pakistan-blocks-access-to-grazing-land-idUSKCN1G31UJ>; UN Department of Economic and Social Affairs, *World Population Prospects: The 2017 Revision – Afghanistan*, 21 June 2017, [https://esa.un.org/unpd/wpp/DVD/Files/4\\_Other%20Files/DataSources.pdf](https://esa.un.org/unpd/wpp/DVD/Files/4_Other%20Files/DataSources.pdf), p. 1.

<sup>587</sup> “Ethnically, the vast majority of kuchi are Pashtun. The kuchi also count Baloch, Arab, as well as Tajik and Uzbek in the north, among their numbers”. M Ker and J. Locke, “Singing in the Wilderness: Kuchi Nomads in Modern Afghanistan”, *Cornell International Affairs Review*, Vol. 3(2), 2010, <http://www.inquiriesjournal.com/articles/1260/singing-in-the-wilderness-kuchi-nomads-in-modern-afghanistan>, pp. 1-2. Minorities of Kuchi include Aimaq, Baluch, Arabs, Kirghiz, Turkmen and Uzbeks. Richard Tapper, “Who are the Kuchi? Nomad Self-Identities in Afghanistan”, *Journal of the Royal Anthropological Institute (N.S.)*, Vol. 14, 2008, pp. 97-116, [http://www.nomadsed.de/fileadmin/user\\_upload/redakteure/Dateien\\_Intern/Archiv\\_AG\\_1/Tapper\\_Kuchi\\_2008.pdf](http://www.nomadsed.de/fileadmin/user_upload/redakteure/Dateien_Intern/Archiv_AG_1/Tapper_Kuchi_2008.pdf), pp. 99-100. See also Minority Rights Group International, *Afghanistan: Kuchis*, undated, <http://minorityrights.org/minorities/kuchis/>.

<sup>588</sup> Minority Rights Group International, *Afghanistan: Kuchis*, undated, <http://minorityrights.org/minorities/kuchis/>.

<sup>589</sup> “Instability in Afghanistan has left [Kuchis] among the poorest groups in the country.” Minority Rights Group International, *Afghanistan: Kuchis*, undated, <http://minorityrights.org/minorities/kuchis/>. See also, Samuel Hall Consulting, *State of Afghan Cities 2015 – Vol. 1*, September 2015, [http://samuelhall.org/wp-content/uploads/2015/09/State-of-Afghan-Cities-2015-Volume\\_1.pdf](http://samuelhall.org/wp-content/uploads/2015/09/State-of-Afghan-Cities-2015-Volume_1.pdf), p. 21.

<sup>590</sup> “With reduced access to the shrinking pastures, the nomads either end up in the cities or grab whatever piece of land they find. As nomadic life becomes difficult to practice, some of them have no easily viable option to settle down somewhere, except as cheap labour in the cities. Those who can are keen to avoid that fate, and try to seize some land.” AREU, *Typologies of Nomad-Settler Conflict in Afghanistan*, January 2018, <https://areu.org.af/wp-content/uploads/2018/01/1801E-Typologies-of-nomad-settler-conflict-in-Afghanistan.pdf>, p. 22. Reportedly, the process of Kuchis becoming sedentary, caused partially by social, economic, environmental and demographic change, “accelerated dramatically” after 2001, especially in Kabul Province. AREU, *Mapping Nomad-Farmer Conflict in Afghanistan*, July 2017, [https://www.ecoi.net/en/file/local/1404589/1226\\_1500886126\\_1714e-mapping-nomad-farmer-conflict-in-afghanistan.pdf](https://www.ecoi.net/en/file/local/1404589/1226_1500886126_1714e-mapping-nomad-farmer-conflict-in-afghanistan.pdf), pp. 6-7. Estimates about the number of Kuchis who still live nomadic lives vary. “Many Kuchis have relocated to settled areas because of war, drought, and dwindling access to land. Only around one-third still led nomadic lives.” RFL/RE, *Afghanistan's Kuchi Nomads Forced to Settle*, 18 September 2015, <https://www.rferl.org/a/afghanistan-society-nomads/27241125.html>. In contrast, the AIHRC reported that over 80 per cent of Kuchis have permanently settled in towns or villages, while close to 18 per cent is semi-nomadic: they have settled but still move with their animals at certain times of the year. According to the AIHRC, only about two per cent of Kuchis are still fully nomadic, with no permanent place of residence. AIHRC, *Fifth Report: Situation of Economic and Social Rights in Afghanistan*, December 2011, <http://www.refworld.org/docid/511e58cf0.html>, p. 113. See also, AAN, *The Social Wandering of the Afghan Kuchi*, November 2013, [http://www.afghanistan-analysts.org/wp-content/uploads/2013/11/20131125\\_FFoschini-Kuchis.pdf](http://www.afghanistan-analysts.org/wp-content/uploads/2013/11/20131125_FFoschini-Kuchis.pdf). Many of these settlements occur in so-called “irregular residential areas” that are unsuitable for human habitation due to lack of urban planning or characteristics of the land. Samuel Hall Consulting, *State of Afghan Cities 2015 – Vol. 1*, September 2015, [http://samuelhall.org/wp-content/uploads/2015/09/State-of-Afghan-Cities-2015-Volume\\_1.pdf](http://samuelhall.org/wp-content/uploads/2015/09/State-of-Afghan-Cities-2015-Volume_1.pdf), p. 76.

Kuchis and other ethnic groups.<sup>591</sup> The socio-economic conditions for settled Kuchis are reported to be even worse than for nomadic Kuchis.<sup>592</sup> The Constitution provides that the State shall take measures to improve the livelihoods of nomads and to improve access to education for nomads (Article 44).<sup>593</sup> However, Kuchis are reported to remain “disadvantaged in terms of access to education, health or livelihood opportunities”.<sup>594</sup>

## b) Hazaras

Hazaras are reported to face continuing societal discrimination, as well as to be targeted for extortion through illegal taxation, forced recruitment and forced labour, physical abuse, and detention.<sup>595</sup> Hazaras, who are predominantly Shi'ites, have historically been marginalized and discriminated against by the Sunni majority population.<sup>596</sup> While they were reported to have made significant economic and political

<sup>591</sup> “In the absence of a government programme to settle the Nomads [Kuchis] in specific areas, they either end up in the cities or grab whatever piece of land they find. Few nomads have the resources to buy land, so one of the options they have is to occupy pastureland where they can. [...] As a result of competition for the exploitation of pastureland, communities that never before objected to Kuchis accessing the pastures turned against them [...] The total absence of policing in rural areas [...] results in relatively minor incidents escalating rapidly into violence.” AREU, *Mapping Nomad-Farmer Conflict in Afghanistan*, July 2017, [https://www.ecoi.net/en/file/local/1404589/1226\\_1500886126\\_1714e-mapping-nomad-farmer-conflict-in-afghanistan.pdf](https://www.ecoi.net/en/file/local/1404589/1226_1500886126_1714e-mapping-nomad-farmer-conflict-in-afghanistan.pdf), p. 8. “There have [...] been increasing ethnic tensions and incidents of violent clashes between Hazaras and nomadic Kuchis over access to land in recent years.” BBC, ‘*God Forgot Afghanistan*’, 30 July 2016, <http://www.bbc.com/news/blogs-trending-36925169>. See also Pajhwok Afghan News, *Khost Lakan Tribe Seeks End to Land Dispute with Kuchis*, 31 July 2017, <https://www.pajhwok.com/en/2017/07/31/khost-lakan-tribe-seeks-end-land-dispute-kuchis>.

<sup>592</sup> “It would appear that sedentary Kuchis tend to be poorer than nomadic Kuchis and that most settled Kuchis become daily workers.” AREU, *Mapping Nomad-Farmer Conflict in Afghanistan*, July 2017, [https://www.ecoi.net/en/file/local/1404589/1226\\_1500886126\\_1714e-mapping-nomad-farmer-conflict-in-afghanistan.pdf](https://www.ecoi.net/en/file/local/1404589/1226_1500886126_1714e-mapping-nomad-farmer-conflict-in-afghanistan.pdf), p. 6. Kuchis often settle in the areas around large cities, especially Kabul, where they lack access to services, including drinking water, and are negatively perceived by the local population. Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2015: Afghanistan*, 2 July 2015, <http://www.refworld.org/docid/55a4fa6915.html>.

<sup>593</sup> Constitution of Afghanistan, 3 January 2004, <http://www.refworld.org/docid/404d8a594.html>, Articles 14 and 44.

<sup>594</sup> Action Contre la Faim, *200,000 Kuchis Nomads Trapped in Afghanistan in Need of Assistance*, 11 February 2018, <https://reliefweb.int/report/afghanistan/200000-kuchis-nomads-trapped-afghanistan-need-assistance>. Kuchis are isolated from health services, and vaccination rates for Kuchi children are much lower than for other groups of children, whether urban or rural. As a result, Kuchis are particularly vulnerable to polio. UNICEF, *A Family Affair: Transforming a Community to Eradicate Polio in Afghanistan*, 22 February 2018, <https://www.unicef.org/afghanistan/stories/family-affair>. Afghanistan's Central Statistics Organization reported in 2016 that only 42.6 per cent of Kuchi women have access to prenatal care, the lowest level among all Afghan ethnic groups. Central Statistics Organization, *Women and Men in Afghanistan* 2016, 2017, <http://cso.gov.af/Content/files/Publications/Women%20in%20men/Women%20and%20Men%20In%20Afghanistan%20English%202016.pdf>, p. 32. See also Reuters, *Afghan Nomads Trapped, and Hungry as Pakistan Blocks Access to Grazing Land*, 19 February 2018, <https://www.reuters.com/article/us-afghanistan-conflict-migration/afghan-nomads-trapped-hungry-as-pakistan-blocks-access-to-grazing-land-idUSKCN1G31UJ>.

<sup>595</sup> December 2017, Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>. “Afghan Hazaras [...] have been forced to migrate multiple times as a result of deep-seated discrimination. [...] Hazaras [...] continue to experience specific aspects of religious or ethnic discrimination.” Minority Rights Group International, *No Escape from Discrimination: Minorities, Indigenous Peoples and the Crisis of Displacement*, December 2017, [http://minorityrights.org/wp-content/uploads/2017/12/MRG\\_Displacement\\_Report\\_Dec17.pdf](http://minorityrights.org/wp-content/uploads/2017/12/MRG_Displacement_Report_Dec17.pdf), pp. 3, 17. “Members of the Shia Hazara minority group were victims of forced labor.” US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>. “Several other attacks against the ethnic group in recent years have been attributed to the Islamic State, touching off large protests in Kabul by Hazaras, who say too little is done to protect them.” New York Times, *Hazaras Protest after an ISIS Attack Kills 10 in Kabul*, 9 March 2018, <https://www.nytimes.com/2018/03/09/world/asia/suicide-attack-kabul-hazaras.html>. “Hazaras activists say the government does not protect the interests of the Hazaras. Parts of central Afghanistan, like Bamiyan, the unofficial Hazara capital, are among the country's poorest, often lacking basic facilities and electricity.” Al Jazeera, *Afghanistan: Who Are the Hazaras?*, 27 June 2016, <https://www.aljazeera.com/indepth/features/2016/06/afghanistan-hazaras-160623093601127.html>. See also, The Geopolitics, *The Agony of the Hazaras and the Indifference of the Afghan State*, 18 May 2018, <https://thegeopolitics.com/the-agony-of-the-hazaras-and-the-indifference-of-the-afghan-state/>; The Globe Post, *Attacks on Hazara Community Killing Political Efficacy in Afghanistan*, 14 May 2018, <https://www.theglobepost.com/2018/04/29/afghanistan-hazara-community/>; Reuters, *Who Are the Hazaras and What Are They Escaping?*, 22 September 2016, <https://in.reuters.com/article/europe-migrants-hazaras/who-are-the-hazaras-and-what-are-they-escaping-idINKCN1IS0Z6>; The Diplomat, *TUTAP Power Project Reopens Old Wounds in Afghanistan*, 4 August 2016, <https://thediplomat.com/2016/08/tutap-power-project-reopens-old-wounds-in-afghanistan/>; Reuters, *Thousands of Afghan Hazaras Join Power Line Protest in Kabul*, 16 May 2016, <https://www.reuters.com/article/us-afghanistan-protests/thousands-of-afghan-hazaras-join-power-line-protest-in-kabul-idUSKCN0Y70BW>.

<sup>596</sup> “The Hazaras are a long-oppressed minority in Afghanistan whose members tend to be Shiite.” New York Times, *Hazaras Protest after an ISIS Attack Kills 10 in Kabul*, 9 March 2018, <https://www.nytimes.com/2018/03/09/world/asia/suicide-attack-kabul-hazaras.html>. “[W]hile all Afghans have been affected, ethnic and religious minorities have been particularly at risk. This is especially the case for Afghanistan's Hazaras, a community who have long faced persecution and discrimination for their faith as Shi'a Muslims and their Asiatic features. In their long history in Afghanistan, Hazaras have suffered persecution, social ostracization and mass killings, with thousands murdered under the Taliban.” Minority Rights Group International, *No Escape from Discrimination: Minorities, Indigenous Peoples and the Crisis of Displacement*, December 2017, [http://minorityrights.org/wp-content/uploads/2017/12/MRG\\_Displacement\\_Report\\_Dec17.pdf](http://minorityrights.org/wp-content/uploads/2017/12/MRG_Displacement_Report_Dec17.pdf), p. 17. See also, Global Village Space, *Afghanistan: The Growing Ethnic Tension Has its Roots in History*, 23 February 2018, <https://www.globalvillagespace.com/afghanistan-growing-ethnic-tension-roots-history>; Daily Times, *Hazara Genocide*, 21 November 2017, <https://dailytimes.com.pk/144056/hazara-genocide/>; Australian Policy and History, *Hazaras' Persecution Worsens: Will the New Government Show Leadership by Lifting the Suspension on Afghani Asylum Claims?*, 13 November 2017, <http://aph.org.au/hazaras-persecution-worsens-will-the-new-government-show-leadership-by-lifting-the-suspension-on-afghani-asylum-claims/>; Minority Rights Group International, *State*

advances since the 2001 fall of the Taliban regime,<sup>597</sup> in recent years there has reportedly been a significant increase in harassment, intimidation, kidnappings and killings at the hands of Taliban, Islamic State and other AGEs.<sup>598</sup>

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

Among the most marginalized communities in Afghanistan are those of Jat ethnicity, which encompasses the Jogi, Chori Frosh, Gorbat and Mosuli communities.<sup>599</sup> Social and institutional discrimination reportedly forms a major obstacle for members of these communities, with the Ministry of Interior reportedly refusing to consider members of the Jogi and Mosuli ethnic groups as nationals of Afghanistan.<sup>600</sup> This in turn means that they are not issued with the national identity card, the *tazkira*,

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*of the World's Minorities and Indigenous Peoples 2016 - Case study: Hazara Heritage and the Uncertain Future of the Buddhas of Bamiyan*, 12 July 2016, <http://www.refworld.org/docid/5796080ec.html>; Al Jazeera, *Afghanistan: Who are the Hazaras?*, 27 June 2016, <https://www.aljazeera.com/indepth/features/2016/06/afghanistan-hazaras-160623093601127.html>; Minority Rights Group International, *Afghanistan: Hazaras*, undated, <http://minorityrights.org/minorities/hazaras/>.

<sup>597</sup> "Since 2001, the traditionally marginalized Shiite Muslim minority, which includes most ethnic Hazaras, have enjoyed increased levels of political representation and participation in national institutions." Freedom House, *Freedom in the World 2017: Afghanistan*, 2 June 2017, <http://www.refworld.org/docid/5936a46d13.html>. See also Australian Government: Department of Foreign Affairs and Trade, *Thematic Report: Hazaras in Afghanistan*, 18 September 2017, <http://dfat.gov.au/about-us/publications/Documents/country-information-report-hazaras-thematic.pdf>, p. 4; Landinfo, *Afghanistan: Hazaras and Afghan Insurgent Groups*, 3 October 2016, <http://www.refworld.org/docid/5ae1ea974.html>, p. 12; Minority Rights Group International, *Afghanistan: Hazaras*, undated, <http://minorityrights.org/minorities/hazaras/>.

<sup>598</sup> "Nationwide, insurgent attacks on Shiite and Hazara targets have claimed more than 300 lives and left more than 700 people wounded in the past two years. Most have been claimed by or are believed to have been carried out by the Islamic State." Washington Post, *'We Suffer More': Rising Violence on Shiite Targets Takes Toll on Afghanistan's Hazaras*, 21 March 2018, [https://www.washingtonpost.com/world/kabul-suicide-bomber-strikes-shiite-ceremony-killing-at-least-29/2018/03/21/e6e6e3ce-2cfa-11e8-b0b0-f706877db618\\_story.html](https://www.washingtonpost.com/world/kabul-suicide-bomber-strikes-shiite-ceremony-killing-at-least-29/2018/03/21/e6e6e3ce-2cfa-11e8-b0b0-f706877db618_story.html). "Throughout 2017 UNAMA noted an increasing pattern of deliberate sectarian-motivated attacks against the Shi'a Muslim religious minority, most of whom also belong to the Hazara ethnic minority, nearly all attributed to and claimed by Daesh/ISIL-KP." UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>. "During [2016-2017], Shi'a Muslims, especially ethnic Hazaras, fell victim to multiple violent and deadly attacks, as well as abductions that often ended in death. The attacks were overwhelmingly claimed by or attributed to [...] terrorist groups, including the Taliban and ISIS." US Commission on International Religious Freedom, *Annual Report: Afghanistan*, April 2017, <https://www.uscifr.gov/sites/default/files/Afghanistan.2017.pdf>, p. 3. "The ISKP publicly claimed responsibility for attacks killing over 100 members of the Shia community. In July [2016] a suicide bombing targeted a protest attended primarily by members of the Shia-majority Hazara community, killing at least 97 and injuring more than 260. In October [2016] gunmen entered the Karte-Sakhi mosque and opened fire on worshippers gathering to mark the Shia holiday of Ashura, killing 17 worshippers and wounding 58, including women and children. The ISKP claimed responsibility for both attacks. The Taliban were responsible for a number of kidnappings of Shia Hazaras and continued to threaten clerics with death for preaching messages contrary to the Taliban's interpretation of Islam. They warned mullahs not to perform funeral prayers for government security officials." US Department of State, *2016 Report on International Religious Freedom: Afghanistan*, 15 August 2017, <http://www.refworld.org/docid/59b7d8f4a.html>. See also, New York Times, *Hazaras Protest after an ISIS Attack Kills 10 in Kabul*, 9 March 2018, <https://www.nytimes.com/2018/03/09/world/asia/suicide-attack-kabul-hazaras.html>; NPR, *ISIS Claims Responsibility for Deadly Attack Aimed at Afghan Hazaras*, 9 March 2018, <https://www.npr.org/sections/thetwo-way/2018/03/09/592210383/isis-claims-responsibility-for-deadly-attack-aimed-at-afghan-hazaras>; Amnesty International, *Amnesty International Report 2017/18: Afghanistan*, 22 February 2018, <http://www.refworld.org/docid/5a99395da.html>; HRW, *World Report 2018: Afghanistan*, 18 January 2018, <http://www.refworld.org/docid/5a61eeac4.html>; Pahjwok News, *Taliban out to Foment Ethnic Trouble in Ghazni: Governor*, 13 January 2018, <https://www.pahjwok.com/en/2018/01/13/taliban-out-foment-ethnic-trouble-ghazni-governor>; AIHRC, *Attacks Against Hazaras in Afghanistan*, 2017, [http://www.aihrc.org.af/media/files/A%20Short%20Report%20on%20Attack%20against%20Hazaras\\_English\\_Final.pdf](http://www.aihrc.org.af/media/files/A%20Short%20Report%20on%20Attack%20against%20Hazaras_English_Final.pdf); The Guardian, *Insurgents Kill up to 50 Afghan Villagers in Northern Province*, 6 August 2017, <https://www.theguardian.com/world/2017/aug/06/insurgents-kill-up-to-50-afghan-villagers-in-northern-province>; RFE/RL, *Islamic State Proving Resilient in Afghanistan in Face of Targeted Campaign*, 4 August 2017, <http://www.refworld.org/docid/5a9fb779a.html>; Huffington Post, *Why ISIS Have Declared War on the Hazara Shias of Afghanistan*, 26 June 2017, [https://www.huffingtonpost.in/syed-zafar-mehdi/why-isis-have-declared-war-on-the-hazara-shias-of-afghanistan\\_a\\_22504421/](https://www.huffingtonpost.in/syed-zafar-mehdi/why-isis-have-declared-war-on-the-hazara-shias-of-afghanistan_a_22504421/); Landinfo, *Afghanistan: Hazaras and Afghan Insurgent Groups*, 3 October 2016, <http://www.refworld.org/docid/5ae1ea974.html>, pp. 25-26; Al Jazeera, *Afghanistan: Who Are the Hazaras?*, 27 June 2016, <https://www.aljazeera.com/indepth/features/2016/06/afghanistan-hazaras-160623093601127.html>.

<sup>599</sup> RFE/RL, *Afghanistan's Marginalized Minority Fights Stateless Status*, July 2015, <http://gandhara.rferl.mobi/a/27100409.html>; Samuel Hall Consulting, *Jogi and Chori Frosh Communities: A Story of Marginalization* (for UNICEF), November 2011, <http://samuelhall.org/REPORTS/JOGI%20and%20CHORI%20FROSH%20Communities.pdf>, p. 15. The total number of Jogi, Jat, Gorbat and Chori Frosh individuals is estimated to be around 30,000, mostly in the cities of Jalalabad (Jat), Mazar-e-Sharif (Jogi and Chori-Frosh), Kabul (Jogi and Jat), Kunduz (Jogi and Chori Frosh), and Herat (Gorbat); ILO, *Afghanistan: Time to Move to Sustainable Jobs: Study on the State of Employment in Afghanistan*, May 2012, <http://www.refworld.org/docid/5124c39f2.html>, p. 39. Similarly to the Kuchis, these groups are abandoning their traditional lifestyle to move to urban areas. Samuel Hall Consulting, *State of Afghan Cities 2015 - Vol. 1*, September 2015, [http://samuelhall.org/wp-content/uploads/2015/09/State-of-Afghan-Cities-2015-Volume\\_1.pdf](http://samuelhall.org/wp-content/uploads/2015/09/State-of-Afghan-Cities-2015-Volume_1.pdf), p. 21. Afghanistan also has a small Kyrgyz community of about 1,500 individuals in northern Badakhshan province, who have expressed concerns about the very survival of their community in Afghanistan. By 2012, their efforts to be relocated to Kyrgyzstan were reported to have remained unsuccessful. EurasiaNet, *Kyrgyz Community in Afghanistan Looking for a Way Out*, 7 May 2012, <http://www.eurasianet.org/node/65369>.

<sup>600</sup> "Jogi and Chori Frosh communities are discriminated against on account of their ancestral origins and related social and economic practices, including high levels of female labour participation rates, for which they are considered 'outsiders'. This has contributed to their severe



as a result of which they are reported to have limited access to social services, government schools, employment and land ownership.<sup>601</sup>

d) *Land Disputes with an Ethnic or Tribal Dimension*

Land ownership is in many cases difficult to establish and, as a result, land disputes are reported to be common in Afghanistan; they frequently turn violent.<sup>602</sup> Land grabbing is reportedly widespread, often involving powerful actors with connections to the Government, as well as public officials.<sup>603</sup> All land registration, distribution and dispute resolution mechanisms, whether formal or informal, are reported to be affected by corruption.<sup>604</sup> To address the widespread corruption, a new Land Management Law was issued by presidential decree on 4 March 2017.<sup>605</sup> Additionally, the new Penal Code, which came into force on 15 February 2018, criminalizes land usurpation.<sup>606</sup>

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economic, social, and political marginalization, a situation exacerbated by the frequent denial of recognition of their citizenship.” Minority Rights Group International, *Afghanistan: Jogi and Chori Frosh*, undated, <http://minorityrights.org/minorities/jogi-chori-frosh/>.

<sup>601</sup> IWPR, *Afghan Gypsies Wait for Recognition*, 27 March 2017, <https://iwpr.net/global-voices/afghan-gypsies-wait-recognition>; AFP, *Living on A Knife Edge*, 18 March 2018, <https://www.thepuketnews.com/living-on-a-knife-edge-66377.php>; TRT World, *Afghanistan's Jogi Minority Seeks Citizenship*, 17 March 2018, <https://www.trtworld.com/life/afghanistan-s-jogi-minority-seeks-citizenship-15980>; The Times of India, *Afghanistan's Forgotten Gypsies Seek Legal Recognition*, 8 March 2018, <https://timesofindia.indiatimes.com/world/middle-east/afghanists-forgotten-gypsies-seek-legal-recognition/articleshow/63221731.cms>; Minority Rights Group International, *Afghanistan: Jogi and Chori Frosh*, undated, <http://minorityrights.org/minorities/jogi-chori-frosh/>. See also V. Jain, *Ethnological and Legal Study of Jogis*, Journal of Social Sciences Research (2016) 2(3) 43, 49.

<sup>602</sup> ITV News, *More Than 26,000 Acres of Usurped Land Reclaimed in One Year: Justice Ministry*, 23 April 2018, <http://www.itvnews.af/en/news/afghanistan/34256-more-than-26000-acres-of-usurped-land-reclaimed-in-one-year-justice-ministry>; Tolo News, *500 Land Ownership Certificates Handed Out In Herat*, 24 February 2018, <https://www.tolonews.com/business/500C2%A0land-ownership-certificates-handed-outC2%A0-herat>; Pahjwok Afghan News, *In Nangarhar, Big-Time Land-Grabbers Remain at Large*, 10 December 2017, <https://www.pahjwok.com/en/2017/12/10/nangarhar-big-time-land-grabbers-remain-large>; ITV News, *President Ghani Warns He Will 'Crush Heads' of Land Grabbers*, 3 August 2017, <http://www.itvnews.af/en/news/afghanistan/30582>; TKG, *Thousands Acres of Usurped Land Reclaimed in Paktika*, 13 June 2017, <http://tkg.af/english/2017/06/13/thousands-acres-usurped-land-reclaimed-paktika/>; Pahjwok Afghan News, *Logar Residents Take to the Streets Against Land Grab*, 24 May 2017, <https://www.pahjwok.com/en/2017/05/24/logar-residents-take-streets-against-land-grab>; Pahjwok Afghan News, *650,000 Acres of Govt Land Usurped Nationwide*, 15 March 2017, <https://www.pahjwok.com/en/2017/03/15/650000-acres-govt-land-usurped-nationwide>; Afghanistan Times, *Land Grabbing: A Lucrative Black Business*, 11 March 2016, <http://afghanistantimes.af/land-grabbing-a-lucrative-black-business>.

<sup>603</sup> “Impunity and the lack of rule of law contribute greatly to the land usurpation problem. [...] A report provided by the Directorate [of Discovering Economic Crimes] indicated that in total 1,247,981 jeribs of government and private land have been usurped by 15,831 usurpers in 30 provinces. MEC’s findings reveal that most private and government land was usurped by those who have, or have had, a significant presence in the government. Law enforcement agencies have been ineffective in investigating and prosecuting land usurpation cases.” Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC), *MEC’s Impact Analysis*, October 2016, [http://www.mec.af/files/MEC\\_Impact\\_%20FINAL%20\(English\).pdf](http://www.mec.af/files/MEC_Impact_%20FINAL%20(English).pdf) p. 9. “Abusive strongmen were sometimes legitimized and empowered through their appointments to positions of authority and responsibility by President Hamid Karzai. [...] These men repressed rival groups and ordinary citizens through illegal land grabs, economic marginalization, and human rights violations.” Special Inspector General for Afghanistan Reconstruction (SIGAR), *Corruption in Conflict*, September 2016, <https://www.sigar.mil/pdf/lessonslearned/SIGAR-16-58-LL.pdf>; p. 11. See also Pahjwok Afghan News, *Above 14,000 Acres of Land Usurped in Baghlan*, 27 January 2018, <https://www.pahjwok.com/en/2018/01/27/above-14000-acres-land-usurped-baghlan>; Pahjwok Afghan News, *Large Swaths of State Land 'Usurped' East of Kabul*, 12 December 2017, <https://www.pahjwok.com/en/2017/12/12/large-swaths-state-land-usurped-east-kabul>; The Kabul Times, *Land Grabbing Still a Major Challenge, Minister*, 5 November 2017, <http://thekabultimes.gov.af/index.php/newsnational/15330-land-grabbing-still-a-major-challenge-minister.html>; Pahjwok Afghan News, *650,000 Acres of Govt Land Usurped Nationwide*, 15 March 2017, <https://www.pahjwok.com/en/2017/03/15/650000-acres-govt-land-usurped-nationwide>.

<sup>604</sup> According to SIGAR, the main challenges to land reform in Afghanistan include include political and judicial corruption; an underdeveloped legal system and lack of enforcement mechanisms to support land laws and property rights; and a lack of Afghan government technical capacity, including the ability to use land administration information technology systems. SIGAR, *Land Reform in Afghanistan: Full Impact and Sustainability of \$41.2 Million USAID Program Is Unknown*, February 2017, <https://www.sigar.mil/pdf/audits/SIGAR-17-27-AR.pdf>, p. 3. “Law enforcement agencies have been ineffective in investigating and prosecuting land usurpation cases.” Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC), *MEC’s Impact Analysis*, October 2016, [http://www.mec.af/files/MEC\\_Impact\\_%20FINAL%20\(English\).pdf](http://www.mec.af/files/MEC_Impact_%20FINAL%20(English).pdf) p. 9.

<sup>605</sup> UN Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security*, 27 February 2018, A/72/768–S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>, p. 20.

<sup>606</sup> Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017, Article 715. (English unofficial translation on record with UNHCR.)



Conflicts about land ownership and land use rights often have historic roots and an ethnic dimension, in part as a result of population movements.<sup>607</sup> Afghans who seek to reclaim their land after returning home from displacement may be particularly vulnerable to land disputes with an ethnic dimension.<sup>608</sup>

In the provinces of Wardak and Ghazni, the annual migration of nomadic Kuchis in search of grazing pastures for their animals in areas settled by Hazaras has given rise to recurring violence between Kuchis and Hazaras.<sup>609</sup> Despite government efforts to address these conflicts, the violence has continued to lead to deaths and injuries among both groups, and displacement of Hazara villagers.<sup>610</sup>

#### e) Summary

Based on the foregoing, UNHCR considers that individuals who belong to one of Afghanistan's minority ethnic groups, particularly in areas where they do not constitute an ethnic majority, may, depending on the individual circumstances of the case, be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of State or non-State actors for reasons

<sup>607</sup> "Growing demographic pressure is an obvious source of nomad-farmer conflict and is often mentioned by interviewees and confirmed by officials [...] [A]nother deep cause underpinning the rise in conflicts over pastureland is the expansion of urban and peri-urban settlements. This trend has, in some cases, pushed up the value of grassland previously used by the nomads, causing local villagers, returnees from Pakistan and powerbrokers to try and seize control over pastureland for the purpose of building on it or of selling it. It does not help that the authorities play little or no role in trying to channel urban expansion towards dry areas, as opposed to pastures and agricultural land." AREU, *Typologies of Nomad-Settler Conflict in Afghanistan*, January 2018, <https://areu.org.af/wp-content/uploads/2018/01/1801E-Typologies-of-nomad-settler-conflict-in-Afghanistan.pdf>, p. 21. "Widespread poverty and a scarcity of productive land generate intense competition for access to and management of land and natural resources among people and communities, which often leads to intracommunal and intercommunal conflict. For example, disputes over access to pastoral land have been at the heart of interethnic tensions between the Shia Hazaras and the Sunni Kuchis for over a century, tensions that have frequently flared into violence". The Asia Foundation, *The State of Conflict and Violence in Asia: Afghanistan*, 11 October 2017, <https://asiafoundation.org/wp-content/uploads/2017/10/Afghanistan-StateofConflictandViolence.pdf>, p. 17. The causes of some of the conflicts about land go back to the deliberate efforts in the 19th and early 20th century by Afghanistan's Pashtun rulers to relocate mostly Pashtun Afghans into areas not previously settled by Pashtuns, in an attempt to gain control over these parts of the country. See for example Landinfo, *The Conflict between Hazaras and Kuchis in the Beshud Districts of Wardak Province*, 6 June 2011, <http://www.refworld.org/docid/5124c5142.html>; Cooperation for Peace and Unity (CPAU), *Fractured Relationships: Understanding Conflict between Nomadic and Settled Communities in Wardak's Pastureland*, October 2010, <http://www.cpaug.af/images/publications/CPAU%20Report%20-%20Fractured%20Relationships.pdf>.

<sup>608</sup> "There are serious concerns about (potential) incidents related to disputes [between returnees and host communities] over land and property, which could escalate into violence. [...] Access to land seems to be a particular concern when connecting the returnee phenomenon with conflict." Oxfam, *Returning to Fragility: Exploring the Link between Conflict and Returnees in Afghanistan*, January 2018, <https://www.oxfam.org/en/research/returning-fragility-exploring-link-between-conflict-and-returnees-afghanistan>, p. 17. "Contestation and conflict over land is common and widespread in Afghanistan and significantly affects returnees. Successive waves of internal and external displacement have forced many to vacate land and housing. In some cases, their lands have been occupied by IDPs or other returnees and in other cases by local power brokers [...]. Displacement and other factors have eroded traditional mechanisms for resolving tenancy disputes, and it is difficult for owners to claim their properties without an original title or deed. Tensions between returnees and tenants often end with violence or the threat of violence among the disputing parties." USIP, *The Forced Return of Afghan Refugees and Implications for Stability*, Peace Briefing 199, January 2016, <https://www.usip.org/sites/default/files/PB199-The-Forced-Return-of-Afghan-Refugees-and-Implications-for-Stability.pdf>, p. 3.

<sup>609</sup> "Land disputes between Hazaras and Kuchis often erupt each summer but have worsened in the last few years since Kuchis have begun arriving in the Behsud and Daimirdad districts in Maidan Wardak province, heavily armed for conflict." Australian Policy and History, *Hazaras' Persecution Worsens: Will the New Government Show Leadership by Lifting the Suspension on Afghani Asylum Claims?*, 13 November 2017, <http://aph.org.au/hazaras-persecution-worsens-will-the-new-government-show-leadership-by-lifting-the-suspension-on-afghani-asylum-claims/>. Reportedly, the conflict between the Kuchis and Hazaras also has a political dimension with "political parties and factions mobilis[ing] support by supporting their constituencies and even encouraging [Kuchis] to challenge other communities over land and access issues [...]. At present, [...] the conflict is limited to a few passages on the Kuchis' migration route that block access to the pasturelands of the Hazarajat. Overall, "[c]onflict between nomads and farmers affects not only Hazara farming communities, but also Tajiks and Pashtuns. Also in these cases, the involvement of political parties and politicians is reported." AREU, *Mapping Nomad-Farmer Conflict in Afghanistan*, July 2017, [https://www.ecoi.net/en/file/local/1404589/1226\\_1500886126\\_1714e-mapping-nomad-farmer-conflict-in-afghanistan.pdf](https://www.ecoi.net/en/file/local/1404589/1226_1500886126_1714e-mapping-nomad-farmer-conflict-in-afghanistan.pdf), pp. 3, 5. According to AREU, "[t]he conflict has deep historical origins in the use made by the nascent Afghan state in the late 19<sup>th</sup> nineteenth century of the nomads to subjugate the Hazaras." AREU, *Typologies of Nomad-Settler Conflict in Afghanistan*, January 2018, <https://areu.org.af/wp-content/uploads/2018/01/1801E-Typologies-of-nomad-settler-conflict-in-Afghanistan.pdf>, p. 9. The Kuchis maintain that decrees issued by the Rahman regime at the end of the 19<sup>th</sup> century means they are entitled to use certain tracts of land as farmland and summer pastures. The Hazaras contest this, arguing that the decrees are invalid. Landinfo, *The Conflict between Hazaras and Kuchis in the Beshud Districts of Wardak Province*, 6 June 2011, <http://www.refworld.org/docid/5124c5142.html>. See also, AREU, *Typologies of Nomad-Settler Conflict in Afghanistan*, January 2018, <https://areu.org.af/wp-content/uploads/2018/01/1801E-Typologies-of-nomad-settler-conflict-in-Afghanistan.pdf>; Pajhwok Afghan News, *Khost Lakan Tribe Seeks End to Land Dispute with Kuchis*, 31 July 2017, <https://www.pajhwok.com/en/2017/07/31/khost-lakan-tribe-seeks-end-land-dispute-kuchis>; BBC, *'God Forgot Afghanistan'*, 30 July 2016, <http://www.bbc.com/news/blogs-trending-36925169>.

<sup>610</sup> See, for example, Australian Policy and History, *Hazaras' Persecution Worsens: Will the New Government Show Leadership by Lifting the Suspension on Afghani Asylum Claims?*, 13 November 2017, <http://aph.org.au/hazaras-persecution-worsens-will-the-new-government-show-leadership-by-lifting-the-suspension-on-afghani-asylum-claims/>; World Hazara Council, *A Human Rights Situational Analysis of Ethnic-Hazaras in Afghanistan and Pakistan*, 22 October 2016, <http://worldhazaracouncil.org/en/wp-content/uploads/Brief-report-on-Human-rights-of-Hazaras-Oct-2016.pdf>, pp. 2-3.

of their nationality or ethnicity/race, or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution where the actors of persecution are non-State actors. Relevant considerations to assess the well-foundedness of the fear of persecution include the relative power position of the ethnic group in the applicant's area of origin, and the history of inter-ethnic relations in that area.

Individuals who belong to one of Afghanistan's dominant ethnic groups may, depending on the individual circumstances of the case, also be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of the State or non-State actors for reasons of their nationality or ethnicity/race, or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution where the actors of persecution are non-State actors. Relevant considerations to assess the well-foundedness of the fear of persecution include the question of whether the ethnic group constitutes a majority in the area of origin or constitutes a minority there.

International protection needs based on ethnicity/race may overlap with those based on religion and/or (imputed) political opinion. Due consideration should also be given to whether other risk profiles outlined in these Guidelines apply to the person concerned.

#### **14. Individuals Involved in Blood Feuds**

In general, a blood feud involves the members of one family killing members of another family in retaliatory acts of vengeance which are carried out according to an ancient code of honour and behaviour.<sup>611</sup> In the context of Afghanistan, while blood feuds are primarily a Pashtun tradition rooted in Pashtuns' customary law system, Pashtunwali, they are also reported to occur among other ethnic groups.<sup>612</sup> Blood feuds can be triggered by murders, but also by other offences, such as the infliction of permanent, serious injury, the kidnapping or violation of married women, or unresolved disputes over land, access to water supplies or property.<sup>613</sup> Blood feuds may give rise to long cycles of retaliatory violence and revenge.<sup>614</sup> Under Pashtunwali, in principle revenge must be taken against the offender,

<sup>611</sup> See UNHCR, *UNHCR Position on Claims for Refugee Status under the 1951 Convention relating to the Status of Refugees Based on a Fear of Persecution Due to an Individual's Membership of a Family or Clan Engaged in a Blood Feud*, 17 March 2006, paras 5-6 and 16-20, <http://www.refworld.org/docid/44201a574.html>.

<sup>612</sup> "Blood feud and private revenge taking also occurs but is less common among non-Pashtun groups." Country of Origin Research and Information (CORI), *Thematic Report Afghanistan: Blood Feuds*, February 2014, <http://www.refworld.org/docid/53199ef64.html>, p. 4. See also Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, <http://www.refworld.org/docid/5124c6512.html>, p. 9. The Landinfo report provides further analysis of the concepts of honour and revenge as central elements of Pashtunwali. The Landinfo report notes that while blood feuds are primarily a Pashtun tradition, blood feuds and private revenge also occur among non-Pashtun groups in Afghanistan, especially in areas where historically there has been a mix of Pashtun and other ethnic groups, and where common norms have taken root over time. Blood feuds are, however, less common among non-Pashtun groups, where there is a greater willingness to use the formal justice system for dispute settlement. *Ibid.*, pp. 15-16. Blood feuds may also involve members of different ethnic groups. See for example Pajhwok Afghan News, *2 Dead as Hazara-Kuchi Feud Resurfaces in Wardak*, 22 June 2015, <https://www.pajhwok.com/en/2015/06/22/2-dead-hazara-kuchi-feud-resurfaces-wardak>, concerning blood feuds between Kuchi and Hazara communities. See also, *Refugee Appeal No. 76355*, 5 November 2009, <http://www.refworld.org/docid/4b3c8bb42.html>, where the New Zealand Refugee Status Appeals Authority held that the appellant, a Tajik who was perceived to have violated the family honour of a Pashtun family, was at risk of persecution on the ground of a particular social group.

<sup>613</sup> Gandhara, *Rural Afghan Girls Continue to Fall Victim to 'Baad' Marriages*, 28 July 2015, <https://gandhara.rferl.org/a/afghanistan-baad-marriages-rural-girls/27157104.html>; Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, <http://www.refworld.org/docid/5124c6512.html>, p. 13. "Causes of disputes in Afghanistan vary widely and often include land, water, family and criminal matters [...] Blood feuds are triggered by personal violence, sometimes deliberate, sometimes unplanned, that arises out of a dispute. In other words it is not the dispute itself but actions arising from it that start blood feuds." CORI, *Thematic Report Afghanistan: Blood Feuds*, February 2014, <http://www.refworld.org/docid/53199ef64.html>, p. 10. Blood feuds may also be triggered, or fueled, by business rivalries: see, for example, AAN, *Finding Business Opportunity in Conflict: Shopkeepers, Taleban and the Political Economy of Andar District*, 2 December 2015, <https://www.afghanistan-analysts.org/finding-business-opportunity-in-conflict-shopkeepers-taleban-and-the-political-economy-of-andar-district/>.

<sup>614</sup> See for example TOLO News, *Eshchi And Dostum 'At Odds for over 30 Years'*, 27 May 2017, <https://www.toloneews.com/index.php/afghanistan/eshchi-and-dostum-%E2%80%98at-odds-over-30-years%E2%80%99>; New York Times, *An Afghan Feud Reignites, Putting Police Families at Odds*, 27 August 2016, <https://www.nytimes.com/2016/08/28/world/asia/afghanistan-daku-shomali-feud.html>; Pajhwok Afghan News, *Warring Ghor Tribes End Feud That Has Killed 300 People*, 29 December 2015, <https://www.pajhwok.com/en/2015/12/29/warring-ghor-tribes-end-feud-has-killed-300-people>, concerning a blood feud which lasted for 40 years and killed 300 people; Pajhwok Afghan News, *In Kapisa, 60-Year-Old Dispute Resolved on Amicable Note*, concerning a blood feud which lasted for 60 years and killed 60 people; Pajhwok Afghan News, *Foreign Hands Fuel Nuristan Tribal Feud*, 9 March 2015, <http://www.pajhwok.com/en/2015/03/10/foreign-hands-fuel-nuristan-tribal-feud-governor>, concerning a blood feud that lasted 16 years and killed 400 people.

but under certain circumstances the offender's brother or other patrilineal kin may become the target for revenge. In general, while revenge is not reported to be exacted against women and children,<sup>615</sup> the practice of *baad*, a tribal form of dispute-settling in which the offending family offers a girl for marriage into the wronged family, is reportedly used to settle a blood feud especially in the rural areas.<sup>616</sup> When the victim's family is not in a position to exact revenge, a blood feud may reportedly lie dormant until such time as the victim's family believes it is capable of taking revenge. Revenge can thus be taken years or even generations after the original offence.<sup>617</sup> Sentencing of the offender in the formal judicial system does not necessarily preclude violent retaliation by the victim's family: unless a settlement has been reached through a traditional dispute settlement mechanism to end the blood feud, the victim's family will reportedly still be expected to exact revenge against the offender after he has served his sentence.<sup>618</sup>

In light of the foregoing, UNHCR considers that persons involved in a blood feud may, depending on the circumstances of the individual case, be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of non-State actors for reasons of membership of a particular social group or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution.<sup>619</sup> Claims by persons involved in blood feuds may, however, give rise to the need to examine possible exclusion from refugee status. Depending on the specific circumstances of the case, family members, partners or other dependants of individuals involved in blood feuds may also be in need of international protection on the basis of their association with individuals at risk.

### 15. Business People, Other People of Means and Their Family Members

Afghans continue to be concerned about widespread corruption, racketeering and extortion.<sup>620</sup> In many areas, the ALP are reported to demand payment of informal taxes and to use violence at police checkpoints against persons who have not paid.<sup>621</sup> Pro-government armed groups are also reported to subject the civilian population to illegal taxation, and harass, threaten or even kill civilians who fail to

<sup>615</sup> Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, <http://www.refworld.org/docid/5124c6512.html>, p. 10.

<sup>616</sup> "When families in some parts of Afghanistan fall out over serious matters, one way of avoiding an escalating blood feud is for the offending party to hand over a woman to the other side. Known as "baad", the custom involves an arranged marriage between the woman and someone from the injured family." IWPR, *Hope for Afghan Women Traded to End Feuds*, 17 January 2017, <https://iwpr.net/global-voices/hope-afghan-women-traded-end-feuds>. "The ancient practice of *baad*, the forced marriage of a girl to an antagonized family to settle a feud, is still prevalent in rural Afghanistan. When a villager kills a member of a rival clan in a fight, the elders of the community forms a *jirga*, or council, to mediate the conflict and prevent further bloodshed. The *jirga* typically chooses a young woman from the perpetrator's family and orders her to marry a man from the victim's clan." Gandhara, *Rural Afghan Girls Continue to Fall Victim to 'Baad' Marriages*, 29 July 2015, <https://gandhara.rferl.org/a/afghanistan-baad-marriages-rural-girls/27157104.html>. See also CORI, *Thematic Report Afghanistan: Blood Feuds*, February 2014, <http://www.refworld.org/docid/53199ef64.html>, pp. 22-29. For further information see Section III.A.7 on "Women with Certain Profiles or in Specific Circumstances".

<sup>617</sup> Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, <http://www.refworld.org/docid/5124c6512.html>, p. 10. See also CORI, *Thematic Report Afghanistan: Blood Feuds*, February 2014, <http://www.refworld.org/docid/53199ef64.html>, pp. 34-37.

<sup>618</sup> "Punishment by a government court does not erase the obligation to take revenge: a victim's family is expected to kill the murderer once he is released from prison unless there is a settlement to end the feud before that time." CORI, *Thematic Report Afghanistan: Blood Feuds*, February 2014, <http://www.refworld.org/docid/53199ef64.html>, p. 39. See also Landinfo, *Afghanistan: Blood Feuds, Traditional Law (Pashtunwali) and Traditional Conflict Resolution*, 1 November 2011, <http://www.refworld.org/docid/5124c6512.html>, p. 9.

<sup>619</sup> For further guidance see UNHCR, *UNHCR Position on Claims for Refugee Status Under the 1951 Convention relating to the Status of Refugees Based on a Fear of Persecution Due to an Individual's Membership of a Family or Clan Engaged in a Blood Feud*, 17 March 2006, paras 5-6 and 16-20, <http://www.refworld.org/docid/44201a574.html>; and UNHCR, *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, <http://www.refworld.org/docid/3d36f23f4.html>.

<sup>620</sup> Afghanistan is ranked 177<sup>th</sup> out of 180 countries on Transparency International's 2017 Corruption Index. Transparency International, *Afghanistan*, undated, <https://www.transparency.org/country/AFG#>. In the 2017 edition of the annual *Survey of the Afghan People* (for which 10,012 Afghans were interviewed in July 2017), 69.8 per cent of respondents stated that corruption was a problem in their daily life, while 83.7 per cent stated that corruption is a major problem in Afghanistan as a whole. The Asia Foundation, *Afghanistan in 2017*, November 2017, [https://asiafoundation.org/wp-content/uploads/2017/11/2017\\_AfghanSurvey\\_report.pdf](https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf), p. 10. In addition, 19 per cent of respondents stated that they or a family member had suffered from racketeering or extortion in the past year. The Asia Foundation, *ibid.*, pp. 7, 49, 161.

<sup>621</sup> IWPR, *Afghan Local Police Accused of Extortion*, 15 January 2018, <https://iwpr.net/global-voices/afghan-local-police-accused-extortion>; Modern War Institute, *Dress Like Allies, Kill Like Enemies: An Analysis of 'Insider Attacks' in Afghanistan*, 4 April 2017, <https://mwi.usma.edu/wp-content/uploads/2017/04/Dress-Like-Allies-Kill-Like-Enemies.pdf>, p. 13.



pay the illegal taxation imposed by these groups.<sup>622</sup> For example, civilians have been reportedly targeted in Kunduz province by pro-government militias, “whose livelihoods now mostly depend on extortion, kidnappings, and murders”.<sup>623</sup> Additionally, pro-government militias have reportedly targeted farmers and traders for extortion.<sup>624</sup>

AGEs are reported to operate illegal checkpoints and to extort money and goods from civilians.<sup>625</sup> The Taliban are reported to make extensive profits from illegal activities, including extortion and kidnapping for ransom.<sup>626</sup> Similarly, Islamic State fighters reportedly subject the civilian population to threats, kidnappings and extortion.<sup>627</sup> Additionally, clashes between the Taliban and Islamic State have reportedly taken place due to the increased competition between the groups over “seizing cash and other assets from civilians”.<sup>628</sup>

<sup>622</sup> “Pro-Government armed group abuses also took place in Jawzjan, Samangan, Daikundi, Khost, Paktya, Kunduz, Helmand, and Balkh provinces, and included the deliberate killing of relatives of those perceived to be Taliban members, killing of civilians who objected to the armed groups’ activities, and killing, threatening and/or harassment of civilians who failed to pay illegal taxation imposed by the groups.” In 2017 UNAMA documented 10 cases where pro-Government armed groups deliberately killed civilians following personal disputes or civilians’ refusal to pay illegal taxation to members of the groups. UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 52.

<sup>623</sup> Gandhara, *Armed Anti-Militant Bands Hound Civilians in Restive Afghan Province*, 25 January 2018, <https://gandhara.rferl.org/a/Afghanistan-anti-taliban-armed-bands/28998464.html>.

<sup>624</sup> New York Times, *Abundant Afghan Harvest Wilts amid Violence and Extortion*, 4 September 2017, <https://www.nytimes.com/2017/09/04/world/asia/kabul-afghanistan-fruit-taliban-harvest-kabul-fruit-market.html>.

<sup>625</sup> FDD’s Long War Journal, *Taliban Blockade of Ghazni-Paktia Highway Enters Second Month*, 9 June 2018, <https://www.longwarjournal.org/archives/2018/06/taliban-blockade-of-ghazni-paktia-highway-enters-second-month.php>. “Besides taxing the opium trade imperatives, the terror groups also levy self-sustaining taxes on traffic movement, government programs, cell phone operators and movement of other natural resources.” Millennium Post, *Kidnappings in Afghanistan*, 14 May 2018, <http://www.millenniumpost.in/opinion/kidnappings-in-afghanistan-299482>. See also, Wall Street Journal, *In Afghanistan, U.S. Attacks Taliban’s Source of Funds*, 30 May 2018, <https://www.wsj.com/articles/in-afghanistan-u-s-attacks-talibans-source-of-funds-1527672601>; DID Press, *Hezb-e Islami Commander Behind Murder and Robbing Cases: Baghlan Residents*, 26 March 2018, <http://didpress.com/en/?p=6335>; Khaama Press, *9 Taliban Insurgents Killed in Baghlan Operations*, 25 February 2018, <https://www.khaama.com/9-taliban-insurgents-killed-in-baghlan-operations-04541>; VOA, *Taliban Rebels Impose Taxes on Media Outlets in Restive Ghazni*, 21 February 2018, <https://www.voanews.com/a/taliban-rebels-impose-taxes-on-media-outlets-in-restive-ghanzi/4264402.html>; Salam Watandar, *HI Men Blamed for Extortion in Baghlan*, 4 January 2018, <https://salamwatandar.com/english/Article.aspx?a=36809>; Salaam Times, *Taliban Extortion Money From Farah Used to Buy Russian Weapons*, 21 December 2017, [http://afghanistan.asia-news.com/en\\_GB/articles/cnmi\\_st/features/2017/12/21/feature-02](http://afghanistan.asia-news.com/en_GB/articles/cnmi_st/features/2017/12/21/feature-02); VOA, *Residents of Kunduz in Afghanistan Fear Another Taliban Attack*, 21 October 2016, <https://www.voanews.com/a/residents-of-kunduz-in-afghanistan-fear-another-taliban-attack/3563477.html>; New York Times, *Abundant Afghan Harvest Wilts amid Violence and Extortion*, 4 September 2017, <https://www.nytimes.com/2017/09/04/world/asia/kabul-afghanistan-fruit-taliban-harvest-kabul-fruit-market.html>; Wall Street Journal, *Taliban Broaden their Reach in Villages Across Afghanistan*, 8 May 2017, <https://www.wsj.com/articles/taliban-broaden-their-reach-in-villages-across-afghanistan-1494235804>.

<sup>626</sup> “[T]he Taliban relies on taxing, kidnapping, drug trafficking, donation from local populations, extortion, foreign donations, commercial business of mine, smuggling, poppy cultivations and larger companies in Afghanistan have started paying taxes to the Taliban to allow them to operate without threat in the areas under the control of Taliban.” Eurasia Review, *How the Taliban Has Succeeded in Financing their Eighteen Years of War – OpEd*, 1 May 2018, <https://www.eurasiareview.com/01052018-how-the-taliban-has-succeeded-in-financing-their-eighteen-years-of-war-oped/>. See also, New York Times, *When the Taliban Are at the Gates, a City Has One Choice: Pay Up*, 7 May 2018, <https://www.nytimes.com/2018/05/07/world/asia/afghanistan-taliban-ghazni.html>; VOA, *Taliban Looking for New Means to Support Insurgency in Southern Afghanistan*, 7 January 2018, <https://www.voanews.com/a/taliban-looking-for-new-means-to-support-insurgency-in-southern-afghanistan/4197161.html>; DVIDS, *Elder Refused to Fund Terrorists, Freed from Taliban Prison*, 19 December 2017, <https://www.dvidshub.net/news/259386/elder-refused-fund-terrorists-freed-taliban-prison>; Pajhwok, *Taliban Collecting Taxes from All in Ghani*, 18 December 2017, <https://www.pajhwok.com/en/2017/12/18/taliban-collecting-taxes-all-ghanzi>; Wall Street Journal, *Taliban Broaden their Reach in Villages across Afghanistan*, 8 May 2017, <https://www.wsj.com/articles/taliban-broaden-their-reach-in-villages-across-afghanistan-1494235804>; ITV News, *Taliban Set up Customs, Forcing People to Pay Extortion in Zabul*, 5 April 2017, <http://www.itvnews.af/en/news/afghanistan/28763-taliban-set-up-customs-forcing-people-to-pay-extortion-in-zabul>; SIGAR, *High-Risk List*, January 2017, [https://www.sigar.mil/pdf/spotlight/2017\\_High-Risk\\_List.pdf](https://www.sigar.mil/pdf/spotlight/2017_High-Risk_List.pdf), p. 39.

<sup>627</sup> Gandhara, *Civilians Recount IS Atrocities in Northern Enclave*, 28 December 2017, <https://gandhara.rferl.org/a/afghanistan-is-atrocities/28943556.html>. “Analysts say the group [Islamic State] has sustained itself thanks to extortion, kidnapping and funds from Islamic State’s central leadership.” LA Times, *Islamic State Has Fewer than 1,000 Fighters in Afghanistan. So Why Did Trump Drop the ‘Mother of all Bombs’?*, 14 April 2017, <http://www.latimes.com/world/asia/la-fg-afghanistan-islamic-state-explainer-20170414-story.html>. See also, AAN, *The Islamic State in ‘Khorasan’: How it Began and Where it Stands now in Nangarhar*, 27 July 2016, <https://www.afghanistan-analysts.org/the-islamic-state-in-khorasan-how-it-began-and-where-it-stands-now-in-nangarhar/>. “Islamic State fighters have also engaged in kidnapping and extortion, collected taxes, and smuggled timber into Pakistan to fund their operations.” Middle East Institute, *The Islamic State in Afghanistan: Examining its Threat to Stability*, May 2016, [https://www.mei.edu/sites/default/files/publications/PF12\\_McNallyAmiral\\_ISISAfghan\\_web.pdf](https://www.mei.edu/sites/default/files/publications/PF12_McNallyAmiral_ISISAfghan_web.pdf), p. 8.

<sup>628</sup> Central Asia News, *Central Asia Watches as Taliban, ISIS Clash over Money, Territory in Afghanistan*, 26 May 2017, [http://central.asia-news.com/en\\_GB/articles/cnmi\\_ca/features/2017/05/26/feature-02](http://central.asia-news.com/en_GB/articles/cnmi_ca/features/2017/05/26/feature-02).



In 2017 UNAMA documented 255 incidents involving the abduction of 1,005 civilians by AGEs which resulted in the death of 76 persons and injury to 17.<sup>629</sup> According to UNAMA, the AGEs “kidnapped civilians based on suspicions that they had connections to or worked for the Government, but also for financial gain, with release predicated on payment of a substantial ransom”.<sup>630</sup> According to UNAMA most incidents of abduction by AGEs resulted in the release of the abducted civilians following mediation of local elders or payment of a ransom.<sup>631</sup> Businessmen and other individuals who have or who are perceived to have financial means have reportedly been increasingly targeted by kidnapping rings.<sup>632</sup>

Practices of illegal taxation and extortion would not normally rise to the level of persecution, nor would other forms of crime. However, certain methods of extortion may rise to the level of persecution, including kidnapping for ransom, while other forms of extortion may contribute to persecution on cumulative grounds. Where individuals are targeted for extortion or for kidnapping for ransom on the basis of their (imputed) political opinion (for example because they are (perceived to be) associated with the government),<sup>633</sup> or on the basis of their race/ethnicity or their religion,<sup>634</sup> the individual concerned may, depending on the individual circumstances of the case, be in need of international refugee protection on these grounds. In other cases, a person at risk of kidnapping for ransom may be found to be targeted as a member of a particular social group, and may, depending on the individual circumstances of the case, be in need of international refugee protection on this basis.

UNHCR considers that separate considerations apply to the situation of family members of individuals who are or who are perceived to be associated with the government, as well as family members of individuals who have or are perceived to have wealth. Where family members, including children, are at risk of kidnapping for ransom for reason of their being related to such individuals, they may, depending on the individual circumstances of the case, be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of State or non-State actors for reasons of their membership of a particular social group or other relevant Convention grounds, combined with a general inability of the State to provide protection from such persecution.

<sup>629</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 34.

<sup>630</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 34. For example, on 5 May 2017, in Lash-e-Juwan district, Farah province, the Taliban abducted three civilian men and released the abductees four to five days later after receiving a ransom payment. In another incident, on 8 April 2017, Taliban abducted a former ANP officer in Ab Kamari district, Baghlan province and released him on 15 April after payment of a ransom and mediation by local elders. *Ibid.*, p. 43. On 22 May 2017, in Chahr Asyab district, Kabul province, AGEs reportedly motivated by potential ransom possibilities abducted four employees of a de-mining organization in an area bordering Maidan Wardak province. *Ibid.*, p. 21. In July 2017 the Taliban carried out a mass kidnapping, abducting 70 people in Kandahar province. While the motive for the kidnappings remained unclear, reportedly “[i]slamist militants usually abduct government officials and security personnel for ransom or to bargain for the release of detained jihadis”. Deutsche Welle, *Taliban Carry out Mass Kidnapping in Afghanistan's Kandahar Province*, 23 July 2017, <http://www.dw.com/en/taliban-carry-out-mass-kidnapping-in-afghanistans-kandahar-province/a-39805761>.

<sup>631</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 43.

<sup>632</sup> Between December 2017 and January 2018, approximately 60 traders and investors were reportedly abducted in Khost, Paktiya, Kandahar and Kunduz provinces, or on average one abduction per day. IWPR, *Kidnappings Terrify Afghan Investors*, 8 February 2018, <https://iwpr.net/global-voices/kidnappings-terrify-afghan-investors>. “[E]xtortion and kidnappings by low-level criminal networks have increased in some areas of Afghanistan.” US Department of Defense, *Enhancing Security and Stability in Afghanistan*, June 2017, [https://www.defense.gov/Portals/1/Documents/pubs/June\\_2017\\_1225\\_Report\\_to\\_Congress.pdf](https://www.defense.gov/Portals/1/Documents/pubs/June_2017_1225_Report_to_Congress.pdf), p. 18. See also, Millennium Post, *Kidnappings in Afghanistan*, 14 May 2018, <http://www.millenniumpost.in/opinion/kidnappings-in-afghanistan-299482>; Ariana News, *Businessman Son Abducted in Balkh Province*, 27 February 2018, <https://ariananews.af/businessman-son-abducted-in-balkh-province>; France24, *Afghans Live in Fear as Kidnappings Soar*, 21 July 2017, <http://www.france24.com/en/20170721-video-reporters-afghanistan-kidnappings-criminal-gangs-torture-police-kabul>; TV1 News, *Police Rescue Kidnapped Son of Businessman in Kabul*, 1 May 2017, <http://www.itvnews.af/en/news/afghanistan/29132-police-rescue-kidnapped-son-of-businessman-in-kabul>; TOLO News, *Businessmen Concerned over Rise in Kidnappings*, 26 March 2017, <https://www.tolonews.com/afghanistan/businessmen-concerned-over-rise-kidnappings>; The National, *Afghan Capital Plagued by Kidnapping and Extortion of Locals*, 10 March 2017, <https://www.thenational.ae/world/afghan-capital-plagued-by-kidnapping-and-extortion-of-locals-1.11053>.

<sup>633</sup> See Section III.A.1.

<sup>634</sup> See Sections III.A.5 and III.A.13.

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

The 1951 Convention forms the cornerstone of the international refugee protection regime. The criteria for refugee status in the 1951 Convention should be interpreted in such a manner that individuals or groups of persons who meet these criteria are duly recognized and protected under that instrument. Only when an asylum-seeker is found not to meet the refugee criteria in the 1951 Convention should broader international protection criteria as contained in UNHCR's mandate and regional instruments be examined, including subsidiary protection.<sup>635</sup>

This section of the Guidelines provides guidance for the determination of eligibility for international protection of Afghan asylum-seekers who are found not to meet the refugee criteria contained in Article 1(A) of the 1951 Convention. Individuals who do not come within the criteria set out in the 1951 Convention may nevertheless be in need of international protection. In particular, individuals who flee situations of violence where there is no nexus with a 1951 Convention ground may be found to come within the terms of UNHCR's mandate, or the criteria set out in regional instruments.<sup>636</sup>

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

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

#### *a) Refugee Status under UNHCR's Broader Mandate Criteria*

UNHCR's mandate encompasses individuals who meet the refugee criteria under the 1951 Convention and its 1967 Protocol,<sup>637</sup> but has been broadened through successive UN General Assembly and ECOSOC resolutions to a variety of other situations of forced displacement resulting from indiscriminate violence or public disorder.<sup>638</sup> In light of this evolution, UNHCR's competence to provide international protection to refugees extends to individuals who are outside their country of origin or habitual residence and who are unable or unwilling to return there owing to serious threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.<sup>639</sup>

In the context of Afghanistan, indicators to assess the threat to life, physical integrity or freedom resulting from generalized violence include: (i) the number of civilian casualties as a result of indiscriminate acts of violence, including bombings, air strikes, suicide attacks, IED explosions and

<sup>635</sup> See UNHCR Executive Committee, *Conclusion on the Provision on International Protection Including through Complementary Forms of Protection*, No. 103 (LVI) – 2005, 7 October 2005, <http://www.refworld.org/docid/43576e292.html>.

<sup>636</sup> As regards regional instruments, see the refugee definitions contained in the 1969 OAU Convention, Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa* ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45, <http://www.refworld.org/docid/3ae6b36018.html> and in the Cartagena Declaration, *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>. Complementary forms of protection include subsidiary protection under Article 15 of the 2011 Qualification Directive. European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 13 December 2011, <http://www.refworld.org/docid/4f197df02.html>.

<sup>637</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, Vol. 189, p. 137, <http://www.refworld.org/docid/3be01b964.html> and UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations Treaty Series, Vol. 606, p. 267, <http://www.refworld.org/docid/3ae6b3ae4.html>.

<sup>638</sup> UNHCR, *Providing International Protection Including Through Complementary Forms of Protection*, 2 June 2005, EC/55/SC/CRP.16, available at: <http://www.refworld.org/docid/47dfb49d.html>; UN General Assembly, *Note on International Protection*, 7 September 1994, A/AC.96/830, <http://www.refworld.org/docid/3f0a935f2.html>.

<sup>639</sup> See for example UNHCR, *MM (Iran) v. Secretary of State for the Home Department - Written Submission on Behalf of the United Nations High Commissioner for Refugees*, 3 August 2010, C5/2009/2479, <http://www.refworld.org/docid/4c6aa7db2.html>, para. 10.

landmines (see Section II.B.1); (ii) the number of conflict-related security incidents (see Section II.B.2); and (iii) the number of people who have been forcibly displaced due to conflict (see Section II.E).

Such considerations are not, however, limited to the direct impact of the violence. They also encompass the longer-term, more indirect consequences of conflict-related violence that, either alone or on a cumulative basis, give rise to threats to life, physical integrity or freedom. In this respect, relevant elements include the information presented in Sections II.C and II.D relating to (i) the control over civilian populations by AGEs, including through the imposition of parallel justice structures and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, restrictions on freedom of movement, and the use of extortion and illegal taxation; (ii) forced recruitment; (iii) the impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty, the destruction of livelihoods and the loss of assets; (iv) high levels of organized crime and the ability of local strongmen, warlords and corrupt government officials to operate with impunity; (v) systematic constraints on access to education and basic health care as a result of insecurity; and (vi) systematic constraints on participation in public life, including in particular for women.<sup>640</sup>

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

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

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

Afghans and others originating from Afghanistan who seek international protection in countries that are States Parties to the 1969 OAU Convention may qualify for refugee status under Article I(2) of that instrument, on the grounds that they were compelled to leave their place of habitual residence owing to events seriously disturbing public order in either part or the whole of Afghanistan, in order to seek refuge outside Afghanistan.<sup>641</sup>

In the context of the 1969 OAU Convention, the phrase "events seriously disturbing public order" encompasses situations of conflict or violence that threaten civilians' lives, freedom or security, as well as other serious disruptions of the *ordre public*.<sup>642</sup> For the same reasons as above, UNHCR

<sup>640</sup> UNHCR, *Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions*, 2 December 2016, HCR/GIP/16/12, <http://www.refworld.org/docid/583595ff4.html>.

<sup>641</sup> Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa* ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45, <http://www.refworld.org/docid/3ae6b36018.html>. The definition of the term "refugee" as contained in Article I of the 1969 OAU Convention has been incorporated into Article I of the *Bangkok Principles on the Status and Treatment of Refugees* (Bangkok Principles). See Asian-African Legal Consultative Organization (AALCO), *Bangkok Principles on the Status and Treatment of Refugees* (Final Text of the AALCO's 1966 Bangkok Principles on Status and Treatment of Refugees, as adopted on 24 June 2001 at the AALCO's 40th Session, New Delhi), <http://www.refworld.org/docid/3de5f2d52.html>.

<sup>642</sup> On the meaning of the phrase "events seriously disturbing public order" in the 1969 OAU Convention, see Marina Sharpe, *The 1969 OAU Refugee Convention and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in the Context of Individual Refugee Status Determination*, January 2013, <http://www.refworld.org/docid/50fd3eddb2.html>; Alice Edwards, "Refugee Status Determination in

considers that areas of Afghanistan that are affected by active conflict as part of the ongoing struggle for control between pro-government forces and AGEs, between different AGEs, as well as areas of Afghanistan that are under the effective control of AGEs should be regarded as areas affected by events seriously disturbing public order. Consequently, UNHCR considers that individuals originating from such areas and who have been found not to meet the criteria of the 1951 Refugee Convention may be in need of international protection under the terms of Article I(2) of the 1969 OAU Convention, on the grounds that they were compelled to leave their place of habitual residence owing to threats to their lives, freedom or security as a result of events seriously disturbing public order.

*c) Refugee Status under the Cartagena Declaration*

Afghan asylum-seekers who seek international protection in any of the countries that have incorporated the Cartagena Declaration on Refugees (“Cartagena Declaration”) into their national legislation may qualify for refugee status on the grounds that their lives, safety or freedom have been threatened by generalized violence, internal conflict, massive violation of human rights or other circumstances that have seriously disturbed public order.<sup>643</sup>

Following similar considerations as for UNHCR’s broader mandate criteria and the 1969 OAU Convention (Sections III.C.1.a and b), UNHCR considers that individuals originating from areas in Afghanistan affected by active conflict between pro-government forces and AGEs, between different AGEs, or from areas under the effective control of AGEs, and who have been found not to meet the criteria of the 1951 Refugee Convention, may be in need of international protection under the terms of the Cartagena Declaration, on the grounds that their lives, safety or freedom were threatened by circumstances that have seriously disturbed public order, either in the form of direct or indirect consequences of conflict-related violence, or as a result of serious and widespread human rights abuses committed by AGEs in areas under their effective control.

**2. Eligibility for Subsidiary Protection under the EU Qualification Directive**

Afghans who seek international protection in Member States of the European Union and who are found not to be refugees under the 1951 Convention may qualify for subsidiary protection under Article 15 of the 2011 Qualification Directive, if there are substantial grounds for believing that they would face a real risk of serious harm in Afghanistan.<sup>644</sup> In light of the information presented in Section II.C of these Guidelines, applicants may, depending on the individual circumstances of the case, be in need of subsidiary protection under Article 15(a) or Article 15(b) on the grounds of a real risk of the relevant

Africa”, 14 *African Journal of International and Comparative Law* 204-233 (2006); UNHCR, *Extending the Limits or Narrowing the Scope? Deconstructing the OAU Refugee Definition Thirty Years On*, April 2005, ISSN 1020-7473, <http://www.refworld.org/docid/4ff168782.html>.

<sup>643</sup> *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>, Section III.3. Although the Cartagena Declaration is included in a non-binding regional instrument, the Cartagena refugee definition has attained a particular standing in the region, not least through its incorporation into 15 national laws and State practice. For guidance on the interpretation of the refugee definition in the Cartagena Declaration, see: UNHCR, *Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions*, 2 December 2016, HCR/GIP/16/12, <http://www.refworld.org/docid/583595ff4.html>, paras 61-85.

<sup>644</sup> Serious harm for the purposes of the Qualification Directive is defined as (a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict. European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 13 December 2011, <http://www.refworld.org/docid/4f197df02.html>, arts 2(f), 15.



forms of serious harm (death penalty<sup>645</sup> or execution; or torture or inhuman or degrading treatment or punishment), either at the hands of the State or its agents, or at the hands of AGEs.<sup>646</sup>

Equally, in light of the fact that Afghanistan continues to be affected by a non-international armed conflict and in light of the information presented in Sections II.B, II.C, II.D and II.E of these Guidelines, applicants originating from or previously residing in conflict-affected areas may, depending on the individual circumstances of the case, be in need of subsidiary protection under Article 15(c) on the grounds of a serious and individual threat to their life or person by reason of indiscriminate violence.

In the context of the armed conflict in Afghanistan, factors to be taken into account to assess the threat to the life or person of an applicant by reason of indiscriminate violence in a particular part of the country include the number of civilian casualties, the number of security incidents, as well as the existence of serious violations of international humanitarian law which constitute threats to life or physical integrity. Such considerations are not, however, limited to the direct impact of the violence, but also encompass the consequences of violence that are more long-term and indirect, including the impact of the conflict on the human rights situation and the extent to which the conflict impedes the ability of the State to protect human rights. In the context of the conflict in Afghanistan, relevant factors in this respect are (i) the control over civilian populations by AGEs, including through the imposition of parallel justice structures and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, restrictions on freedom of movement, and the use of extortion and illegal taxation; (ii) forced recruitment; (iii) the impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty, the destruction of livelihoods and the loss of assets; (iv) high levels of organized crime and the ability of local strongmen, warlords and corrupt government officials to operate with impunity; (v) systematic constraints on access to education and basic health care as a result of insecurity; and (vi) systematic constraints on participation in public life, including in particular for women.<sup>647</sup>

These factors, either alone or cumulatively, may be found to give rise to a situation in a particular part of Afghanistan that is sufficiently serious to engage Article 15(c) without the need for the applicant to demonstrate individual factors or circumstances increasing the risk of harm.<sup>648</sup> Where, after all relevant evidence has been considered, this is found not to be the case in the part of Afghanistan from which the applicant originates, it falls to be considered whether the applicant's individual characteristics are such as to reveal specific vulnerabilities which, combined with the nature and the extent of the violence, give rise to a serious and individual threat to the applicant's life or person.

<sup>645</sup> Article 170 of Afghanistan's revised Penal Code, which entered into force on 15 February 2018, lists the crimes which can incur the death penalty. Afghanistan, *Penal Code*, published in the Official Gazette No. 1260, 15 May 2017 (English unofficial translation on record with UNHCR). In addition, in accordance with Article 2 of the Penal Code, those found guilty of *hudood* crimes are to be punished in accordance with the principles of Hanafi jurisprudence of Sharia law; *hudood* punishments include execution and stoning to death. See also, Hossein Gholami, *Basics of Afghan Law and Criminal Justice*, undated, <http://www.auswaertiges-amt.de/cae/servlet/contentblob/343976/publicationFile/3727/Polizei-Legal-Manual.pdf>; Cornell Law School, *Death Penalty Database*, <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Afghanistan>.

<sup>646</sup> It should be noted that where applicants face a real risk of such treatment for reason of a 1951 Convention ground, they should be accorded refugee status under the Convention (unless they are to be excluded from the benefit of protection under the Refugee Convention under Article 1.F); only where there is no nexus between the risk of serious harm and one of the Convention grounds should the applicant be accorded subsidiary protection.

<sup>647</sup> See, UNHCR, *Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions*, 2 December 2016, HCR/GIP/16/12, <http://www.refworld.org/docid/583595ff4.html>.

<sup>648</sup> See Court of Justice of the European Union, *Elgafaji v. Staatssecretaris van Justitie*, C-465/07, 17 February 2009, <http://www.refworld.org/docid/499aaee52.html>, where the Court of Justice of the European Union held (at para. 43) that the existence of a serious and individual threat to the life or person of an applicant "can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place [...] reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat."

### C. Internal Flight, Relocation or Protection Alternative

A detailed analytical framework for assessing the availability of an internal flight or relocation alternative (IFA/IRA), also referred to as internal protection alternative,<sup>649</sup> 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*.<sup>650</sup>

An assessment of the possibility of relocation requires an assessment of the relevance as well as the reasonableness of the proposed IFA/IRA.<sup>651</sup> 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.<sup>652</sup>

If an IFA/IRA is considered in asylum procedures, a particular area of proposed relocation must be identified, and all relevant general and personal circumstances regarding the relevance and reasonableness of the proposed area of relocation for the particular applicant must be established to the extent possible and must duly be taken into account. The applicant must be given an adequate opportunity to respond to the purported relevance and reasonableness of the proposed IFA/IRA.<sup>653</sup>

The guidance provided in this Section applies to IFA/IRA assessments in the context of determinations of the need for international refugee protection under the 1951 Convention (Section III.A), UNHCR’s broader mandate criteria (Section III.B.1a), and the Cartagena Declaration (see Section III.B.1c). The guidance provided in this Section also applies to internal protection assessments under Article 8 of the Qualification Directive.<sup>654</sup>

Sections III.C.1 and III.C.2 provide general guidance on applying the criteria of relevance and reasonableness to a proposed area of IFA/IRA in Afghanistan, while Section III.C.3 provides guidance for the particular case of Kabul as the proposed area of IFA/IRA.

The consideration of possible internal relocation is not generally relevant to the determination of refugee status under Article I(2) of the OAU Convention.<sup>655</sup>

<sup>649</sup> European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 13 December 2011, <http://www.refworld.org/docid/4f197df02.html>, Article 8.

<sup>650</sup> UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>.

<sup>651</sup> In relation to applications for international protection in EU Member States, Article 8 of the 2011 Qualification Directive applies. It includes both a relevance and reasonable test. 2011 Qualification Directive, Article 8.

<sup>652</sup> UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 7. In relation to applications for international protection in EU Member States, see also Article 8(2) of the 2011 Qualification Directive, which provides that “Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant”.

<sup>653</sup> UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 6.

<sup>654</sup> European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 13 December 2011, <http://www.refworld.org/docid/4f197df02.html>, article 8.

<sup>655</sup> UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 5. Article I(2) of the 1969 Convention extends the refugee definition to “every person, who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his

## 1. Relevance Analysis

### I. Areas of Afghanistan where an IFA/IRA is not available

In light of the available evidence of serious and widespread human rights abuses by AGEs in areas under their effective control, as well as the inability of the State to provide protection against such abuses in these areas, **UNHCR considers that an IFA/IRA is not available in areas of the country that are under the effective control of AGEs**, with the possible exception of individuals with previously-established links with the AGE-leadership in the proposed area of relocation.

**UNHCR considers that an IFA/IRA is also not available in areas of the country affected by active combat between pro-government forces and AGEs, or between different AGEs.**

### II. Assessing whether the applicant would be exposed to the original risk of being persecuted in the proposed area of IFA/IRA

A proposed area of IFA/IRA would not be relevant if the applicant would be exposed to the original risk of being persecuted in that area.

1. Where the applicant has a well-founded fear of **persecution at the hands of the State or its agents, there is a presumption that consideration of an IFA/IRA is not relevant.**<sup>656</sup>
2. Where the applicant has a well-founded fear of **persecution at the hands of members of society as a result of harmful traditional practices and religious norms of a persecutory nature** (see for example risk profiles 7, 10 and 12 in Section III.A), the endorsement of such norms and practices by large segments of society and powerful conservative elements at all levels of government needs to be taken into account as a factor that weighs against the relevance of an IFA/IRA. UNHCR considers that, coupled with the evidence provided in Section II.C regarding the limitations on the ability of the State to provide protection from human rights abuses, **there is a presumption that consideration of an IFA/IRA in these cases is not relevant.**
3. In cases where **the agents of persecution are AGEs**, the relevance of a proposed IFA/IRA must be assessed taking into account a number of different elements.<sup>657</sup>
  - (i) Where the agents of persecution are AGEs, consideration must be given to whether the persecutor is likely to pursue the applicant in the proposed area of relocation. Given the wide geographic reach of some AGEs, including the Taliban and Islamic State, a viable IFA/IRA may not be available to individuals at risk of being targeted by such groups.
  - (ii) In addition, the evidence provided in Section II.C needs to be taken into account regarding the limitations on the ability of the State to provide protection from human rights abuses at the hands of AGEs, as a result of ineffective governance and high levels of corruption.

### III. Assessing whether the applicant would be exposed to new risks of being persecuted in the proposed area of IFA/IRA, or to other forms of serious harm

In addition to the considerations above relating to the original form of persecution in the applicant's home area, the decision-maker must also establish that the applicant would not face any new form of

country of origin or nationality" [emphasis added]. The same considerations apply to individuals coming within the refugee definition as contained in Article I(2) of the Bangkok Principles, which is identical to the refugee definition of the 1969 OAU Convention.

<sup>656</sup> UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, paras 7.I.b, 13-14.

<sup>657</sup> *Ibid.*, paras 7.I.c, 15-17.

persecution in the proposed area of IFA/IRA, nor any other serious harm, including as a result of indiscriminate violence.<sup>658</sup>

As UNHCR has noted in its *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative”*:

“a person with an established fear of persecution for a 1951 Convention reason in one part of the country cannot be expected to relocate to another area of serious harm. If the claimant would be exposed to a new risk of serious harm, including a serious risk to life, safety, liberty or health, or one of serious discrimination, an internal flight or relocation alternative does not arise, irrespective of whether or not there is a link to one of the Convention grounds. The assessment of new risks would therefore also need to take into account serious harm generally covered under [broader refugee criteria or] complementary forms of protection.”<sup>659</sup>

The assessment must be based on up-to-date information about the security situation in the proposed area of IFA/IRA, including in particular the impact of the conflict in Afghanistan on civilians.

#### IV. Assessing where the proposed area of IFA/IRA is practically, safely and legally accessible

In cases where an area of Afghanistan has been identified that is not excluded as a relevant IFA/IRA on the basis of considerations under I and II above, **it would still need to be assessed whether the proposed area of IFA/IRA is practically, safely and legally accessible to the individual.**<sup>660</sup> In the context of Afghanistan, this requirement entails an assessment of the concrete prospects of safely accessing the proposed area of relocation, including by assessing the risks associated with the widespread use of IEDs and presence of landmines and explosive remnants of war (ERW) throughout the country; attacks and fighting taking place on roads; and restrictions on civilians’ freedom of movement imposed by AGEs.<sup>661</sup>

### 2. Reasonableness Analysis

#### a) The Applicant’s Personal Circumstances

Whether an IFA/IRA is “reasonable” must be determined on a case-by-case basis, taking into account the personal circumstances of the applicant, including their age, gender, health, disability, family situation and relationships, as well as their educational and professional background.<sup>662</sup>

The particular circumstances of children as well as the legal obligations of States under the Convention on the Rights of the Child – in particular the obligations to ensure that the best interests of the child are a primary consideration in all decision-making affecting children and to give due weight to the views of the child in light of his or her age and maturity – need to be taken into account in assessing the reasonableness of an IFA/IRA involving children.<sup>663</sup> Adjudicators need to give due

<sup>658</sup> UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 20.

<sup>659</sup> *Ibid.*

<sup>660</sup> *Ibid.*, para. 7.

<sup>661</sup> Many areas of Afghanistan are not safely accessible as a substantial number of main roads are considered insecure. Adjudicators must carefully consider current country conditions and risks in this regard. See, for example, UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 32; UNAMA, *Afghanistan: Mid-Year Report on the Protection of Civilians in Armed Conflict 2017*, July 2017, <http://www.refworld.org/docid/596e0b5e4.html>, p. 36. See also, EASO, *Afghanistan Security Situation*, December 2017, <http://www.refworld.org/docid/5ac603924.html>, Section 1.9.4, “Road Security”, and sources quoted therein.

<sup>662</sup> UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, paras 25-26.

<sup>663</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations Treaty Series, Vol. 1577, p. 3, <http://www.refworld.org/docid/3ae6b38f0.html>. See also UNHCR, *Special Measures Applying to the Return of Unaccompanied and Separated Children to Afghanistan*, August 2010, <http://www.refworld.org/docid/4c91dbb22.html>.



consideration to the fact that what is considered merely inconvenient for adults may constitute undue hardship for a child.

These considerations take on additional importance in relation to unaccompanied and separated children.<sup>664</sup> In the case of unaccompanied and separated children from Afghanistan, UNHCR considers that in addition to a requirement of meaningful support of the child's own (extended) family or larger ethnic community in the area of prospective relocation, the best interests of the child must be a primary consideration in assessing the availability of an IFA/IRA for the child, in accordance with Article 3(1) of the Convention on the Rights of the Child.<sup>665</sup> The return of unaccompanied and separated children to Afghanistan is furthermore subject to the minimum safeguards identified in the 2010 *Aide-mémoire: Special Measures Applying to the Return of Unaccompanied and Separated Children to Afghanistan*.<sup>666</sup>

To determine the reasonableness of a proposed IFA/IRA for persons with specific needs, including persons with disabilities and elderly persons, it would be particularly important to establish that members of their (extended) family or members of their larger ethnic community in the area of prospective relocation are willing and able to provide durable support to meet the person's identified needs in a sustainable – and where necessary permanent – manner.

In light of the serious human rights situation for women in Afghanistan (see Section III.A.7), as well as social norms that restrict women's freedom of movement (see Section III.A.8), and the generally low employment rates for women in Afghanistan, UNHCR considers that an IFA/IRA is not reasonable for women who are single heads of household and who do not or who are not perceived to have male protection through members of their family.

#### b) Safety and Security

A proposed area of IFA/IRA would only be reasonable if the applicant is able to live in the proposed area in safety and security, free from danger and risk of injury.<sup>667</sup> These conditions must be durable, not illusory or unpredictable.<sup>668</sup> In this regard, the volatility and fluidity of the armed conflict in Afghanistan must be taken into consideration. Information presented in Section II.B of these Guidelines and reliable, up-to-date information about the security situation in the proposed area of relocation would be important elements in assessing the reasonableness of a proposed IFA/IRA.

<sup>664</sup> UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <http://www.refworld.org/docid/4b2f4f6d2.html>, paras 53-57. See also *AA (unattended children) Afghanistan v. Secretary of State for the Home Department*, CG [2012] UKUT 00016 (IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 6 January 2012, <http://www.refworld.org/docid/4f293e452.html>, where the Upper Tribunal found that “the background evidence demonstrates that unattached children returned to Afghanistan may, depending upon their individual circumstances and the location to which they are returned, be exposed to a risk of serious harm, inter alia from indiscriminate violence, forced recruitment, sexual violence, trafficking and a lack of adequate arrangements for child protection.” (*Ibid.*, para. 92). See furthermore Catherine Gladwell and Hannah Elwyn, “Broken Futures: Young Afghan Asylum Seekers in the UK and on Return to their Country of Origin”, *UNHCR, New Issues in Refugee Research, Research Paper No. 246*, October 2012, <http://www.unhcr.org/5098d2679.html>.

<sup>665</sup> UNHCR, *Special Measures Applying to the Return of Unaccompanied and Separated Children to Afghanistan*, August 2010, <http://www.refworld.org/docid/4c91dbb22.html>.

<sup>666</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, U.N.T.S. Vol. 1577, p. 3, <http://www.refworld.org/docid/3ae6b38f0.html>, Article 3(1); UN Committee on the Rights of the Child (CRC), *General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1)*, 29 May 2013, CRC/C/GC/14, <http://www.refworld.org/docid/51a84b5e4.html>, paras 75-76.

<sup>667</sup> UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 27.

<sup>668</sup> *Ibid.*

c) *Respect for Human Rights and Economic Survival*

For a proposed IFA/IRA to be reasonable, the applicant must be able to exercise his or her basic human rights in the area of relocation, and the applicant must have possibilities for economic survival in dignified conditions.<sup>669</sup> In this regard, the assessment of the reasonableness of a proposed IFA/IRA must give particular attention to:

- (i) access to shelter in the proposed area of relocation;
- (ii) the availability of basic infrastructure and access to essential services in the proposed area of relocation, such as potable water and sanitation, health care and education;
- (iii) the presence of livelihood opportunities, including access to land for Afghans originating from rural areas; or in the case of applicants who cannot be expected to provide for their own livelihood (for example elderly applicants), proven and sustainable support to enable access to an adequate standard of living.<sup>670</sup>

In relation to (i) – (iii) above, in the specific context of Afghanistan the importance of the availability and access to social networks, existing of the applicant's extended family or members of his or her ethnic group, has been widely documented.<sup>671</sup> In this regard, the presence of members of the same ethnic background as the applicant in the proposed area of relocation cannot by itself be taken as evidence that the applicant would be able to benefit from meaningful support from such communities; rather, such support would generally require specific pre-existing social relations connecting the applicant to individual members of the ethnic community in question.<sup>672</sup> Moreover, even where such pre-existing social relations exist, an assessment should be made whether the members of this network are willing and able to provide genuine support to the applicant in practice, against the background of Afghanistan's precarious humanitarian situation, the low developmental indicators, and the wider economic constraints affecting large segments of the population.<sup>673</sup> In addition, the extent to which applicants are able to rely on family networks in the proposed area of relocation also has to be considered in light of

<sup>669</sup> UNHCR, *ibid.*, paras 28-30.

<sup>670</sup> Afghans originating from rural areas, with few marketable professional skills beyond agriculture and animal husbandry, may have more difficulty reintegrating elsewhere. They are likely to have few or no savings and no property (because property has been destroyed, looted or left behind during displacement), no social support networks in the places of relocation and perhaps even communications difficulties, due to language or dialect limitations.

<sup>671</sup> See, for example, Refugee Support Network, *After Return: Documenting the Experiences of Young People Forcibly Removed to Afghanistan*, April 2016, [http://www.refugeesupportnetwork.org/sites/default/files/files/After%20Return\\_RSN\\_April%202016.pdf](http://www.refugeesupportnetwork.org/sites/default/files/files/After%20Return_RSN_April%202016.pdf); Oeppen, C. and Majidi, N., *Can Afghans Reintegrate after Assisted Return from Europe?*, Peace Research Institute Oslo (PRIO), 22 May 2015, [http://file.prio.no/publication\\_files/PRIO/Oeppen%20-%20Can%20Afghans%20Reintegrate%20after%20Assisted%20Return%20from%20Europe.%20PRIO%20Policy%20Brief%207-2015.pdf](http://file.prio.no/publication_files/PRIO/Oeppen%20-%20Can%20Afghans%20Reintegrate%20after%20Assisted%20Return%20from%20Europe.%20PRIO%20Policy%20Brief%207-2015.pdf). See also for example, Ordinary Court of Rome, 5 June 2018, No. 58068/2017, <http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/decisione%20art.%2017%20Reg.%20Dub.%20%282%29.pdf>.

<sup>672</sup> For example, in an expert opinion provided by William Maley, Professor of Diplomacy at the Asia-Pacific College of Diplomacy at The Australian National University, on the return to Afghanistan of Hazaras, Prof. Maley made the following observations. "[...] an Hazara returned from abroad with no ties in areas they can safely access would be in an even more perilous position [compared to someone who has ties to persons in the region to which he or she is returned]. This ties in directly with the issue of livelihood opportunities. Again, serious research in this area highlights the importance of social relations. A recent study by Kantor and Pain emphasises the centrality of relationships to livelihoods in rural Afghanistan, and the points they make apply equally to urban areas (Paula Kantor and Adam Pain, *Securing Life and Livelihoods in Afghanistan: The Role of Social Relationships* (Kabul: Afghanistan Research and Evaluation Unit, December 2010). The mere fact that there may be people of similar ethnic background living in a potential relocation destination does not overcome this problem, since ethnic identities do not in and of themselves give rise to the ties of personal affinity and reciprocity that arise from family connections. (Indeed, one mistake that observers — even Afghan observers — on occasion make is to underestimate the degree of differentiation amongst groups such as the Hazaras, including distinctions between elite and non-elite figures, distinctions based on district of origin and tribe, and distinctions based on values and ideology.) An Hazara who is returned to a region in which he lacks strong social connections is likely to end up destitute, or be exposed to gross exploitation or criminal predation. The simplistic and superficial conclusion that Kabul offers a safe or meaningful 'relocation' option for Hazaras should be avoided." Professor William Maley, *View on the Return of Hazaras to Afghanistan*, 5 December 2016, <http://worldhazaracouncil.org/en/professor-william-maley-view-on-the-return-of-hazaras-to-afghanistan/>, para. 6. More generally, adjudicators should take into account that the various ethnic groups in Afghanistan are not necessarily homogenous communities. Among Pashtuns, for example, strong rivalries between different sub-groupings may be a cause of tensions and conflicts. See for example Civil-Military Fusion Centre, *Afghanistan Ethnic Groups: A Brief Investigation*, August 2011, <http://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation>; Tribal Analysis Center, *Pashtun Tribal Dynamics*, October 2009, <http://www.tribalanalysiscenter.com/PDF-TAC/Pashtun%20Tribal%20Dynamics.pdf>.

<sup>673</sup> See Sections II.A and II.D above.

the reported stigma and discrimination against those who return to Afghanistan after spending time abroad.<sup>674</sup>

Against this background, UNHCR considers that a proposed IFA/IRA is reasonable only where the individual has access to (i) shelter, (ii) essential services such as sanitation, health care and education; and (iii) livelihood opportunities or proven and sustainable support to enable access to an adequate standard of living. Moreover, UNHCR considers an IFA/IRA as reasonable only where the individual has access to a support network of members of his or her (extended) family or members of his or her larger ethnic community in the area of prospective relocation, who have been assessed to be willing and able to provide genuine support to the applicant in practice.

UNHCR considers that the only exception to the requirement of external support are single able-bodied men and married couples of working age without identified specific vulnerabilities as described above. In certain circumstances, such persons may be able to subsist without family and community support in urban and semi-urban areas that have the necessary infrastructure and livelihood opportunities to meet the basic necessities of life and that are under effective Government control.

### 3. *Internal Flight or Relocation Alternative in Afghanistan's Cities*

In line with the guidance provided in Sections III.C.1 and III.C.2, an assessment of the possibility of relocation to a particular city requires an assessment of both the relevance and the reasonableness of relocation to the proposed city for the particular applicant. In addition, if an IFA/IRA to a specific city is considered in asylum procedures, all relevant general and personal circumstances regarding the relevance and reasonableness of that city as a proposed area of relocation for the particular applicant must be established to the extent possible and must duly be taken into account. The applicant must be given an adequate opportunity to respond to the purported relevance and reasonableness of the city in question as the proposed IFA/IRA.<sup>675</sup>

In relation to the reasonableness assessment, a decision-maker would need to assess whether the city in question is practically and safely accessible to the applicant.<sup>676</sup> This requires an assessment of the availability of transportation by air to the nearest airport and the safety of subsequent transportation by road to the final destination; or alternatively an assessment of the safety of transportation by road from Kabul international airport to the final destination.<sup>677</sup>

UNHCR calls attention to the fact that few cities in Afghanistan are spared from attacks by AGEs that seek to make civilian victims. UNHCR notes that it is precisely civilians who partake in day-to-day economic and social activities in urban areas who are exposed to a risk of falling victim to such

<sup>674</sup> Support from family networks may be withdrawn if the returnee is perceived to bring shame to the family, including because the returnee is perceived to have come under the influence of Western culture. Schuster, L. & Majidi, N., *What Happens Post-Deportation? The Experience of Deported Afghans*, 2013, Migration studies, 1(2), pp. 221-240, <http://openaccess.city.ac.uk/4717/1/2013%20Schuster%20Majidi%20.pdf>. According to PRIO, returnees from Europe reportedly face a general assumption that they have become 'westernized' or 'anti-Islamic' in Europe, while many also feel that they have disappointed their family and become a drain on the family's resources. PRIO, *Can Afghans Reintegrate after Assisted Return from Europe?*, July 2015, [http://file.prio.no/publication\\_files/PRIO/Oeppen%20-%20Can%20Afghans%20Reintegrate%20after%20Assisted%20Return%20from%20Europe.%20PRIO%20Policy%20Brief%207-2015.pdf](http://file.prio.no/publication_files/PRIO/Oeppen%20-%20Can%20Afghans%20Reintegrate%20after%20Assisted%20Return%20from%20Europe.%20PRIO%20Policy%20Brief%207-2015.pdf). See also, Washington Post, *Europe is Rejecting Thousands of Afghan Asylum Seekers a Year. But what Awaits them Back Home?*, 28 May 2018, [https://www.washingtonpost.com/world/europe-is-rejecting-thousands-of-afghan-asylum-seekers-a-year-but-what-awaits-them-back-home/2018/05/28/62494144-1593-11e8-930c-45838ad0d77a\\_story.html](https://www.washingtonpost.com/world/europe-is-rejecting-thousands-of-afghan-asylum-seekers-a-year-but-what-awaits-them-back-home/2018/05/28/62494144-1593-11e8-930c-45838ad0d77a_story.html). According to long-term research by the Refugee Support Network (RSN) tracking a group of young men returned from the United Kingdom to Afghanistan, "The simple existence of family in Afghanistan does not equate to protection for the returnees. Some young people are not welcomed by family as they have returned from the UK without having met family expectations of their initial migration, while, for others families' resources are too limited for them to provide for a returning young person." The RSN also noted that the majority of those tracked struggle to re-establish contact with their families upon return, find it impossible to continue their education and to obtain sustainable employment, and experience mental health difficulties and a lasting deterioration in their emotional well-being. RSN, *After Return: Documenting The Experiences of Young People Forcibly Removed to Afghanistan*, April 2016, [https://refugeesupportnetwork.org/sites/default/files/files/After%20Return\\_RSN\\_April%202016.pdf](https://refugeesupportnetwork.org/sites/default/files/files/After%20Return_RSN_April%202016.pdf), pp. 6, 22.

<sup>675</sup> UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 6.

<sup>676</sup> *Ibid.*, paras 10-12.

<sup>677</sup> See for example, EASO, *Afghanistan Security Situation*, December 2017, <http://www.refworld.org/docid/5ac603924.html>, Section 1.9.4 and sources quoted therein.

violence.<sup>678</sup> Such activities include travelling to and from a place of work, travelling to hospitals and clinics, or travelling to school; livelihood activities that take place in the city's streets, such as street vending; as well as going to markets, mosques and other places where people gather.

In relation to the reasonableness assessment, UNHCR calls attention to the general observation in OCHA's Humanitarian Needs Overview for 2018 to the effect that, "Overall, provincial capitals across Afghanistan now host more than 54 percent of IDPs, further compounding the pressure on overstretched services and infrastructure and increasing competition for resources between incoming and host communities."<sup>679</sup> In addition, as noted in Section II.D, the northern and western parts of Afghanistan are facing the most severe drought in decades, with agriculture collapsing as a result of the cumulative effect of several years of low rainfall. Among the worst-affected provinces are Balkh, Ghor, Faryab, Badghis, Herat and Jowzjan.<sup>680</sup>

In addition, as noted in Section II.F, in 2016 more than one million Afghans returned from Iran and Pakistan, followed by an additional 620,000 returnees in 2017. The Protection Cluster in Afghanistan noted already in April 2017, following the 2016 returns but prior to most of the 2017 returns, "The enormous surge in returns [from Pakistan and Iran] resulted in extreme stress on the already overstretched absorption capacity in Afghanistan's main provincial and district centres, as many Afghans joined the legions of IDPs unable to return to their areas of origin due to the worsening conflict. [...] With limited job opportunities, no social protection nets and poor shelter conditions, displaced people not only face increased protection risks in their daily life, but are also forced into secondary displacement and negative coping strategies, like child labour, early marriage, reducing quantity and quality of food etc."<sup>681</sup>

According to the Afghan Living Conditions Survey 2016-2017, 72.4 per cent of the urban population in Afghanistan live in slums, informal settlements or inadequate housing households.<sup>682</sup> Moreover, poverty levels in Afghanistan are reported to be rising, with the proportion of the population living below the national poverty line reportedly having increased from 34 per cent in 2007-2008 to 55 per cent in 2016-2017.<sup>683</sup>

<sup>678</sup> For a general overview of the security in different parts of Afghanistan, see for example, EASO, *Afghanistan: Security Situation: Update*, May 2018, <http://www.refworld.org/docid/5b3be4ad4.html>; EASO, *Afghanistan Security Situation*, December 2017, <http://www.refworld.org/docid/5ac603924.html> and sources quoted in both reports.

<sup>679</sup> OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 11.

<sup>680</sup> The Telegraph, *Afghanistan Faces Worst Drought in Decades, as UN Warns 1.4 Million People Need Help*, 22 July 2018, <https://www.telegraph.co.uk/news/2018/07/22/afghanistan-faces-worst-drought-decades-un-warns-14m-need-help/>; see also, SOFREP, *Drought in Afghanistan: Worst in Recent History*, 31 July 2018, <https://sofrep.com/106550/drought-in-afghanistan-worst-in-recent-history/>; New York Times, *Drought Adds to Woes of Afghanistan, in Grips of a Raging War*, 27 May 2018, <https://www.nytimes.com/2018/05/27/world/asia/afghanistan-drought-war.html>.

<sup>681</sup> Protection Cluster Afghanistan, *Afghanistan*, April 2017, [http://www.globalprotectioncluster.org/assets/files/field\\_protection\\_clusters/Afghanistan/files/factsheets/201704-protection-cluster-factsheet\\_en.pdf](http://www.globalprotectioncluster.org/assets/files/field_protection_clusters/Afghanistan/files/factsheets/201704-protection-cluster-factsheet_en.pdf), p. 2. See also, NRC/IDMC, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, pp. 20, 25; IOM, *Displacement Survey Shows 3.5 Million Internally Displaced, Returnees from Abroad in 15 Afghan Provinces*, 8 May 2018, <http://afghanistan.iom.int/press-releases/displacement-survey-shows-35-million-internally-displaced-returnees-abroad-15-afghan>; OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 11; Protection Cluster Afghanistan, *Central Region Update*, May 2017, [http://www.globalprotectioncluster.org/assets/files/field\\_protection\\_clusters/Afghanistan/files/factsheets/20170621\\_cr\\_may\\_factsheet.pdf](http://www.globalprotectioncluster.org/assets/files/field_protection_clusters/Afghanistan/files/factsheets/20170621_cr_may_factsheet.pdf); Cordaid, *Responding to the Plight of Displaced and Returning Families*, 26 February 2018, <https://reliefweb.int/report/afghanistan/responding-plight-displaced-and-returning-families>.

<sup>682</sup> The estimate is based on the criteria to determine slum households used in the Millennium Sustainable Development Goal indicator 11.1.1 for sustainable cities and communities. "The definition of slum- and inadequate housing includes components of durability of housing, overcrowding, access to drinking water and sanitation, and security of tenure." Central Statistics Organization, *Afghanistan Living Condition Survey 2016-2017: Highlights Report*, 2018, [http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight\(1\).pdf](http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight(1).pdf), pp. 2, 10. See also, International Growth Centre, *Policy Options for Kabul's Informal Settlements*, January 2018, <https://www.theigc.org/wp-content/uploads/2018/01/Policy-options-for-Kabuls-informal-settlements-19.01.188.pdf>, p. 2; OCHA, *Afghanistan: Informal Settlement Mapping and Profiling*, November 2017, <https://reliefweb.int/sites/reliefweb.int/files/resources/reach afg map informal settlement province density nov2017.pdf>; Government of the Islamic Republic of Afghanistan, *The State of Afghan Cities 2015*, September 2015, <http://unhabitat.org/books/soac2015/>, pp. 10, 86.

<sup>683</sup> Central Statistics Organization, *Afghanistan Living Condition Survey 2016-2017: Highlights Report*, 2018, [http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight\(1\).pdf](http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight(1).pdf), pp. 6-7. "Perception-based indicators of economic health have worsened since last year (figure 3.2). One-third of respondents (33.5%) report that the financial well-being of their household has declined compared to last year, while 20.3% report improvement, and 46.0% report no change. By comparison, in 2012, almost half of respondents (49.8%) reported improvement compared to the previous year, and only 6.9% reported being worse off." The Asia Foundation, *Afghanistan in 2017: A Survey of the Afghan People*, November 2017, <https://asiafoundation.org/wp->



#### 4. Internal Flight or Relocation Alternative in Kabul

In addition to the general guidance provided in Sections III.C.1 and III.C.2 above, and against the background of the additional information provided in Section III.C.3, UNHCR offers the following specific guidance relating to the two limbs of an IFA/IRA assessment for Kabul. In line with the guidance provided in Sections III.C.1 and III.C.2, an assessment of the possibility of relocation to Kabul requires an assessment of both the relevance and the reasonableness of this proposed area of relocation. In addition, if an IFA/IRA to Kabul is considered in asylum procedures, all relevant general and personal circumstances regarding the relevance and reasonableness of Kabul as a proposed area of relocation for the particular applicant must be established to the extent possible and must duly be taken into account. The applicant must be given an adequate opportunity to respond to the purported relevance and reasonableness of Kabul as the proposed IFA/IRA.<sup>684</sup>

##### a) The relevance of Kabul as an IFA/IRA

To assess the relevance of Kabul as a proposed IFA/IRA, and in particular the risk that the applicant would face a real risk of serious harm, including a serious risk to life, safety, liberty or health, or one of serious discrimination, decision-makers must pay due regard to the negative trends in relation to the security situation for civilians in Kabul. UNAMA reported 993 civilian casualties (321 killed and 672 injured) in Kabul province during the first six months of 2018.<sup>685</sup> In 2017 UNAMA “continued to document the highest levels of civilian casualties in Kabul province, mainly from indiscriminate attacks in Kabul city. Of the 1,831 civilian casualties (479 deaths and 1,352 injured) documented in Kabul province, 88 per cent resulted from suicide and complex attacks carried out by Anti-Government Elements in Kabul city.”<sup>686</sup> As also noted in Section II.B.1 above, UNAMA reported that the number of civilian casualties in Kabul city caused by suicide and complex attacks in 2017 represented 70 per cent of all civilian casualties in Afghanistan in 2017 caused by such attacks.<sup>687</sup>

UNHCR notes that civilians who partake in day-to-day economic and social activities in Kabul are exposed to a risk of falling victim to the generalized violence that affects the city.<sup>688</sup> Such activities

[content/uploads/2017/11/2017\\_AfghanSurvey\\_report.pdf](#), pp. 66-67. See also, WFP, FAO, Food Security Cluster, *Seasonal Food Security Assessment: Afghanistan* 2017, 3 December 2017, <https://reliefweb.int/sites/reliefweb.int/files/resources/post20harvest20sfsa20201720report20by20fsac.pdf>.

<sup>684</sup> UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/docid/3f2791a44.html>, para. 6.

<sup>685</sup> UNAMA, *Afghanistan: Mid-Year Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2018*, 15 July 2018, <http://www.refworld.org/docid/5b5047137.html>, p. 2.

<sup>686</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 4. See also, EASO, *Afghanistan: Security Situation - Update*, May 2018, <http://www.refworld.org/docid/5b3be4ad4.html>, Section 2.1; and EASO, *Afghanistan Security Situation*, December 2017, <http://www.refworld.org/docid/5ac603924.html> and sources quoted in both reports. See also, PRI, *Violence in Kabul Is so Extreme, Citizens Are Carrying Around ‘In Case I Die’ Notes*, 31 January 2018 <https://www.pri.org/stories/2018-01-31/violence-kabul-so-extreme-citizens-are-carrying-around-case-i-die-notes>.

<sup>687</sup> UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 29.

<sup>688</sup> The European Asylum Support Office (EASO) has assessed that “indiscriminate violence is taking place in the province of Kabul, including the capital city.” EASO, *Country Guidance: Afghanistan*, June 2018, <https://www.easo.europa.eu/sites/default/files/easo-country-guidance-afghanistan-2018.pdf>, p. 83. EASO’s conclusion is based on: EASO, *Afghanistan: Security Situation: Update*, May 2018, <http://www.refworld.org/docid/5b3be4ad4.html>, Section 2.1 (pp. 25-34); EASO, *Afghanistan Security Situation*, December 2017, <http://www.refworld.org/docid/5ac603924.html>, Section 2.1 (pp. 69-74) and Section 2.15 (pp. 153-157). See also, Administrative Court of Appeal of Lyon, 13 March 2018, *Nos 17LY02181 – 17LY02184*, <http://www.asylumlawdatabase.eu/en/case-law/france-administrative-court-appeal-lyon-13-march-2018-nos-17ly02181-%E2%80%93-17ly02184#content>, where the Court found that an internal armed conflict prevails throughout the territory of Afghanistan, and that the situation in the Kabul region and Kabul city constitutes indiscriminate violence resulting from this internal armed conflict. See also, Administrative Court of Nantes, 8 June 2018, *Nos 17NT03167 and 17NT03174*, <http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/CAA%20Nantes%20-%208%20juin%202018%20-%2017NT03167-74%20-%20Dubin%20Belgique%20Ricochet%20afghanistan%20%281%29.pdf>, where the Court came to the same conclusion in respect of the situation in Kabul city. See further, Washington Post, ‘Worse Than The Civil War’: Kabul Violence Makes Afghans Fearful of Unseen Enemies — And Each Other, 21 May 2018, [https://www.washingtonpost.com/world/asia\\_pacific/worse-than-the-civil-war-kabul-violence-makes-afghans-fearful-of-unseen-enemies--and-each-other/2018/05/19/46ba7ad4-547b-11e8-a6d4-ca1d035642ce\\_story.html](https://www.washingtonpost.com/world/asia_pacific/worse-than-the-civil-war-kabul-violence-makes-afghans-fearful-of-unseen-enemies--and-each-other/2018/05/19/46ba7ad4-547b-11e8-a6d4-ca1d035642ce_story.html); Carnegie Endowment for International Peace, *ISIS Kabul Bombings Target Journalists, Government Ahead of Elections*, 30 April 2018, <https://carnegieendowment.org/2018/04/30/isis-kabul-bombings-target-journalists-government-ahead-of-elections-pub-76222>; New York Times, ‘So Many Bodies’: Bomber Kills Dozens Signing Up to Vote in Kabul, 22 April 2018, <https://www.nytimes.com/2018/04/22/world/asia/suicide-bomber-afghanistan-elections.html>; International Crisis Group, *The Cost of Escalating Violence in Afghanistan*, 7 February 2018, <https://www.crisisgroup.org/asia/south-asia/afghanistan/cost-escalating-violence->

include travelling to and from a place of work, travelling to hospitals and clinics, or travelling to school; livelihood activities that take place in the city's streets, such as street vending; as well as going to markets, mosques and other places where people gather.

*b) The reasonableness of Kabul as an IFA/IRA*

In accordance with the guidance provided in Section III.C.2 above, to assess whether Kabul provides a reasonable IFA/IRA, it must be established that the applicant will have access in Kabul to:

- (i) shelter;
- (ii) essential services, such as potable water and sanitation, health care and education;
- (iii) livelihood opportunities, or proven and sustainable support to enable access to an adequate standard of living.

Relevant information to be taken into account by decision-makers in this regard includes the grave concerns expressed by humanitarian and development actors about the limits of Kabul's absorption capacity. Since the fall of the former Taliban regime in 2001, Kabul City Region has seen the largest population increase in Afghanistan. Official population estimates indicate that by early 2016 Kabul City Region had 5 million residents, 60 per cent of which were in Kabul city.<sup>689</sup> The city's population has seen further rapid growth in the wake of the large-scale returns to Afghanistan from Iran and Pakistan (see Section II.F).<sup>690</sup>

The International Growth Centre noted in January 2018, "Kabul has been undergoing rapid urbanisation for the last three decades. Population growth in the city is outpacing the city's capacity to provide necessary infrastructure, services and jobs to citizens, resulting in the emergence of widespread informal settlements that house an estimated 70% of the city's population."<sup>691</sup>

Against a background of general concerns about rising poverty levels in Afghanistan,<sup>692</sup> the Asia Foundation's 2017 Survey of the Afghan People found that perceptions of a worsening financial situation was most common in the Central/Kabul region, at 43.9 per cent.<sup>693</sup> In January 2017 it was reported that 55 per cent of households in Kabul informal settlements were severely food insecure.<sup>694</sup>

<sup>689</sup> *afghanistan*; Public Radio International, *Violence in Kabul Is so Extreme, Citizens Are Carrying Around 'In Case I Die' Notes*, 31 January 2018, <https://www.pri.org/stories/2018-01-31/violence-kabul-so-extreme-citizens-are-carrying-around-case-i-die-notes>; Deutsche Welle, *Kabul Residents in Shock after Wave of Violence*, 31 January 2018, <https://www.dw.com/en/kabul-residents-in-shock-after-wave-of-violence/a-42392793>; Democracy Now, "Unprecedented Level of Violence" in Heart of Kabul as Taliban Sends "Clear Message" to Trump, 29 January 2018, [https://www.democracynow.org/2018/1/29/unprecedented\\_level\\_of\\_violence\\_in\\_heart](https://www.democracynow.org/2018/1/29/unprecedented_level_of_violence_in_heart); New York Times, *Why Attack Afghan Civilians? Creating Chaos Rewards Taliban*, 28 January 2018, <https://www.nytimes.com/2018/01/28/world/asia/afghanistan-taliban-kabul-attacks.html>; National Post, *Kabul Violence Rages on as 11 Afghan Troops Die in ISIL Military Academy Attack*, 28 January 2018, <https://nationalpost.com/news/world/gunbattle-said-to-be-occurring-near-afghan-military-academy>; New York Times, *'It's a Massacre': Blast in Kabul Deepens Toll of a Long War*, 27 January 2018, <https://www.nytimes.com/2018/01/27/world/asia/afghanistan-kabul-attack.html>.  
UN Habitat and Government of the Islamic Republic of Afghanistan, *Atlas of Afghan City Regions 2016*, 15 July 2016, <https://unhabitat.org/atlas-of-afghan-city-regions-2016/#>, p. xvii.

<sup>690</sup> Protection Cluster Afghanistan, *Afghanistan*, April 2017, [http://www.globalprotectioncluster.org/assets/files/field\\_protection\\_clusters/Afghanistan/files/factsheets/201704-protection-cluster-factsheet\\_en.pdf](http://www.globalprotectioncluster.org/assets/files/field_protection_clusters/Afghanistan/files/factsheets/201704-protection-cluster-factsheet_en.pdf), p. 2. See also, NRC/IDMC, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, pp. 20, 25; IOM, *Displacement Survey Shows 3.5 Million Internally Displaced, Returnees from Abroad in 15 Afghan Provinces*, 8 May 2018, <http://afghanistan.iom.int/press-releases/displacement-survey-shows-35-million-internally-displaced-returnees-abroad-15-afghan>; OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 11; Protection Cluster Afghanistan, *Central Region Update*, May 2017, [http://www.globalprotectioncluster.org/assets/files/field\\_protection\\_clusters/Afghanistan/files/factsheets/20170621\\_cr\\_may\\_factsheet.pdf](http://www.globalprotectioncluster.org/assets/files/field_protection_clusters/Afghanistan/files/factsheets/20170621_cr_may_factsheet.pdf); Cordaid, *Responding to the Plight of Displaced and Returning Families*, 26 February 2018, <https://reliefweb.int/report/afghanistan/responding-plight-displaced-and-returning-families>.

<sup>691</sup> International Growth Centre, *Policy Options for Kabul's Informal Settlements*, January 2018, <https://www.theigc.org/wp-content/uploads/2018/01/Policy-options-for-Kabuls-informal-settlements-19.01.188.pdf>, p. 2. The International Growth Centre is directed by the London School of Economics (LSE) and the University of Oxford.

<sup>692</sup> Central Statistics Organization, *Afghanistan Living Condition Survey 2016-2017: Highlights Report*, 2018, [http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight\(1\).pdf](http://cso.gov.af/Content/files/Surveys/ALCS/Final%20English%20ALCS%20Highlight(1).pdf), pp. 6-7.

<sup>693</sup> The Asia Foundation, *Afghanistan in 2017: A Survey of the Afghan People*, November 2017, <https://asiafoundation.org/wp-content/uploads/2017/11/2017-AfghanSurvey-report.pdf>, p. 67; see also pp. 7, 29, 30, 32.

<sup>694</sup> REACH, *Informal Settlement Food Security Assessment: Afghanistan*, January 2017, [http://fsccluster.org/sites/default/files/documents/reach\\_afg\\_report\\_informal\\_settlement\\_food\\_security\\_assessment\\_january\\_2017.pdf](http://fsccluster.org/sites/default/files/documents/reach_afg_report_informal_settlement_food_security_assessment_january_2017.pdf), pp. 3-4. See also, World Food Programme, *Afghanistan Country Brief*, February 2018, <https://docs.wfp.org/api/documents/766832236a7a4a1cbf8c4d24f87037b7/download/>, p. 1; NRC/IDMC and Samuel Hall, *Escaping War: Where to Next?*, January 2018, <http://www.refworld.org/docid/5ac7874f4.html>, pp. 25 and 53; The Johanniter, *Afghanistan: "Need for Food*

OCHA's 2018 Humanitarian Needs Overview ranks Kabul among the 10 provinces (out of a total of 34 provinces) that are "the most conflict-affected".<sup>695</sup> In addition, the Humanitarian Needs Overview notes that "needs are particularly pronounced in large urban centres, including Kabul and Jalalabad City, where both IDP and returnee populations have congregated in search of income and livelihoods opportunities as well as access to basic and essential services. Humanitarian needs in these two provinces [Kabul and Nangarhar] comprise 42 percent of all those relating to internal displacement and cross-border influxes."<sup>696</sup>

c) *Conclusion on the Availability of an IFA/IRA in Kabul*

UNHCR considers that given the current security, human rights and humanitarian situation in Kabul, an IFA/IRA is generally not available in the city.

## D. Exclusion from International Refugee Protection

In light of the serious human rights abuses and violations of international humanitarian law during Afghanistan's long history of armed conflicts, exclusion considerations under Article 1F of the 1951 Convention may arise in individual claims by Afghan asylum-seekers. Exclusion considerations will be triggered if there are elements in the applicant's claim that suggest that he or she may have been associated with the commission of crimes within the scope of Article 1F. Given the potentially serious consequences of exclusion from international refugee protection, the exclusion clauses need to be interpreted restrictively and applied with caution. A full assessment of the circumstances of the individual case is required in all cases.<sup>697</sup>

In the context of Afghanistan, exclusion considerations may be raised in the cases of asylum-seekers with certain backgrounds and profiles, in particular those who have participated in the revolution of April 1978 that brought to power the People's Democratic Party of Afghanistan (PDPA) and which was followed by the brutal crackdown on later uprisings; and those who were involved in the armed conflicts in Afghanistan from 1979 until present, that is (i) the non-international armed conflict between the PDPA Government and armed opponents backed by local elites from the summer of 1979 until the Soviet invasion on 24 December 1979, (ii) the decade of international armed conflict beginning with the overthrow on 27 December 1979 of the existing Afghan Government and subsequent occupation of Afghanistan by the Soviet Union until the withdrawal of Soviet military was completed in February 1989;<sup>698</sup> (iii) the non-international armed conflict which followed, with mujahideen forces led by various commanders fighting against the Government and pro-government armed groups until the Taliban took control over Kabul in September 1996; (iii) the non-international armed conflict between the Taliban and the United Front, also known as Northern Alliance between 1996 and the ouster of the Taliban in 2001; (iv) the international armed conflict which began with the intervention on 6 October 2001 led by the United States and which ended with the election of an Afghan Government in June 2002, following a period of occupation from the fall of the Taliban regime<sup>699</sup> and (v) the non-

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and Wood" in *Settlements of Kabul*, 12 December 2017, <http://www.johanniter.de/die-johanniter/johanniter-unfall-hilfe/start/news/afghanistan-need-for-food-and-wood-in-settlements-of-kabul/>; REACH, *Afghanistan: Multi-Cluster Needs Assessment, Shelter and WASH in Informal Settlements*, November 2017, [https://reliefweb.int/sites/reliefweb.int/files/resources/reach\\_afg\\_report\\_multi-cluster\\_needs\\_assessment\\_wash\\_and\\_esnfi\\_november2017\\_0.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/reach_afg_report_multi-cluster_needs_assessment_wash_and_esnfi_november2017_0.pdf), p. 3.

<sup>695</sup> OCHA, *Afghanistan: 2018 Humanitarian Needs Overview*, 1 December 2017, <http://www.refworld.org/docid/5b0678957.html>, p. 18.

<sup>696</sup> *Ibid.* For further information on access to shelter, essential services and livelihood opportunities in Kabul, see European Asylum Support Office (EASO), *Country of Origin Information Report Afghanistan: Key Socio-Economic Indicators, State Protection, and Mobility in Kabul City, Mazar-e Sharif, and Herat City*, August 2017, <http://www.refworld.org/docid/59a527ca4.html> and sources quoted therein.

<sup>697</sup> Detailed guidance on the interpretation and application of Article 1F of the 1951 Convention can be found in UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, 4 September 2003, <http://www.refworld.org/docid/3f5857684.html>; and *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>.

<sup>698</sup> For an overview of the events leading up to the Soviet invasion in 1979 and a discussion of the applicable rules of international humanitarian law (IHL), see Michael Reisman and James Silk, "Which Law Applies to the Afghan Conflict?", *Faculty Scholarship Series*, Paper 752, 1988, [http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1745&context=fss\\_papers](http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1745&context=fss_papers).

<sup>699</sup> See ICRC, *International Law and Terrorism: Questions and Answers*, 1 November 2011, <http://www.icrc.org/eng/resources/documents/faq/terrorism-faq-050504.htm>.

international armed conflict between the Government and the Taliban and other armed groups which continues until the present day.<sup>700</sup>

When considering claims of individuals who were involved in the above-listed events and armed conflicts, Article 1F(a) is of particular relevance. Where an applicant may have been associated with acts committed in connection and associated with an armed conflict, the starting point for the exclusion analysis will be to examine whether or not these acts were in violation of the applicable rules of international humanitarian law and corresponding provisions of international criminal law and may thus constitute war crimes as referred to in Article 1F(a).<sup>701</sup> Where the crimes in question constitute fundamentally inhumane acts committed as part of a widespread or systematic attack against a civilian population, the exclusion ground of crimes against humanity as referred to in Article 1F(a) may also be relevant.<sup>702</sup> 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.<sup>703</sup>

A range of actors have reportedly engaged in serious crimes, including the illegal drugs trade, illegal taxation, trafficking in arms and trafficking in human beings.<sup>704</sup> These actors include not only organized criminal networks, but also warlords and AGEs. The crimes in question may be linked to the armed

<sup>700</sup> UNSC, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768–S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>; UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>, p. 56; HRW, “No Safe Place”: *Insurgent Attacks on Civilians in Afghanistan*, May 2018, <http://www.refworld.org/docid/5afaae8d4.html>, p. 8; Amnesty International, *Amnesty International Report 2017/18: Afghanistan*, 22 February 2018, <http://www.refworld.org/docid/5a99395da.html>.

<sup>701</sup> War crimes are serious violations of IHL which entail individual responsibility directly under international law. The applicable rules of IHL and corresponding provisions of international criminal law differ, depending on whether the armed conflict is international (including situations of occupation) or non-international in character. For more detailed guidance, see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras 30–32. In the context of a non-international armed conflict, the notion of “war crimes” may be applied to serious violations of the relevant rules of IHL (i.e. Common Article 3 of the 1949 Geneva Conventions, certain provisions of Additional Protocol II and rules of customary international law) from the early 1990s onwards. The International Criminal Tribunal for the former Yugoslavia (ICTY) held that by that time, violations of IHL applicable to non-international armed conflicts could be considered to entail criminal responsibility under customary international law; see *Prosecutor v. Dusho Tadic aka “Dule”, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction*, IT-94-1, 2 October 1995, <http://www.refworld.org/docid/47fd520.html>, para. 134. Serious violations of the aforementioned rules of IHL that occurred earlier could not be considered “war crimes”, but they may fall within the scope of “serious non-political crimes” (Article 1F(b)) or, depending on the circumstances, “crimes against humanity” (Article 1F(a)).

<sup>702</sup> For more detailed guidance, see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras 33–36.

<sup>703</sup> For an overview of various violations of international human rights and humanitarian law in Afghanistan, see, for example, HRW, *Afghanistan: Insurgent Attacks on Civilians Escalate*, 8 May 2018, <http://www.refworld.org/docid/5afaae34.html>; HRW, “No Safe Place”: *Insurgent Attacks on Civilians in Afghanistan*, May 2018, <http://www.refworld.org/docid/5afaae8d4.html>; AIHRC, *Summary of the Report on Civilian Casualties in Armed Conflict in 1396*, April 2018, <http://www.refworld.org/docid/5b1a7f7a4.html>; UNAMA, *Afghanistan: Annual Report on the Protection of Civilians in Armed Conflict 2017*, February 2018, <http://www.refworld.org/docid/5a854a614.html>; UNSC, *The Situation in Afghanistan and its Implications for International Peace and Security*, 27 February 2018, A/72/768–S/2018/165, <http://www.refworld.org/docid/5ae879b14.html>; Amnesty International, *Amnesty International Report 2017/18: Afghanistan*, 22 February 2018, <http://www.refworld.org/docid/5a99395da.html>; HRW, *Kabul Hotel Attack a War Crime*, 22 January 2018, <http://www.refworld.org/docid/5a8eb0c84.html>; HRW, *Afghanistan: ICC Prosecutor Asks to Open Inquiry*, 20 November 2017, <http://www.refworld.org/docid/5a13e5894.html>; Amnesty International, *Forced Back to Danger: Asylum-Seekers Returned from Europe to Afghanistan*, 5 October 2017, <http://www.refworld.org/docid/59d5d8ae4.html>; HRW, *Afghanistan: Proposed Militia a Threat to Civilians*, 15 September 2017, <http://www.refworld.org/docid/59bbeaa44.html>; HRW, *HRW Submission to the Committee Against Torture: Afghanistan*, March 2017, <http://www.refworld.org/docid/5908b2784.html>. For additional information, see Section II.

<sup>704</sup> See for example, Reuters, *Human Trafficking on the Rise in Afghanistan Despite New Laws*, 29 March 2018, <https://www.reuters.com/article/us-afghanistan-humantrafficking-laws/human-trafficking-on-the-rise-in-afghanistan-despite-new-laws-idUSKBN1H52U8>; Gandhara, *Armed Anti-Militant Bands Hound Civilians in Restive Afghan Province*, 25 January 2018, <https://gandhara.rferl.org/a/Afghanistan-anti-taliban-armed-bands/28998464.html>; UNODC, *Afghanistan Opium Survey 2017*, 15 November 2017, [https://www.unodc.org/documents/crop-monitoring/Afghanistan/Afghan\\_opium\\_survey\\_2017\\_cult\\_prod\\_web.pdf](https://www.unodc.org/documents/crop-monitoring/Afghanistan/Afghan_opium_survey_2017_cult_prod_web.pdf), p. 7; Business Insider, *Heroin Is Driving a Sinister Trend in Afghanistan*, 30 October 2017, <http://uk.businessinsider.com/taliban-control-of-heroin-drug-production-trafficking-in-afghanistan-2017-10?r=US&IR=T>; New York Times, *Afghan Taliban Awash in Heroin Cash, a Troubling Turn for War*, 29 October 2017, <https://www.nytimes.com/2017/10/29/world/asia/opium-heroin-afghanistan-taliban.html>; The Diplomat, *War, Drugs, and Peace: Afghanistan and Myanmar*, 14 September 2017, <https://thediplomat.com/2017/09/war-drugs-and-peace-afghanistan-and-myanmar/>; The National, *From Poppy to Heroin: Taliban Move into Afghan Drug Production*, 8 August 2017, <https://www.thenational.ae/world/asia/from-poppy-to-heroin-taliban-move-into-afghan-drug-production-1.617836>; US Department of State, *2017 Trafficking in Persons Report: Afghanistan*, 27 June 2017, <http://www.refworld.org/docid/5959ed1b13.html>.



conflicts in Afghanistan.<sup>705</sup> If this is the case, they would need to be assessed against applicable rules of international humanitarian law and may fall within the scope of war crimes as referred to in Article 1F(a), if committed from the early 1990s onwards.<sup>706</sup> Otherwise, such crimes may give rise to exclusion as serious non-political crimes within the meaning of Article 1F(b) of the 1951 Convention.<sup>707</sup>

In some cases, the question may arise whether Article 1F(c) of the 1951 Convention is applicable to acts committed by Afghan applicants. In UNHCR's view, this exclusion provision may apply only to crimes which, because of their nature and gravity, have an international impact in the sense that they are capable of infringing on international peace and security or the friendly relations between States.<sup>708</sup>

Exclusion considerations may also arise with regard to individuals who may have been associated with acts considered to be of a "terrorist" nature. In UNHCR's view, such crimes may fall within any of the exclusion grounds provided for in Article 1F, if the relevant criteria are met. In many such cases, Article 1F(b) will be applicable, as violent acts of terrorism are likely to meet the seriousness threshold for the application of this provision, and to fail the predominance test used to determine whether the crime is political.<sup>709</sup> In certain circumstances, such acts may fall within Article 1F(a) as a crime against humanity or as a war crime, if the act in question was committed during an armed conflict, and if it constitutes a serious violation of relevant provisions of international humanitarian law and international criminal law.<sup>710</sup> Under certain circumstances, acts considered to be of a terrorist nature may give rise to exclusion based on Article 1F(c). This would apply where the acts in question constitute war crimes and/or crimes against humanity within the meaning of Article 1F(a),<sup>711</sup> but also with regard to crimes prohibited under

<sup>705</sup> "Insurgency in Afghanistan continues to be closely interlinked with illicit drug production and trafficking, activities that reached record levels during 2017." Security Council Report, *June 2018 Monthly Forecast: Afghanistan*, 31 May 2018, [http://www.securitycouncilreport.org/monthly-forecast/2018-06/afghanistan\\_25.php](http://www.securitycouncilreport.org/monthly-forecast/2018-06/afghanistan_25.php). "[O]pium poppy cultivation and drug production chain generate huge profits, supporting criminality and insurgency, and ultimately resulting in greater insecurity". UNODC, *UNODC, Afghanistan Partner to Strengthen Drug Control and Promote Economic Development in the Country*, 5 December 2017, <http://www.unodc.org/unodc/en/frontpage/2017/December/unodc-afghanistan-partner-to-strengthen-drug-control-and-promote-economic-development-in-the-country.html>. "The significant levels of opium poppy cultivation and illicit trafficking of opiates will probably further fuel instability, insurgency and increase funding to terrorist groups in Afghanistan". UNODC, *Afghanistan Opium Survey 2017*, 15 November 2017, [https://www.unodc.org/documents/crop-monitoring/Afghanistan/Afghan\\_opium\\_survey\\_2017\\_cult\\_prod\\_web.pdf](https://www.unodc.org/documents/crop-monitoring/Afghanistan/Afghan_opium_survey_2017_cult_prod_web.pdf), p. 7. See also, Pajhwok Afghan News, *Taliban Annually Earn \$200m from Drug Trade: Nicholson*, 20 November 2017, <https://www.pajhwok.com/en/2017/11/20/taliban-annually-earn-200m-drug-trade-nicholson>; USIP, *Illegal Mining in Afghanistan: A Driver of Conflict*, July 2017, <https://www.usip.org/sites/default/files/2017-07/pb226-illegal-extraction-of-minerals-as-a-driver-of-conflict-in-afghanistan.pdf>; Brookings Institution, *How Predatory Crime and Corruption in Afghanistan Underpin the Taliban Insurgency*, 18 April 2017, <https://www.brookings.edu/blog/order-from-chaos/2017/04/18/how-predatory-crime-and-corruption-in-afghanistan-underpin-the-taliban-insurgency/>; UN University Centre for Policy Research, *Afghanistan Affections: How to Break Political-Criminal Alliances in Contexts of Transition*, April 2017, <https://i.unu.edu/media/cpr.unu.edu/attachment/2442/Afghanistan-Affections-How-to-Break-Political-Criminal-Alliances-in-Contexts-of-Transition.pdf>.

<sup>706</sup> As noted in footnote 575 above, where such acts were linked with a non-international armed conflict and took place from the early 1990s onward, they may give rise to exclusion under Article 1F(a) – "war crimes". Serious violations of the rules of IHL applicable to a non-international armed conflict before that time may result in exclusion based on Article 1F(b) – "serious non-political crimes committed outside the country of refuge prior to admission to that country as a refugee" – or Article 1F(a) – "crimes against humanity".

<sup>707</sup> For more detailed guidance, see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras 37-45.

<sup>708</sup> For more detailed guidance, see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras 46-49.

<sup>709</sup> For exclusion based on Article 1F(b) to apply, the geographic ('outside the country of refuge') and temporal ('prior to admission to that country as a refugee') criteria under this provision must also be met; see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras 41 and 81.

<sup>710</sup> IHL does not provide a definition of terrorism. However, it prohibits, during armed conflict, most acts that would commonly be considered terrorist if they were committed in peacetime. The decisive question is whether a particular conduct satisfies the material and mental elements required to establish a war crime under IHL. Those acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are specifically prohibited in Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II to the 1949 Geneva Conventions. In its Commentary to Article 13 of Additional Protocol II, the ICRC notes that "attacks aimed at terrorizing are just one type of attack, but they are particularly reprehensible." See ICRC, *Commentary to Article 13 of Additional Protocol No. II of 1977*, <http://www.icrc.org/ihl.nsf/COM/475-760019?OpenDocument>, para. 4785. More detailed information on terrorism and the law of armed conflict can be found on the website of the ICRC, at <http://www.icrc.org/eng/resources/documents/faq/terrorism-faq-050504.htm>. See also ICTY, *Prosecutor v. Galic*, Case No. IT-98-29A, Appeal Chamber judgment of 30 November 2006, <http://www.refworld.org/docid/47fd56565.html>, paras 98 and 102-104.

<sup>711</sup> There is an overlap between these two exclusion grounds, as acts which fall within Article 1F(a) are also "contrary to the purposes and principles of the United Nations"; see UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, <http://www.refworld.org/docid/4f33c8d92.html>, para. 162.

international Conventions and Protocols pertaining to terrorism, if they are characterized by the above-mentioned larger characteristics in terms of their impact on the international plane.<sup>712</sup>

For exclusion to be justified, individual responsibility must be established in relation to a crime within the scope of Article 1F. Such responsibility flows from a person having committed a crime or participated in its commission in a manner that gives rise to criminal liability, for example through ordering, instigating, aiding and abetting, or by contributing to the commission of a crime by a group of persons acting with a common purpose. For persons in positions of authority within a military or civilian hierarchy, individual responsibility may also arise on the basis of command/superior responsibility. Defences to criminal responsibility, if any, as well as considerations related to proportionality apply. Evidence about practices of forced recruitment, including in particular of children, needs to be taken into consideration in this regard.

Membership in government armed forces, police, intelligence or security apparatus, or in an armed group or militia, is not in itself a sufficient basis to exclude an individual from refugee status. The same applies to government officials and civil servants. In all such cases, it is necessary to consider whether the individual concerned was personally involved in excludable acts, or participated in the commission of such acts in a manner that gives rise to individual responsibility under the relevant criteria of international law. A careful assessment of the circumstances pertaining to each individual case is required.<sup>713</sup>

In 2007, the Government passed the National Stability and Reconciliation Law,<sup>714</sup> 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.<sup>715</sup> In UNHCR's view, this does not mean that

<sup>712</sup> Rather than focus on the "terrorism" label, a more reliable guide to the correct application of Article 1F(c) in cases involving a terrorist act is the extent to which the act impinges on the international plane – in terms of its gravity, international impact, and implications for international peace and security. In UNHCR's view, only terrorist acts that are distinguished by these larger characteristics may qualify for exclusion under this provision. For more detailed guidance, see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras 46–49. See also UNHCR, *Yasser al-Sirri (Appellant) v. Secretary of State for the Home Department (Respondent) and DD (Afghanistan) (Appellant) v. Secretary of State for the Home Department (Respondent): UNHCR'S Composite Case in the Two Linked Appeals*, 23 March 2012, <http://www.refworld.org/docid/4f6c92b12.html>.

<sup>713</sup> These considerations would apply to applicants who held official functions as government officials or civil servants in the Afghan Interim Administration between December 2001 and July 2002, the Afghan Transitional Administration between July 2002 and October 2004, or the Government of Afghanistan since the formation of the first Government led by President Karzai in late 2004. For more detailed guidance, see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, paras 50–73 and paras 76–78.

<sup>714</sup> "[T]he Afghan parliament passed a general amnesty in 2007, which entered into force in 2009. The amnesty law provides legal immunity to all belligerent parties including 'those individuals and groups who are still in opposition to the Islamic State of Afghanistan,' without any temporal limitation or any exception for international crimes." International Criminal Court: Pre-Trial Chamber III, *Situation in the Islamic Republic of Afghanistan*, ICC-02/17, 20 November 2017, [https://www.icc-cpi.int/CourtRecords/CR2017\\_06891.PDF](https://www.icc-cpi.int/CourtRecords/CR2017_06891.PDF), p. 135. "In March [2010], President Hamid Karzai publicly confirmed that in 2009 his government had quietly enacted into law a blanket pardon for war crimes and crimes against humanity that took place before 2001. The National Stability and Reconciliation Law was enacted in spite of Karzai's earlier promises that he would not sign the measure when it was passed by parliament in 2007." Project Ploughshares, *Afghanistan (1978 – first combat deaths)*, 1 December 2017, [http://ploughshares.ca/pl\\_armedconflict/afghanistan-1978-first-combat-deaths/](http://ploughshares.ca/pl_armedconflict/afghanistan-1978-first-combat-deaths/). "Despite advocacy and pressure by international human rights organizations and civil and human rights activists, in 2008 the Afghan National Assembly (Parliament), which is dominated by many warlords and former leaders accused of human rights violations, passed an amnesty law called the Law on National Reconciliation, Public Amnesty and National Stability (Amnesty Law). This law grants amnesty to those who have committed even massive violations of human rights and war crimes. It also provides amnesty to perpetrators of ongoing crimes who are presently embroiled in conflict, provided they reconcile with the government." A. M. Hazim, "Toward Cooperation between Afghanistan and the International Criminal Court", *George Washington International Law Review*, Vol. 49 (No. 3), 615, at p. 624. See also, Reuters, *Afghanistan Confirms Blanket Pardon for War Crimes*, 16 March 2010, <https://www.reuters.com/article/us-afghanistan-amnesty/afghanistan-confirms-blanket-pardon-for-war-crimes-idUSTRE62F2LU20100316>; AAN, *After Two Years in Legal Limbo: A First Glance at the Approved 'Amnesty Law'*, 22 February 2010, <https://www.afghanistan-analysts.org/after-two-years-in-legal-limbo-a-first-glance-at-the-approved-amnesty-law/>.

<sup>715</sup> The adoption of the law drew widespread national and international criticism as well as continuous calls for its repeal; see, for example, UN Committee Against Torture, *Concluding Observations on the Second Periodic Report of Afghanistan*, 12 June 2017, CAT/C/AFG/CO/2, <http://www.refworld.org/docid/596f4f754.html>, para. 8(a). "A Victims' Jirga (Council or Assembly) convened in Kabul in 2010 produced a concluding statement calling for, inter alia, ending the culture of impunity and immediately nullifying the Amnesty Law; investigating perpetrators of crimes against humanity and war crimes including those presently on-going; and for the international community to support the transitional justice process in Afghanistan [...] Fifteen civil society organisations in Afghanistan signed a joint letter to the Prosecutor in November 2012, calling for immediate action by the ICC to address the situation in their country." International Criminal Court: Pre-Trial Chamber III, *Situation in the Islamic Republic of Afghanistan*, ICC-02/17, 20 November 2017, [https://www.icc-cpi.int/CourtRecords/CR2017\\_06891.PDF](https://www.icc-cpi.int/CourtRecords/CR2017_06891.PDF), pp. 178–179. "Although the legislature passed the Amnesty Law, a study conducted by the Afghanistan Independent Human Rights Commission in 2005 shows that the overwhelming majority of Afghan people support the prosecution of the alleged perpetrators of past atrocities." A. M. Hazim, "Toward Cooperation between Afghanistan and the International Criminal Court", *George Washington International Law Review*, Vol. 49 (No. 3), 615, at p. 625. See also, The Diplomat, *Afghanistan: Choosing Peace over*

exclusion may not be applied where crimes within the scope of Article 1F were committed prior to that date. Given the heinous nature of many of the crimes committed by various actors in Afghanistan throughout the past decades, UNHCR considers that the amnesty law is without incidence for the examination of the possible application of exclusion clauses under Article 1F.<sup>716</sup>

In the context of Afghanistan, careful consideration needs to be given in particular to the following profiles:

- (i) Former members of the armed forces and the intelligence/security apparatus, including KhAD/WAD agents, as well as former officials of the Communist regimes;
- (ii) Former members of armed groups and militia forces during and after the Communist regimes;
- (iii) (Former) members and commanders of AGEs;
- (iv) (Former) members of the ANDSF, including the NDS, the ANP and the ALP;
- (v) (Former) members of paramilitary groups and militias; and
- (vi) (Former) members of groups and networks engaged in organized crime.

More detailed information on serious human rights abuses and violations of international humanitarian law by members of the first five above-mentioned groups is provided below.

### ***1. The Communist Regimes: Former Members of the Armed Forces and the Intelligence/Security Apparatus, Including KhAD/WAD Agents, as well as Former Officials***

Members of military, police and security services, as well as high-ranking Government officials during the Taraki, Hafizullah Amin, Babrak Karmal, and Najibullah regimes,<sup>717</sup> were involved in operations subjecting civilians to arrest, disappearances, torture, inhuman and degrading treatment and punishment, and extrajudicial executions.<sup>718</sup> These included the mass killings after the 1978 *coup d'état* and the reprisals against resistance to the decrees on land-reforms issued under Hafizullah Amin's regime. In addition, incidents of deliberate targeting of civilians during military operations are well-documented.<sup>719</sup>

In this context, careful consideration needs to be given to cases of former employees of the *Khadamate Ettelaate Dowlati* (KhAD), the State Information Service, which later became the *Wezarat-e Amniyat*-

Justice, 20 July 2017, <https://thediplomat.com/2017/07/afghanistan-choosing-peace-over-justice/>; Pahjwok Afghan News, *TJCG Calls for Repeal of Amnesty Law*, 29 April 2015, <http://archive.pahjwok.com/en/2015/04/29/tjcg-calls-repeal-amnesty-law>; Pahjwok Afghan News, *Govt Asked to Repeal Amnesty Law*, 29 January 2014, <https://www.pahjwok.com/en/2014/01/29/govt-asked-repeal-amnesty-law>; Reuters, *U.N. Calls For Repeal Of Afghan Amnesty Law*, 25 March 2010, <https://www.reuters.com/article/idUSSGE62O08V>; HRW, *Afghanistan: Repeal Amnesty Law*, 10 March 2010, <https://www.hrw.org/news/2010/03/10/afghanistan-repeal-amnesty-law>.

<sup>716</sup> UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.refworld.org/docid/3f5857d24.html>, para. 75. Such amnesty from prosecution would be incompatible with the duty of States to investigate and prosecute crimes under IHL 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](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule159). Several international jurisdictions have stated that that war crimes and serious human rights violations may not be the subject of amnesty; see, for example, *Prosecutor v. Anto Furundzija* (Trial Judgement), IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998, <http://www.refworld.org/docid/40276a8a4.html>; and *Case of Barrios Altos v. Peru*, Inter-American Court of Human Rights, 14 March 2001, [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_75\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_75_ing.pdf).

<sup>717</sup> This period of recent Afghan history started with a military *coup d'état* on 27 April 1978 that brought to power a Government dominated by the PDPA, continued during the Soviet occupation that started on 27 December 1979, and lasted until the fall of the Najibullah Government on 15 April 1992.

<sup>718</sup> See, for example, UN Commission on Human Rights, *Report on the Situation of Human Rights in Afghanistan prepared by the Special Rapporteur, Mr. Felix Ermacora, in accordance with Commission on Human Rights Resolution 1985/38*, E/CN.4/1986/24, 17 February 1986, <http://www.refworld.org/docid/482996d02.html>; HRW, "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.

<sup>719</sup> HRW, *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 HRW, *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>.

*e Dowlati* (WAD) or Ministry of State Security.<sup>720</sup> Although the functions of the KhAD/WAD evolved over time, culminating in the coordination and undertaking of military operations following the withdrawal of Soviet troops in 1989, it also included non-operational (support) directorates at central, provincial and district levels.<sup>721</sup> Information available to UNHCR does not link the support directorates to human rights violations in the same manner as the operational units. Thus the mere fact of having been an employee of the KhAD/WAD would not automatically lead to exclusion, taking into account that UNHCR has not been able to confirm that there was a systematic rotation policy inside the KhAD/WAD.<sup>722</sup> The individual exclusion assessment needs to take into consideration the individual's role, rank and functions within the organization.

In cases of applicants who held official functions during the Communist regimes, it is necessary to examine the nature of their positions and the tasks and responsibilities entrusted to them. When examining the possible application of exclusion under Article 1F to a former official of these regimes, an individualized assessment is required to determine whether the applicant was associated with crimes within the scope of Article 1F in a manner that gives rise to individual responsibility. Exclusion of such persons merely on the basis of their former membership of the State administration, without evidence that they have committed excludable crimes or participated in their commission through one of the modes for incurring individual responsibility established in international law, would not be consistent with international refugee law.

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

The activities of members of armed groups and militia forces<sup>723</sup> during the period of the armed resistance against the Communist regimes and the Soviet occupation – from 27 April 1978 until the fall of Najibullah in April 1992 – may give rise to exclusion concerns. Examples of relevant acts include political assassinations, reprisals and extrajudicial killings, and rape, including of civilians for reasons such as working for Government institutions and schools, or transgressing Islamic principles and norms. Other reported crimes by armed groups and militia forces include extrajudicial executions of prisoners of war and attacks on civilian targets.<sup>724</sup> The armed conflict between 1992 and 1995, in particular, was characterized by serious violations of international human rights and humanitarian law, including the shelling of urban centres by all parties to the conflict.<sup>725</sup>

<sup>720</sup> In 1986, the KhAD was upgraded to ministry level and from then on was known as WAD (*Wezarat-e Amniyat-e Dowlati* or Ministry of State Security). For detailed information on (i) the origins of the KhAD/WAD; (ii) its structure and staffing; (iii) linkages between these services and the Afghan military and militias; (iv) the distinction between operational and support services; and (v) rotation and promotion policies within the KhAD/WAD, see UNHCR, *Note on the Structure and Operation of the KhAD/WAD in Afghanistan 1978-1992*, May 2008, <http://www.refworld.org/docid/482947db2.html>.

<sup>721</sup> These directorates included administration and finance, personnel, propaganda and counter-propaganda, logistics, telecommunications and decoding. See UNHCR, *Note on the Structure and Operation of the KhAD/WAD in Afghanistan 1978-1992*, May 2008, <http://www.refworld.org/docid/482947db2.html>, paras 15-17.

<sup>722</sup> UNHCR, *Note on the Structure and Operation of the KhAD/WAD in Afghanistan 1978-1992*, May 2008, <http://www.refworld.org/docid/482947db2.html>. In this Note, UNHCR observes that “UNHCR is not able to confirm that there was a systematic rotation policy inside KhAD/WAD. Sources consulted by UNHCR affirmed that rotations within the KhAD/WAD structures were largely based on expertise and experience. In emergency situations, staff may have been shifted to work on a given operation, but within its area of expertise. Military personnel operated within its rank and levels of expertise. One expert [...] stated that, in his view, there was no mandatory rotation; he believes that people could change jobs within the KhAD/WAD, but that it was not a rule or requirement. In the view of that source, such a rotation policy would have gone against any sense of professionalism within the institution. Other sources state that the activities of KhAD/WAD officers were regulated by a number of principles, one of which was confidentiality. For this reason, they believe that the KhAD/WAD could not resort to a general rotation policy, as this would have risked disclosure of information from one Directorate to another.” Ibid., para. 24.

<sup>723</sup> Applicants whose applications require careful scrutiny include commanders and members of the following Islamic parties with armed factions: *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*, *Harkat-e-Inqilab-e-Islami* (led by Mohammad Nabi Mohammadi) and *Harkat-e-Islami*.

<sup>724</sup> HRW, *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 HRW, *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>.

<sup>725</sup> See, for instance, HRW, *Blood-Stained Hands: Past Atrocities in Kabul and Afghanistan's Legacy of Impunity*, 7 July 2005, <http://www.refworld.org/docid/45c2c89f2.html>; Amnesty International, *Afghanistan: Executions, Amputations and Possible Deliberate and Arbitrary Killings*, ASA 11/05/95, April 1995, <http://www.refworld.org/docid/48298bca2.html>; and Amnesty International, *Afghanistan: The Human Rights Crisis and the Refugees*, ASA 11/002/1995, 1 February 1995, <http://www.refworld.org/docid/3ae6a9a613.html>.



### 3. Members and Commanders of AGEs

Elements from the former Taliban regime, combined with new recruits, started to mount armed operations in Afghanistan as early as 2002. The applicability of the exclusion clauses is relevant in relation to former members and military commanders of the Taliban, during its time in power and following its ouster, in cases where there is sufficient evidence to support findings of serious reasons for considering that they were associated with serious abuses of human rights and/or violations of humanitarian law. As noted in Section II.C.1.b, there are widespread reports about deliberate attacks on civilians by Taliban forces, summary executions, and illegal punishments meted out by parallel justice structures enforced by the Taliban. Some of these acts may constitute war crimes.<sup>726</sup>

The applicability of the exclusion clauses will also need to be considered in relation to individual members and military commanders of other AGEs, including *Al-Qaeda*,<sup>727</sup> Islamic State and members of groups claiming to be affiliated to Islamic State,<sup>728</sup> the Haqqani Network,<sup>729</sup> *Hezb-e-Islami* (Party of

<sup>726</sup> See, for example, Al-Jazeera, *Afghanistan: Taliban Resume Fighting as Eid Ceasefire Ends*, 18 June 2018, <https://www.aljazeera.com/news/2018/06/afghanistan-taliban-resume-fighting-eid-ceasefire-ends-180618044536196.html>; Al-Jazeera, *Afghanistan: Who Controls What*, 5 June 2018, <https://www.aljazeera.com/indepth/interactive/2016/08/afghanistan-controls-160823083528213.html>; American Foreign Policy Council, *World Almanac of Islamism: Taliban*, last updated 27 April 2018, <http://almanac.afpc.org/taliban>; BBC, *Taliban Threaten 70% of Afghanistan, BBC Finds*, 31 January 2018, <https://www.bbc.com/news/world-asia-42863116>; NBC News, *The Taliban Is Gaining Strength and Territory in Afghanistan*, 30 January 2018, <https://www.nbcnews.com/news/world/numbers-afghanistan-are-not-good-n842651>; NATO Parliamentary Assembly, *Special Report: Afghanistan*, 7 October 2017, <https://www.nato-pa.int/download-file?filename=sites/default/files/2017-11/2017%20-%20164%20DSC%2017%20E%20bis-%20%20AFGHANISTAN.pdf>, p. 5; SciencesPo, *Taliban and Daesh: Religious Creed and Militant Groups in Afghanistan*, November 2017, <https://www.sciencespo.fr/enjeumondial/fr/odr/taliban-and-daesh-religious-creed-and-militant-groups-afghanistan>; Stanford University, *The Taliban*, last updated 15 July 2016, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/367>; US National Counterterrorism Center, *Afghan Taliban*, undated, [https://www.dni.gov/nctc/groups/afghan\\_taliban.html](https://www.dni.gov/nctc/groups/afghan_taliban.html).

<sup>727</sup> See, for example, Accord, *Incremental Peace in Afghanistan*, Issue 27, 1 June 2018, <http://www.c-r.org/downloads/Incremental%20Peace%20in%20Afghanistan.pdf>, p. 149; Counter Extremism Project, *Afghanistan: Extremism & Counter-Extremism*, 9 May 2018, [https://www.counterextremism.com/sites/default/files/country\\_pdf/AF-05092018.pdf](https://www.counterextremism.com/sites/default/files/country_pdf/AF-05092018.pdf), p. 5; US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Al-Qa'ida (AQ)*, 19 July 2017, <http://www.refworld.org/docid/5981e3f013.html>; American Foreign Policy Council, *World Almanac of Islamism: Al Qaeda*, last updated 15 December 2017, <http://almanac.afpc.org/al-qaeda>; Brookings Institution, *Afghanistan's Terrorism Resurgence: Al-Qaida, ISIS, and Beyond*, 27 April 2017, <https://www.brookings.edu/testimonies/afghanistans-terrorism-resurgence-al-qaeda-isis-and-beyond/>; Council on Foreign Relations, *The Taliban*, 17 August 2017, [https://www.cfr.org/interactives/taliban?cid=marketing\\_use-taliban\\_infoguide-012115#/taliban?cid=marketing\\_use-taliban\\_infoguide-012115](https://www.cfr.org/interactives/taliban?cid=marketing_use-taliban_infoguide-012115#/taliban?cid=marketing_use-taliban_infoguide-012115); The Heritage Foundation, *Afghanistan in Crisis: Why Is the Region Still a Hotbed of Terrorism and Violence?*, 3 August 2017, <https://www.heritage.org/middle-east/commentary/afghanistan-crisis-why-the-region-still-hotbed-terrorism-and-violence>; Pajhwok Afghan News, *Rebel Groups in Afghanistan: A Run-through*, 11 April 2017, <http://peace.pajhwok.com/en/armed-group/rebel-groups-afghanistan-run-through>; Tolo News, *20 Terrorist Groups Fighting Against Afghan Government*, 26 February 2017, <https://www.tolonews.com/afghanistan/20-terrorist-groups-fighting-against-afghan-government>; Middle East Institute, *A Resilient Al-Qaeda in Afghanistan and Pakistan*, August 2016, [https://www.mei.edu/sites/default/files/publications/PF18\\_Weinbaum\\_AQinAFPAK\\_web\\_1.pdf](https://www.mei.edu/sites/default/files/publications/PF18_Weinbaum_AQinAFPAK_web_1.pdf); Stanford University, *Al Qaeda*, last updated 18 August 2015, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/21>.

<sup>728</sup> See, for example, Jinnah Institute, *Daesh in Afghanistan*, 2018, <http://jinnah-institute.org/wp-content/uploads/2018/01/The-Afghanistan-Essays-Zahid-Hussain-5.pdf>; PressTV, *Daesh Becoming a Real Challenge in Afghanistan*, 17 Jun 2018, <https://www.youtube.com/watch?v=5owsXD9796Y> [video]; Accord, *Incremental Peace in Afghanistan*, Issue 27, 1 June 2018, <http://www.c-r.org/downloads/Incremental%20Peace%20in%20Afghanistan.pdf>, p. 149; Counter Extremism Project, *Afghanistan: Extremism & Counter-Extremism*, 9 May 2018, [https://www.counterextremism.com/sites/default/files/country\\_pdf/AF-05092018.pdf](https://www.counterextremism.com/sites/default/files/country_pdf/AF-05092018.pdf), p. 6; PressTV, *Despite Presence of Foreign Troops, Daesh Growing in Afghanistan*, 22 April 2018, <http://www.presstv.com/Detail/2018/04/22/559353/Afghanistan-Daesh-terrorists-US-NATO-Russia-Iran>; Pajhwok Afghan News, *Daesh Operating Military Base in Jalalabad, Claims Hazrat Ali*, 20 April 2018, <https://www.pajhwok.com/en/2018/04/30/daesh-operating-military-base-jalalabad-claims-hazrat-ali>; UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, p. 2, footnote 1; Tolo News, *The Rise and Fall of Daesh's Caliphate*, 19 January 2018, <https://www.tolonews.com/opinion/rise-and-fall-daesh%E2%80%99s-caliphate>; Bonn International Center for Conversation (BICC), *Making Sense of Daesh in Afghanistan: A Social Movement Perspective*, Working Paper No 6, 2017, [https://www.bicc.de/uploads/tx\\_bicctools/BICC\\_Working\\_Paper\\_6\\_2017.pdf](https://www.bicc.de/uploads/tx_bicctools/BICC_Working_Paper_6_2017.pdf); SciencesPo, *Taliban and Daesh: Religious Creed and Militant Groups in Afghanistan*, November 2017, <https://www.sciencespo.fr/enjeumondial/fr/odr/taliban-and-daesh-religious-creed-and-militant-groups-afghanistan>; NATO Parliamentary Assembly, *Special Report: Afghanistan*, 7 October 2017, <https://www.nato-pa.int/download-file?filename=sites/default/files/2017-11/2017%20-%20164%20DSC%2017%20E%20bis-%20%20AFGHANISTAN.pdf>, p. 6; US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Islamic State's Khorasan Province (ISIS-K)*, 19 July 2017, <http://www.refworld.org/docid/5981e3d513.html>; Brookings Institution, *Afghanistan's Terrorism Resurgence: Al-Qaida, ISIS, and Beyond*, 27 April 2017, <https://www.brookings.edu/testimonies/afghanistans-terrorism-resurgence-al-qaeda-isis-and-beyond/>; Pajhwok Afghan News, *Rebel Groups in Afghanistan: A Run-through*, 11 April 2017, <http://peace.pajhwok.com/en/armed-group/rebel-groups-afghanistan-run-through>; Tolo News, *20 Terrorist Groups Fighting Against Afghan Government*, 26 February 2017, <https://www.tolonews.com/afghanistan/20-terrorist-groups-fighting-against-afghan-government>.

<sup>729</sup> The Haqqani Network, while enjoying a large measure of tactical autonomy, is reported to share many of the Taliban's political and ideological objectives. See Jinnah Institute, *The Haqqani Question*, 2018, <http://jinnah-institute.org/wp-content/uploads/2018/01/The-Afghanistan-Essays-Rahimullah-6.pdf>; Accord, *Incremental Peace in Afghanistan*, Issue 27, 1 June 2018, <http://www.c-r.org/downloads/Incremental%20Peace%20in%20Afghanistan.pdf>, p. 149; Counter Extremism Project, *Afghanistan: Extremism & Counter-Extremism*, 9 May 2018, [https://www.counterextremism.com/sites/default/files/country\\_pdf/AF-05092018.pdf](https://www.counterextremism.com/sites/default/files/country_pdf/AF-05092018.pdf), p. 7; Central Intelligence

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Agency (CIA), *Terrorist Groups - Foreign Based: Afghanistan*, last updated 11 April 2018, [https://www.cia.gov/library/publications/the-world-factbook/fields/print\\_2265.html](https://www.cia.gov/library/publications/the-world-factbook/fields/print_2265.html); US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Haqqani Network (HQN)*, 19 July 2017, <http://www.refworld.org/docid/5981e3dfc.html>; UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, p. 2, footnote 1; The Japan Times, *Afghanistan's Most Feared: Taliban-Affiliated Haqqani Network Behind Kabul Blast that Killed at Least 95*, 29 January 2018, <https://www.japantimes.co.jp/news/2018/01/28/asia-pacific/haqqani-network-haqqanis-afghanistans-feared-insurgents/>; LA Times, *Many Americans Have Never Heard of the Haqqani Network, One of the World's Most Lethal Terror Groups*, 6 January 2018, <http://www.latimes.com/world/asia/la-fg-haqqani-network-20180105-story.html>; Stanford University, *Haqqani Network*, last updated 8 November 2017, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/363>; Deutsche Welle, *Militant Haqqani Network: A Brief History*, 17 October 2017, <http://www.dw.com/en/militant-haqqani-network-a-brief-history/g-4098389>; Washington Post, *A Much-Feared Taliban Offshoot Returns from the Dead*, 19 July 2017, [https://www.washingtonpost.com/world/asia\\_pacific/ruthless-taliban-branch-is-center-stage-in-us-pakistan-tensions/2017/07/18/dc03b2b4-5a89-11e7-aa69-3964a7d55207\\_story.html](https://www.washingtonpost.com/world/asia_pacific/ruthless-taliban-branch-is-center-stage-in-us-pakistan-tensions/2017/07/18/dc03b2b4-5a89-11e7-aa69-3964a7d55207_story.html); Tolo News, *20 Terrorist Groups Fighting Against Afghan Government*, 26 February 2017, <https://www.tolonews.com/afghanistan/20-terrorist-groups-fighting-against-afghan-government>; US National Counterterrorism Center, *Haqqani Network*, undated, [https://www.dni.gov/nctc/groups/haqqani\\_network.html](https://www.dni.gov/nctc/groups/haqqani_network.html); Global Security, *Haqqani Network (HQN)*, undated, <https://www.globalsecurity.org/military/world/para/haqqani.htm>.

Islam),<sup>730</sup> the Islamic Movement of Uzbekistan,<sup>731</sup> the Islamic Jihad Union,<sup>732</sup> the *Lashkar-e-Taiba* (Army of the Righteous),<sup>733</sup> *Lashkar-e-Jhangvi*,<sup>734</sup> *Therik-e Taliban Pakistan* (TTP),<sup>735</sup> *Jaish-e-*

<sup>730</sup> See, for example, Accord, *Incremental Peace in Afghanistan*, Issue 27, 1 June 2018, <http://www.c-r.org/downloads/Incremental%20Peace%20in%20Afghanistan.pdf>, p. 148; Counter Extremism Project, *Afghanistan: Extremism & Counter-Extremism*, 9 May 2018, [https://www.counterextremism.com/sites/default/files/country\\_pdf/AF-05092018.pdf](https://www.counterextremism.com/sites/default/files/country_pdf/AF-05092018.pdf), p. 8; Tolo News, *Freed Hizb-e-Islami Prisoners "Fighting Alongside Taliban"*, 7 May 2018, <https://www.tolonews.com/afghanistan/hizb-e-islami-members-fight-alongside-taliban-kandahar>; Global Security, *Hizb-i-Islami*, 2 September 2017, <https://www.globalsecurity.org/military/world/para/hizbi-islami.htm>; AAN, *Charismatic, Absolutist, Divisive: Hekmatyar and the Impact of His Return*, 3 May 2017, <https://www.afghanistan-analysts.org/charismatic-absolutist-divisive-hekmatyar-and-the-impact-of-his-return/>; Institute for the Study of War, *Hizb-I-Islami Gulbuddin (HIG)*, undated, <http://www.understandingwar.org/hizb-i-islami-gulbuddin-hig>; US National Counterterrorism Center, *Hezb-e-Islami Gulbuddin (HIG)*, undated, [https://www.dni.gov/nctc/groups/hezb\\_e\\_islami.html](https://www.dni.gov/nctc/groups/hezb_e_islami.html); TRAC, *Hizb-i-Islami Gulbuddin (HIG)*, undated, <https://www.trackingterrorism.org/group/hizb-i-islami-gulbuddin-hig>.

<sup>731</sup> "Uzbek fighters have become deeply embedded in ISIS and have fought alongside the Taliban in Afghanistan [...] The Islamic Movement of Uzbekistan was the most prominent Central Asian group active in Afghanistan and Pakistan". International Institute for Counter-Terrorism, *Central Asian Jihadists in the Front Line*, 4 September 2017, <http://www.ict.org.il/Article/2075/CentralAsianJihadists#gsc.tab=0>. See also, Counter Extremism Project, *Afghanistan: Extremism & Counter-Extremism*, 9 May 2018, [https://www.counterextremism.com/sites/default/files/country\\_pdf/AF-05092018.pdf](https://www.counterextremism.com/sites/default/files/country_pdf/AF-05092018.pdf), p. 8; UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, p. 2, footnote 1; Sputnik News, *'We Are Surrounded': 21 Terrorist Organizations Active in Afghanistan*, 15 February 2018, <https://sputniknews.com/asia/201802151061674094-afghanistan-terror-groups-pakistan/>; US Department of Defense, *U.S. Forces Strike Taliban, East Turkestan Islamic Movement Training Sites*, 7 February 2018, <https://www.defense.gov/News/Article/Article/1435247/us-forces-strike-taliban-east-turkestan-islamic-movement-training-sites/>; US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Islamic Movement of Uzbekistan (IMU)*, 19 July 2017, <http://www.refworld.org/docid/5981e3d7a.html>; Tolo News, *20 Terrorist Groups Fighting Against Afghan Government*, 26 February 2017, <https://www.tolonews.com/afghanistan/20-terrorist-groups-fighting-against-afghan-government>; Pajhwok Afghan News, *Rebel Groups in Afghanistan: A Run-through*, 11 April 2017, <http://peace.pajhwok.com/en/armed-group/rebel-groups-afghanistan-run-through>; Global Security, *Islamic Movement of Uzbekistan (IMU)*, undated, <https://www.globalsecurity.org/military/world/para/imu.htm>.

<sup>732</sup> The Islamic Jihad Union is reported to be a splinter group of the Islamic Movement of Uzbekistan and is affiliated with Al-Qaeda. See, Global Security, *Islamic Jihad Union*, undated, <http://www.globalsecurity.org/military/world/para/iju.htm>. See also Accord, *Incremental Peace in Afghanistan*, Issue 27, 1 June 2018, <http://www.c-r.org/downloads/Incremental%20Peace%20in%20Afghanistan.pdf>, p. 148; UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, p. 2, footnote 1; US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Islamic Jihad Union (IJU)*, 19 July 2017, <http://www.refworld.org/docid/5981e3d8a.html>; Pajhwok Afghan News, *Rebel Groups in Afghanistan: A Run-through*, 11 April 2017, <http://peace.pajhwok.com/en/armed-group/rebel-groups-afghanistan-run-through>; Jamestown Foundation, *Unrest in Northern Afghanistan Heralds Regional Threats*, 7 January 2016, <http://www.refworld.org/docid/569f501c4.htm>.

<sup>733</sup> See, for example, Central Intelligence Agency (CIA), *Terrorist Groups - Foreign Based: Afghanistan*, last updated 11 April 2018, [https://www.cia.gov/library/publications/the-world-factbook/fields/print\\_2265.html](https://www.cia.gov/library/publications/the-world-factbook/fields/print_2265.html); American Foreign Policy Council, *World Almanac of Islamism: Lashkar-e Taiba*, last updated 11 April 2018, <http://almanac.afpc.org/lashkar-e-taiba>; UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, p. 2, footnote 1; Sputnik News, *'We Are Surrounded': 21 Terrorist Organizations Active in Afghanistan*, 15 February 2018, <https://sputniknews.com/asia/201802151061674094-afghanistan-terror-groups-pakistan/>; US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Lashkar e-Tayyiba (LeT)*, 19 July 2017, <http://www.refworld.org/docid/5981e3ccc.html>; Pajhwok Afghan News, *Rebel Groups in Afghanistan: A Run-through*, 11 April 2017, <http://peace.pajhwok.com/en/armed-group/rebel-groups-afghanistan-run-through>; Tolo News, *20 Terrorist Groups Fighting Against Afghan Government*, 26 February 2017, <https://www.tolonews.com/afghanistan/20-terrorist-groups-fighting-against-afghan-government>; US National Counterterrorism Center, *Lashkar-e-Tayyiba (LT)*, undated, <https://www.dni.gov/nctc/groups/lt.html>; Stanford University, *Lashkar-e-Taiba*, last updated 30 January 2016, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/79>; Global Security, *Lashkar-i-taiba (LeT)*, undated, <https://www.globalsecurity.org/military/world/para/let.htm>.

<sup>734</sup> See, for example, Central Intelligence Agency (CIA), *Terrorist Groups - Foreign Based: Afghanistan*, last updated 11 April 2018, [https://www.cia.gov/library/publications/the-world-factbook/fields/print\\_2265.html](https://www.cia.gov/library/publications/the-world-factbook/fields/print_2265.html); Pajhwok Afghan News, *Rebel Groups in Afghanistan: A Run-through*, 11 April 2017, <http://peace.pajhwok.com/en/armed-group/rebel-groups-afghanistan-run-through>; Tolo News, *20 Terrorist Groups Fighting Against Afghan Government*, 26 February 2017, <https://www.tolonews.com/afghanistan/20-terrorist-groups-fighting-against-afghan-government>; Gandhara, *Pakistani Extremists Carve a Sanctuary in Southern Afghanistan*, 23 January 2017, <https://gandhara.rferl.org/a/afghanistan-zabul-lashkar-e-jhangvi/28251900.html>; Australian National Security, *Lashkar-e Jhangvi*, 3 March 2018, <https://www.nationalsecurity.gov.au/listedterroristorganisations/pages/lashkar-e-jhangvi.aspx>; Geo TV, *Suspected LeJ Terrorists Escaped to Afghanistan: CTD*, 14 September 2017, <https://www.geo.tv/latest/158083-suspected-lej-terrorists-escaped-to-afghanistan-ctd>; Stanford University, *Lashkar-e-Jhangvi*, last updated 7 July 2015, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/215>; US National Counterterrorism Center, *Lashkar-e-Jhangvi (LJ)*, undated, <https://www.dni.gov/nctc/groups/lj.html>.

<sup>735</sup> See, for example, Jinnah Institute, *Enemy at the Gates: The TTP in Afghanistan*, 2018, <http://jinnah-institute.org/wp-content/uploads/2018/01/The-Afghanistan-Essays-Zamir-Akram-8.pdf>; Accord, *Incremental Peace in Afghanistan*, Issue 27, 1 June 2018, <http://www.c-r.org/downloads/Incremental%20Peace%20in%20Afghanistan.pdf>, p. 150; Stanford University, *Tehrik-i-Taliban Pakistan*, last updated 6 August 2017, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/105>; US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Tehrik-e Taliban Pakistan (TTP)*, 19 July 2017, <http://www.refworld.org/docid/5981e3bd26.html>; Pajhwok Afghan News, *Rebel Groups in Afghanistan: A Run-through*, 11 April 2017, <http://peace.pajhwok.com/en/armed-group/rebel-groups-afghanistan-run-through>; Tolo News, *20 Terrorist Groups Fighting Against Afghan Government*, 26 February 2017, <https://www.tolonews.com/afghanistan/20-terrorist-groups-fighting-against-afghan-government>; US National Counterterrorism Center, *Tehrik-e Taliban Pakistan (TTP)*, undated, <https://www.dni.gov/nctc/groups/ttp.html>; Global Security, *Tehrik Taliban-i Pakistan (TTiP)*, undated, <https://www.globalsecurity.org/military/world/para/ttp.htm>.



Mohammad,<sup>736</sup> Maulvi Nazir Group,<sup>737</sup> Tora-Bora Nizami Mahaz (Tora-Bora Military Front),<sup>738</sup> Jundallah,<sup>739</sup> Harkat ul-Jihad-i-Islami (HuJI),<sup>740</sup> Harkat ul-Mujahideen (HuM),<sup>741</sup> and the East Turkestan Islamic Movement (ETIM).<sup>742</sup>

#### 4. Members of the Afghan Security Forces, including the NDS, the ANP and the ALP

The applicability of the exclusion clauses will need to be considered in relation to members of the ANDSF, in cases where there are indications that they may have been associated with serious abuses of human rights and/or violations of humanitarian law. As noted in Section II.C.1.a, elements of the ANDSF are reported to have committed serious human rights violations, including unlawful killings;

<sup>736</sup> See, for example, Central Intelligence Agency (CIA), *Terrorist Groups - Foreign Based: Afghanistan*, last updated 11 April 2018, [https://www.cia.gov/library/publications/the-world-factbook/fields/print\\_2265.html](https://www.cia.gov/library/publications/the-world-factbook/fields/print_2265.html); UN General Assembly, *The Situation of Human Rights in Afghanistan and Technical Assistance Achievements in the Field of Human Rights*, 21 February 2018, A/HRC/37/45, <http://www.refworld.org/docid/5b03e25e4.html>, p. 2, footnote 1; Sputnik News, 'We Are Surrounded': 21 Terrorist Organizations Active in Afghanistan, 15 February 2018, <https://sputniknews.com/asia/201802151061674094-afghanistan-terror-groups-pakistan/>; US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Jaish-e-Mohammed (JeM)*, 19 July 2017, <http://www.refworld.org/docid/5981e3d413.html>; Pahjwok Afghan News, *Rebel Groups in Afghanistan: A Run-through*, 11 April 2017, <http://peace.pahjwok.com/en/armed-group/rebel-groups-afghanistan-run-through>; Tolo News, *20 Terrorist Groups Fighting Against Afghan Government*, 26 February 2017, <https://www.tolonews.com/afghanistan/20-terrorist-groups-fighting-against-afghan-government>; Stanford University, *Jaish-e-Mohammed*, last updated 25 June 2015, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/95>; Global Security, *Jaish-e-Mohammed (JEM)*, undated, <https://www.globalsecurity.org/military/world/para/jem.htm>.

<sup>737</sup> See Pakistan Forward, *Clashes Erupt in South Waziristan Between Maulvi Nazir Militants and PTM*, 4 June 2018, [http://pakistan.asia-news.com/en\\_GB/articles/cnmi\\_pf/newsbriefs/2018/06/04/newsbrief-01](http://pakistan.asia-news.com/en_GB/articles/cnmi_pf/newsbriefs/2018/06/04/newsbrief-01); Tolo News, *20 Terrorist Groups Fighting Against Afghan Government*, 26 February 2017, <https://www.tolonews.com/afghanistan/20-terrorist-groups-fighting-against-afghan-government>; Sputnik News, 'We Are Surrounded': 21 Terrorist Organizations Active in Afghanistan, 15 February 2018, <https://sputniknews.com/asia/201802151061674094-afghanistan-terror-groups-pakistan/>.

<sup>738</sup> The Tora-Bora Nizami Mahaz is reported to be an offshoot of the *Hezb-e-Islami (Khalis)* (HiK). The faction reportedly broke away from HiK following the death of the HiK leader Maulvi Yunis Khalis and the subsequent power struggle between Anwarul Haq Mujahid, the son of Khalis, and Haji Din Mohammad. The group has openly declared its opposition to US-led forces and in 2016 the group reportedly swore allegiance to the Taliban. See, The Long War Journal, *Influential Taliban Commander Pledges to New Emir*, 12 March 2018, <https://www.longwarjournal.org/archives/2016/08/influential-taliban-commander-pledges-to-new-emir.php>; Naval Postgraduate School, *Nangarhar's Continued Decline into Insurgency, Violence and Widespread Drug Production*, February 2016, <http://www.refworld.org/docid/56c2eaa34.html>, p. 4.; TRAC, *Tora Bora Nizami Mahaz (TBNM)*, undated, <https://www.trackingterrorism.org/group/tora-bora-nizami-mahaz-tbnm>.

<sup>739</sup> Since its inception in 2003, Jundallah reportedly operates primarily in the province of Sistan va Balochistan of Iran, and the Baloch areas of Pakistan and Afghanistan. Jundallah's stated goals are to secure recognition of Balochi cultural, economic, and political rights from the Government of Iran, and to spread awareness of the plight of the Baloch people. US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Jundallah*, 19 July 2017, <http://www.refworld.org/docid/5981e3d04.html>.

<sup>740</sup> Harkat-ul Jihad Islami (HUJI) reportedly seeks the annexation of the state of Jammu and Kashmir and the expulsion of Coalition Forces from Afghanistan, and has supplied fighters to the Taliban in Afghanistan. See Central Intelligence Agency (CIA), *Terrorist Groups - Foreign Based: Afghanistan*, last updated 11 April 2018, [https://www.cia.gov/library/publications/the-world-factbook/fields/print\\_2265.html](https://www.cia.gov/library/publications/the-world-factbook/fields/print_2265.html); US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Harkat ul-Jihad-i-Islami (HUJI)*, 19 July 2017, <http://www.refworld.org/docid/5981e3de11.html>; Stanford University, *Harkat-ul-Jihadi al-Islami*, last updated 11 July 2016, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/217>; UN Security Council ISIL and Al-Qaida Sanctions Committee, *Harkat-ul Jihad Islami*, 3 February 2015, [https://www.un.org/sc/suborg/en/sanctions/1267/aq\\_sanctions\\_list/summaries/entity/Harakat-ul-jihad-islami](https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list/summaries/entity/Harakat-ul-jihad-islami); Global Security, *Harkat-ul-Jihad-al-Islami (HuJI)*, undated, <https://www.globalsecurity.org/military/world/para/huji-b.htm>.

<sup>741</sup> Harkat ul-Mujahideen (HUM) reportedly seeks the annexation of the state of Jammu and Kashmir and the expulsion of Coalition Forces from Afghanistan. See Central Intelligence Agency (CIA), *Terrorist Groups - Foreign Based: Afghanistan*, last updated 11 April 2018, [https://www.cia.gov/library/publications/the-world-factbook/fields/print\\_2265.html](https://www.cia.gov/library/publications/the-world-factbook/fields/print_2265.html); Stanford University, *Harkat-ul-Mujahideen*, last updated 8 August 2017, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/219>; US Department of State, *Country Reports on Terrorism 2016 - Foreign Terrorist Organizations: Harkat ul-Mujahideen (HUM)*, 19 July 2017, <http://www.refworld.org/docid/5981e3dc13.html>.

<sup>742</sup> The group is also known as Turkistan Islamic Party (TIP) or the Turkistan Islamic Movement (TIM). "The Islamic Movement of Eastern Turkestan established in the 80s of last century in Chinese Xingjian was later renamed into the Turkistan Islamic Party [TIP] and since 1997 it has been known to be based in Afghanistan. Since then, TIP is actively cooperating with terrorist groups al Qaeda and Taliban. In 1998, the leader of TIP, Hasan Mahsum, received a passport from the Taliban in Kabul [...] Close cooperation with Al Qaeda and the Taliban in Afghanistan has radicalized the ideology of the TIP and jihadism has become a key element of the party platform." Modern Diplomacy, *China and the Turkestan Islamic Party: From Separatism to World Jihad*, 9 December 2017, <https://moderndiplomacy.eu/2017/12/09/china-and-the-turkestan-islamic-party-from-separatism-to-world-jihad/>. See also, The Long War Journal, *Turkistan Islamic Party Highlights Joint Raids with the Afghan Taliban*, 12 March 2018, <https://www.longwarjournal.org/archives/2018/03/turkistan-islamic-party-highlights-joint-raids-with-the-afghan-taliban.php>; Reuters, *U.S. Forces in Afghanistan Attack Anti-China Militants*, 8 February 2018, <https://www.reuters.com/article/us-afghanistan-usa-china/u-s-forces-in-afghanistan-attack-anti-china-militants-idUSKBN1FS23S>; Afghan Biographies, *East Turkestan Islamic Movement (ETIM)*, 15 February 2018, [http://www.afghan-bios.info/index.php?option=com\\_afghanbios&id=3883&task=view&total=3673&start=883&Itemid=2](http://www.afghan-bios.info/index.php?option=com_afghanbios&id=3883&task=view&total=3673&start=883&Itemid=2); International Centre for Counter-Terrorism, *Uighur Foreign Fighters: An Underexamined Jihadist Challenge*, November 2017, <https://icct.nl/wp-content/uploads/2017/11/Clarke-Kan-Uighur-Foreign-Fighters-An-Underexamined-Jihadist-Challenge-Nov-2017-1.pdf>; The Diplomat, *Central Asia's Stake in Afghanistan's War*, 20 July 2015, <https://thediplomat.com/2015/07/central-asias-stake-in-afghanistans-war/>; Afghan War News, *East Turkestan Islamic Movement*, undated, <http://www.afghanwarnews.info/insurgency/east-turkestan-islamic-movement-etim.htm>.



torture and cruel, inhuman or degrading treatment or punishment; and sexual violence, including rape of detainees and the sexual exploitation of children.

#### ***5. Members of Pro-Government Paramilitary Groups and Militias***

The applicability of the exclusion clauses will need to be considered in relation to members of pro-government paramilitary groups and militias, in cases where there are indications that they may have been associated with serious abuses of human rights and/or violations of humanitarian law. As noted in Section II.C.1.b, paramilitary groups and militias are reported to have committed serious human rights abuses, including extrajudicial killings, assaults and extortion.